

2013

**SESSION LAWS**

OF THE

**STATE OF WASHINGTON**

REGULAR SESSION  
SIXTY-THIRD LEGISLATURE  
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## WASHINGTON SESSION LAWS GENERAL INFORMATION

### 1. EDITIONS AVAILABLE.

- (a) *General Information.* The session laws are printed in a permanent softbound edition containing the accumulation of all laws adopted in the legislative session. The edition contains a subject index and tables indicating Revised Code of Washington sections affected.
- (b) *Where and how obtained - price.* The permanent session laws may be ordered from the Statute Law Committee, Pritchard Building, P.O. Box 40552, Olympia, Washington 98504-0552. The edition costs \$25.00 per set plus applicable state and local sales taxes and \$7.00 shipping and handling. All orders must be accompanied by payment.

### 2. PRINTING STYLE - INDICATION OF NEW OR DELETED MATTER.

The session laws are presented 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 effective date for the Laws of the 2013 regular session to be the first moment of July 28, 2013.
- (b) Laws that carry an emergency clause take effect immediately, or as otherwise specified, upon approval by the Governor.
- (c) Laws that prescribe an effective date take effect upon that date.

### 6. INDEX AND TABLES.

A cumulative index and tables of all 2013 laws may be found at the back of the final volume.

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## CHAPTER 154

[Senate Bill 5030]

## STATE HIGHWAYS—CHINOOK SCENIC BYWAY

AN ACT Relating to extending the Chinook scenic byway; amending RCW 47.39.020; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature recognizes the city of Enumclaw as the gateway to the Chinook scenic byway in western Washington. As such, it is the legislature's intent to set the western terminus of the byway within Enumclaw's city limits. It is further the legislature's intent to make attractions within the city of Enumclaw eligible for future grant opportunities by establishing an all-encompassing entrance point for the Chinook scenic byway.

**Sec. 2.** RCW 47.39.020 and 2011 c 123 s 1 are each amended to read as follows:

The following portions of highways are designated as part of the scenic and recreational highway system:

(1) State route number 2, beginning at the crossing of Woods creek at the east city limits of Monroe, thence in an easterly direction by way of Stevens pass to a junction with state route number 97 in the vicinity of Peshastin; also

Beginning at the junction with state route number 17, in the vicinity of Coulee City, thence easterly to the junction with state route number 155;

(2) State route number 3, beginning at a junction with state route number 101 in the vicinity of Shelton, thence northeasterly and northerly to a junction with state route number 104 in the vicinity of Port Gamble;

(3) State route number 4, beginning at the junction with state route number 101, thence easterly through Cathlamet to Coal Creek road, approximately .5 miles west of the Longview city limits;

(4) State route number 5, beginning at the junction with Starbird Road in Snohomish county, thence northerly to the junction with Bow Hill Road in Skagit county, to be designated as an agricultural scenic corridor with appropriate signage;

(5) State route number 6, beginning at the junction with state route number 101 in Raymond, thence easterly to the junction with state route number 5, in the vicinity of Chehalis;

(6) State route number 7, beginning at the junction with state route number 12 in Morton, thence northerly to the junction with state route number 507;

(7) State route number 8, beginning at a junction with state route number 12 in the vicinity of Elma, thence easterly to a junction with state route number 101 near Tumwater;

(8) State route number 9, beginning at the junction with state route number 530 in Arlington, thence northerly to the end of the route at the Canadian border;

(9) State route number 10, beginning at Teanaway junction, thence easterly to a junction with state route number 97 west of Ellensburg;

(10) State route number 11, beginning at the junction with state route number 5 in the vicinity of Burlington, thence in a northerly direction to the junction with state route number 5;

(11) State route number 12, beginning at a junction with a county road approximately 2.8 miles west of the crossing of the Wynoochee river which is

approximately 1.2 miles west of Montesano, thence in an easterly direction to a junction with state route number 8 in the vicinity of Elma; also

Beginning at a junction with state route number 5, thence easterly by way of Morton, Randle, and Packwood to the junction with state route number 410, approximately 3.5 miles west of Naches; also

Beginning at the junction with state route number 124 in the vicinity of the Tri-Cities, thence easterly through Wallula and Touchet to a junction with a county road approximately 2.4 miles west of a junction with state route number 129 at Clarkston;

(12) State route number 14, beginning at the crossing of Gibbons creek approximately 0.9 miles east of Washougal, thence easterly along the north bank of the Columbia river to a point in the vicinity of Plymouth;

(13) State route number 17, beginning at a junction with state route number 395 in the vicinity of Mesa, thence northerly to the junction with state route number 97 in the vicinity of Brewster;

(14) State route number 19, the Chimacum-Beaver Valley road, beginning at the junction with state route number 104, thence northerly to the junction with state route number 20;

(15) State route number 20, beginning at the junction with state route number 101 to the ferry zone in Port Townsend; also

Beginning at the Keystone ferry slip on Whidbey Island, thence northerly and easterly to a junction with state route number 153 southeast of Twisp; also

Beginning at the junction of state route number 97 in the vicinity of Okanogan, thence westerly across the Okanogan river to the junction with state route number 215; also

Beginning at a junction with state route number 97 near Tonasket, thence easterly and southerly to a junction with state route number 2 at Newport;

(16) State route number 25, beginning at the Spokane river bridge, thence northerly through Cedonia, Gifford, Kettle Falls, and Northport, to the Canadian border;

(17) State route number 26, beginning at the Whitman county boundary line, thence easterly by way of the vicinities of La Crosse and Dusty to a junction with state route number 195 in the vicinity of Colfax;

(18) State route number 27, beginning at a junction with state route number 195 in the vicinity of Pullman, thence northerly by way of the vicinities of Palouse and Garfield to a junction with state route number 271 in the vicinity of Oakesdale; also

From a junction with state route number 271 at Oakesdale, thence northerly to the vicinity of Rockford;

(19) State route number 31, beginning at the junction with state route number 20 in Tiger, thence northerly to the Canadian border;

(20) State route number 82, beginning at the junction with state route number 395 south of the Tri-Cities area, thence southerly to the end of the route at the Oregon border;

(21) State route number 90, beginning at the junction with East Sunset Way in the vicinity east of Issaquah, thence easterly to Thorp road 9.0 miles west of Ellensburg;

(22) State route number 97, beginning at the Oregon border, in a northerly direction through Topenish and Wapato to the junction with state route number 82 at Union Gap; also

Beginning at the junction with state route number 10, 2.5 miles north of Ellensburg, in a northerly direction to the junction with state route number 2, 4.0 miles east of Leavenworth; also

Beginning at the junction of state route number 153 in the vicinity south of Pateros, thence northerly by way of the vicinities of Brewster, Okanogan, Omak, Riverside, Tonasket, and Oroville to the international boundary line;

(23) State route number 97 alternate, beginning at the junction with state route number 2 in the vicinity of Monitor, thence northerly to the junction with state route number 97, approximately 5.0 miles north of Chelan;

(24) State route number 101, beginning at the Astoria-Megler bridge, thence north to Fowler street in Raymond; also

Beginning at a junction with state route number 109 in the vicinity of Queets, thence in a northerly, northeasterly, and easterly direction by way of Forks to the junction with state route number 5 in the vicinity of Olympia;

(25) State route number 104, beginning at a junction with state route number 101 in the vicinity south of Discovery bay, thence in a southeasterly direction to the Kingston ferry crossing;

(26) State route number 105, beginning at a junction with state route number 101 at Raymond, thence westerly and northerly by way of Tokeland and North Cove to the shore of Grays Harbor north of Westport; also

Beginning at a junction with state route number 105 in the vicinity south of Westport, thence northeasterly to a junction with state route number 101 at Aberdeen;

(27) State route number 109, beginning at a junction with state route number 101 in Hoquiam to a junction with state route number 101 in the vicinity of Queets;

(28) State route number 112, beginning at the easterly boundary of the Makah Indian reservation, thence in an easterly direction to the vicinity of Laird's corner on state route number 101;

(29) State route number 116, beginning at the junction with the Chimacum-Beaver Valley road, thence in an easterly direction to Fort Flagler State Park;

(30) State route number 119, beginning at the junction with state route number 101 at Hoodspout, thence northwesterly to the Mount Rose development intersection;

(31) State route number 122, Harmony road, between the junction with state route number 12 near Mayfield dam and the junction with state route number 12 in Mossyrock;

(32) State route number 123, beginning at the junction with state route number 12 in the vicinity of Morton, thence northerly to the junction with state route number 410;

(33) State route number 129, beginning at the Oregon border, thence northerly to the junction with state route number 12 in Clarkston;

(34) State route number 141, beginning at the junction with state route number 14 in Bingen, thence northerly to the end of the route at the Skamania county line;

(35) State route number 142, beginning at the junction with state route number 14 in Lyle, thence northeasterly to the junction with state route number 97, .5 miles from Goldendale;

(36) State route number 153, beginning at a junction with state route number 97 in the vicinity of Pateros, thence in a northerly direction to a junction with state route number 20 in the vicinity south of Twisp;

(37) State route number 155, beginning at a junction with state route number 2 in the vicinity north of Coulee City, thence northerly and westerly to the junction with state route number 215;

(38) State route number 194, beginning at the Port of Almota to the junction with state route number 195 in the vicinity of Pullman;

(39) State route number 195, beginning at the Washington-Idaho boundary line southeast of Uniontown, thence northwesterly and northerly by way of the vicinity of Colton, Pullman, Colfax, Steptoe, and Rosalia to the Whitman county boundary line;

(40) State route number 202, beginning at the junction with state route number 522, thence in an easterly direction to the junction with state route number 90 in the vicinity of North Bend;

(41) State route number 211, beginning at the junction with state route number 2, thence northerly to the junction with state route number 20 in the vicinity of Usk;

(42) State route number 215, beginning at the junction of state route number 20 in the vicinity of Okanogan, thence northeasterly on the west side of the Okanogan river to a junction with state route number 97 north of Omak;

(43) State route number 231, beginning at the junction with state route number 23, in the vicinity of Sprague, thence in a northerly direction to the junction with state route number 2, approximately 2.5 miles west of Reardan;

(44) State route number 261, beginning at the junction with state route number 12 in the vicinity of Delaney, thence northwesterly to the junction with state route number 260;

(45) State route number 262, beginning at the junction with state route number 26, thence northeasterly to the junction with state route number 17 between Moses Lake and Othello;

(46) State route number 271, beginning at a junction with state route number 27 in the vicinity of Oakesdale, thence northwesterly to a junction with state route number 195 in the vicinity south of Rosalia;

(47) State route number 272, beginning at the junction with state route number 195 in Colfax, thence easterly to the Idaho state line, approximately 1.5 miles east of Palouse;

(48) State route number 278, beginning at a junction with state route number 27, thence easterly via Rockford to the Idaho state line;

(49) State route number 305, beginning at the Winslow ferry dock to the junction with state route number 3 approximately 1.0 mile north of Poulsbo;

(50) State route number 395, beginning at the north end of the crossing of Mill creek in the vicinity of Colville, thence in a northwesterly direction to a junction with state route number 20 at the west end of the crossing over the Columbia river at Kettle Falls;

(51) State route number 401, beginning at a junction with state route number 101 at Point Ellice, thence easterly and northerly to a junction with state route number 4 in the vicinity north of Naselle;

(52) State route number 410, beginning (~~(4.0 miles east of)~~) at the intersection with Farman street in Enumclaw, thence in an easterly direction to the junction with state route number 12, approximately 3.5 miles west of Naches;

(53) State route number 501, beginning at the junction with state route number 5 in the vicinity of Vancouver, thence northwesterly on the New Lower River road around Vancouver Lake;

(54) State route number 503, beginning at the junction with state route number 500, thence northerly by way of Battle Ground and Yale to the junction with state route number 5 in the vicinity of Woodland;

(55) State route number 504, beginning at a junction with state route number 5 at Castle Rock, to the end of the route on Johnston Ridge, approximately milepost 52;

(56) State route number 505, beginning at the junction with state route number 504, thence northwesterly by way of Toledo to the junction with state route number 5;

(57) State route number 508, beginning at the junction with state route number 5, thence in an easterly direction to the junction with state route number 7 in Morton;

(58) State route number 525, beginning at the ferry toll booth on Whidbey Island to a junction with state route number 20 east of the Keystone ferry slip;

(59) State route number 542, beginning at the junction with state route number 5, thence easterly to the vicinity of Austin pass in Whatcom county;

(60) State route number 547, beginning at the junction with state route number 542 in Kendall, thence northwesterly to the junction with state route number 9 in the vicinity of the Canadian border;

(61) State route number 706, beginning at the junction with state route number 7 in Elbe, in an easterly direction to the end of the route at Mt. Rainier National Park;

(62) State route number 821, beginning at a junction with state route number 82 at the Yakima firing center interchange, thence in a northerly direction to a junction with state route number 82 at the Thrall road interchange;

(63) State route number 971, Navarre Coulee road, between the junction with state route number 97 and the junction with South Lakeshore road;

(64) Beginning at the Anacortes ferry landing, the Washington state ferries Anacortes/San Juan Islands route, which includes stops at Lopez, Shaw, Orcas, and San Juan Islands; and the roads on San Juan and Orcas Islands as described in San Juan Island county council resolution number 7, adopted February 5, 2008;

(65) All Washington state ferry routes.

Passed by the Senate March 11, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 7, 2013.

Filed in Office of Secretary of State May 7, 2013.

CHAPTER 155

[Senate Bill 5050]

TOW TRUCKS—CARRYING OF PASSENGERS

AN ACT Relating to the carrying of passengers in a vehicle attached to a flatbed tow truck; and amending RCW 46.61.625.

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

**Sec. 1.** RCW 46.61.625 and 1999 c 398 s 9 are each amended to read as follows:

(1) No person or persons shall occupy any trailer while it is being moved upon a public highway, except a person occupying a proper position for steering a trailer designed to be steered from a rear-end position.

(2) Except as provided in subsection (3) of this section, no person or persons may occupy a vehicle while it is being towed by a tow truck as defined in RCW 46.55.010.

(3)(a) A tow truck operator may allow passengers to ride in a vehicle that is carried on the deck of a flatbed tow truck only when the following conditions are met:

(i) The number of people that need to be transported exceeds the seating capacity of the tow truck or a person needing to be transported has a disability that limits that person's ability to enter the tow truck;

(ii) All passengers in the carried vehicle and in the tow truck comply with RCW 46.61.687 and 46.61.688;

(iii) Any passenger under sixteen years of age is accompanied by an adult riding in the same vehicle; and

(iv) There is a way for the passengers in the carried vehicle to immediately communicate, either verbally, audibly, or visually, with the tow truck operator in case of an emergency.

(b) No passenger of such a carried vehicle may exit the carried vehicle, ride outside of the passenger compartment of the carried vehicle, or exhibit dangerous or distracting behaviors while in the carried vehicle.

Passed by the Senate April 19, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 7, 2013.

Filed in Office of Secretary of State May 7, 2013.

CHAPTER 156

[Senate Bill 5056]

BUSINESS LICENSES—MASTER LICENSES—EMPLOYMENT OF MINORS

AN ACT Relating to the submission of new master applications by persons seeking work permits for the employment of minors; and adding a new section to chapter 19.02 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 19.02 RCW to read as follows:

A person seeking a work permit for the employment of minors under RCW 49.12.121 is not required to complete an entirely new master application if there are no changes to any other information submitted on the most recent master application. The person need only complete the parts of a new master

application that identify the employer seeking the minor work permit, including address and contact information, and that indicate the employer plans to employ one or more minors, the duties to be performed by minors, and the estimated number of hours to be worked by minors.

Passed by the Senate February 6, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 7, 2013.

Filed in Office of Secretary of State May 7, 2013.

## CHAPTER 157

[Engrossed Substitute Senate Bill 5095]

### VEHICLES—PROOF OF REQUIRED DOCUMENTS—ELECTRONIC FORMATS

AN ACT Relating to providing proof required documents for motor vehicle operation electronically; and amending RCW 46.30.020, 46.30.030, and 46.16A.180.

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

**Sec. 1.** RCW 46.30.020 and 2011 c 171 s 76 are each amended to read as follows:

(1)(a) No person may operate a motor vehicle subject to registration under chapter 46.16A RCW in this state unless the person is insured under a motor vehicle liability policy with liability limits of at least the amounts provided in RCW 46.29.090, is self-insured as provided in RCW 46.29.630, is covered by a certificate of deposit in conformance with RCW 46.29.550, or is covered by a liability bond of at least the amounts provided in RCW 46.29.090. ~~((Written))~~ Proof of financial responsibility for motor vehicle operation must be provided on the request of a law enforcement officer in the format specified under RCW 46.30.030.

(b) A person who drives a motor vehicle that is required to be registered in another state that requires drivers and owners of vehicles in that state to maintain insurance or financial responsibility shall, when requested by a law enforcement officer, provide evidence of financial responsibility or insurance as is required by the laws of the state in which the vehicle is registered.

(c) ~~When asked to do so by a law enforcement officer, failure to display ((an insurance identification card))~~ proof of financial responsibility for motor vehicle operation as specified under RCW 46.30.030 creates a presumption that the person does not have motor vehicle insurance.

(d) Failure to provide proof of motor vehicle insurance is a traffic infraction and is subject to penalties as set by the supreme court under RCW 46.63.110 or community restitution.

(e) For the purposes of this section, when a person uses a portable electronic device to display proof of financial security to a law enforcement officer, the officer may only view the proof of financial security and is otherwise prohibited from viewing any other content on the portable electronic device.

(f) Whenever a person presents a portable electronic device pursuant to this section, that person assumes all liability for any damage to the portable electronic device.

(2) If a person cited for a violation of subsection (1) of this section appears in person before the court or a violations bureau and provides written evidence

that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, the citation shall be dismissed and the court or violations bureau may assess court administrative costs of twenty-five dollars at the time of dismissal. In lieu of personal appearance, a person cited for a violation of subsection (1) of this section may, before the date scheduled for the person's appearance before the court or violations bureau, submit by mail to the court or violations bureau written evidence that at the time the person was cited, he or she was in compliance with the financial responsibility requirements of subsection (1) of this section, in which case the citation shall be dismissed without cost, except that the court or violations bureau may assess court administrative costs of twenty-five dollars at the time of dismissal.

(3) The provisions of this chapter shall not govern:

(a) The operation of a motor vehicle registered under RCW 46.18.220 or 46.18.255, governed by RCW 46.16A.170, or registered with the Washington utilities and transportation commission as common or contract carriers; or

(b) The operation of a motorcycle as defined in RCW 46.04.330, a motor-driven cycle as defined in RCW 46.04.332, or a moped as defined in RCW 46.04.304.

(4) RCW 46.29.490 shall not be deemed to govern all motor vehicle liability policies required by this chapter but only those certified for the purposes stated in chapter 46.29 RCW.

**Sec. 2.** RCW 46.30.030 and 1989 c 353 s 3 are each amended to read as follows:

(1) Whenever an insurance company issues or renews a motor vehicle liability insurance policy, the company shall provide the policyholder with an identification card as specified by the department of licensing. At the policyholder's request, the insurer shall provide the policyholder a card for each vehicle covered under the policy. The card required by this section may be provided in either paper or electronic format. Acceptable electronic formats include the display of electronic images on a cellular phone or any other type of portable electronic device.

(2) The department of licensing shall adopt rules specifying the type, style, and content of insurance identification cards to be used for proof of compliance with RCW 46.30.020, including the method for issuance of such identification cards by persons or organizations providing proof of compliance through self-insurance, certificate of deposit, or bond. In adopting such rules the department shall consider the guidelines for insurance identification cards developed by the insurance industry committee on motor vehicle administration.

**Sec. 3.** RCW 46.16A.180 and 2010 c 161 s 432 are each amended to read as follows:

(1) A registration certificate must be:

(a) Signed by the registered owner, or if a firm or corporation, the signature of one of its officers or other authorized agent, to be valid;

(b) Carried in the vehicle for which it is issued; and

(c) Provided to law enforcement and the department by the operator of the vehicle upon demand.



(d) The registration certificate required by this section may be provided in either paper or electronic format. Acceptable electronic formats include the display of electronic images on a cellular phone or any other type of portable electronic device.

(2) It is unlawful for any person to operate or be in possession of a vehicle without carrying a registration certificate for the vehicle. Any person in charge of a vehicle shall, upon demand of any of the local authorities or of any police officer or of any representative of the department, permit an inspection of the vehicle registration certificate. This section does not apply to a vehicle for which registration is not required to be renewed annually and is a publicly owned vehicle marked as required under RCW 46.08.065.

Passed by the Senate February 20, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 7, 2013.

Filed in Office of Secretary of State May 7, 2013.

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## CHAPTER 158

[Senate Bill 5297]

### COAL TRANSITION POWER

AN ACT Relating to coal transition power; amending RCW 19.285.040; and reenacting and amending RCW 19.285.030.

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

**Sec. 1.** RCW 19.285.030 and 2012 c 22 s 2 are each reenacted and amended to read as follows:

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

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for qualifying utilities under its jurisdiction that are not investor-owned utilities; or (b) an independent auditor selected by a qualifying utility that is not under the jurisdiction of the state auditor and is not an investor-owned utility.

(3)(a) "Biomass energy" includes: (i) Organic by-products of pulping and the wood manufacturing process; (ii) animal manure; (iii) solid organic fuels from wood; (iv) forest or field residues; (v) untreated wooden demolition or construction debris; (vi) food waste and food processing residuals; (vii) liquors derived from algae; (viii) dedicated energy crops; and (ix) yard waste.

(b) "Biomass energy" does not include: (i) Wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) wood from old growth forests; or (iii) municipal solid waste.

(4) "Commission" means the Washington state utilities and transportation commission.

(5) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(6) "Cost-effective" has the same meaning as defined in RCW 80.52.030.

(7) "Council" means the Washington state apprenticeship and training council within the department of labor and industries.

(8) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(9) "Department" means the department of commerce or its successor.

(10) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(11) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than freshwater that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services;

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or impoundments; and

(c) Qualified biomass energy.

(12) "Investor-owned utility" has the same meaning as defined in RCW 19.29A.010.

(13) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

(14) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(15) "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest electric power planning and conservation act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(16) "Public facility" has the same meaning as defined in RCW 39.35C.010.

(17) "Qualified biomass energy" means electricity produced from a biomass energy facility that: (a) Commenced operation before March 31, 1999; (b) contributes to the qualifying utility's load; and (c) is owned either by: (i) A qualifying utility; or (ii) an industrial facility that is directly interconnected with electricity facilities that are owned by a qualifying utility and capable of carrying electricity at transmission voltage.

(18) "Qualifying utility" means an electric utility, as the term "electric utility" is defined in RCW 19.29A.010, that serves more than twenty-five thousand customers in the state of Washington. The number of customers served may be based on data reported by a utility in form 861, "annual electric utility report," filed with the energy information administration, United States department of energy.

(19) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by freshwater. The certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(20) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; or (i) biomass energy.

(21) "Rule" means rules adopted by an agency or other entity of Washington state government to carry out the intent and purposes of this chapter.

(22) "Year" means the twelve-month period commencing January 1st and ending December 31st.

(23) "Coal transition power" has the same meaning as defined in RCW 80.80.010.

**Sec. 2.** RCW 19.285.040 and 2012 c 22 s 3 are each amended to read as follows:

(1) Each qualifying utility shall pursue all available conservation that is cost-effective, reliable, and feasible.

(a) By January 1, 2010, using methodologies consistent with those used by the Pacific Northwest electric power and conservation planning council in its most recently published regional power plan, each qualifying utility shall identify its achievable cost-effective conservation potential through 2019. At least every two years thereafter, the qualifying utility shall review and update this assessment for the subsequent ten-year period.

(b) Beginning January 2010, each qualifying utility shall establish and make publicly available a biennial acquisition target for cost-effective conservation consistent with its identification of achievable opportunities in (a) of this subsection, and meet that target during the subsequent two-year period. At a minimum, each biennial target must be no lower than the qualifying utility's pro rata share for that two-year period of its cost-effective conservation potential for the subsequent ten-year period.

(c) In meeting its conservation targets, a qualifying utility may count high-efficiency cogeneration owned and used by a retail electric customer to meet its own needs. High-efficiency cogeneration is the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output. The reduction in load due to high-efficiency cogeneration shall be: (i) Calculated as the ratio of the fuel chargeable to power heat rate of the cogeneration facility compared to the heat rate on a new and clean basis of a best-commercially available technology combined-cycle natural gas-fired combustion turbine; and (ii) counted towards meeting the biennial conservation target in the same manner as other conservation savings.

(d) The commission may determine if a conservation program implemented by an investor-owned utility is cost-effective based on the commission's policies and practice.

(e) The commission may rely on its standard practice for review and approval of investor-owned utility conservation targets.

(2)(a) Except as provided in (j) of this subsection, each qualifying utility shall use eligible renewable resources or acquire equivalent renewable energy credits, or any combination of them, to meet the following annual targets:

(i) At least three percent of its load by January 1, 2012, and each year thereafter through December 31, 2015;

(ii) At least nine percent of its load by January 1, 2016, and each year thereafter through December 31, 2019; and

(iii) At least fifteen percent of its load by January 1, 2020, and each year thereafter.

(b) A qualifying utility may count distributed generation at double the facility's electrical output if the utility: (i) Owns or has contracted for the distributed generation and the associated renewable energy credits; or (ii) has contracted to purchase the associated renewable energy credits.

(c) In meeting the annual targets in (a) of this subsection, a qualifying utility shall calculate its annual load based on the average of the utility's load for the previous two years.

(d) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if: (i) The utility's weather-adjusted load for the previous three years on average did not increase over that time period; (ii) after December 7, 2006, the utility did not commence or renew ownership or incremental purchases of electricity from resources other than coal transition power or renewable resources other than on a daily spot price basis and the electricity is not offset by equivalent renewable energy credits; and (iii) the utility invested at least one percent of its total annual retail revenue requirement that year on eligible renewable resources, renewable energy credits, or a combination of both.

(e) The requirements of this section may be met for any given year with renewable energy credits produced during that year, the preceding year, or the subsequent year. Each renewable energy credit may be used only once to meet the requirements of this section.

(f) In complying with the targets established in (a) of this subsection, a qualifying utility may not count:

(i) Eligible renewable resources or distributed generation where the associated renewable energy credits are owned by a separate entity; or

(ii) Eligible renewable resources or renewable energy credits obtained for and used in an optional pricing program such as the program established in RCW 19.29A.090.

(g) Where fossil and combustible renewable resources are cofired in one generating unit located in the Pacific Northwest where the cofiring commenced after March 31, 1999, the unit shall be considered to produce eligible renewable resources in direct proportion to the percentage of the total heat value represented by the heat value of the renewable resources.

(h)(i) A qualifying utility that acquires an eligible renewable resource or renewable energy credit may count that acquisition at one and two-tenths times its base value:

(A) Where the eligible renewable resource comes from a facility that commenced operation after December 31, 2005; and

(B) Where the developer of the facility used apprenticeship programs approved by the council during facility construction.

(ii) The council shall establish minimum levels of labor hours to be met through apprenticeship programs to qualify for this extra credit.

(i) A qualifying utility shall be considered in compliance with an annual target in (a) of this subsection if events beyond the reasonable control of the utility that could not have been reasonably anticipated or ameliorated prevented it from meeting the renewable energy target. Such events include weather-related damage, mechanical failure, strikes, lockouts, and actions of a governmental authority that adversely affect the generation, transmission, or distribution of an eligible renewable resource under contract to a qualifying utility.

(j)(i) Beginning January 1, 2016, only a qualifying utility that owns or is directly interconnected to a qualified biomass energy facility may use qualified biomass energy to meet its compliance obligation under RCW 19.285.040(2).

(ii) A qualifying utility may no longer use electricity and associated renewable energy credits from a qualified biomass energy facility if the associated industrial pulping or wood manufacturing facility ceases operation other than for purposes of maintenance or upgrade.

(k) An industrial facility that hosts a qualified biomass energy facility may only transfer or sell renewable energy credits associated with its facility to the qualifying utility with which it is directly interconnected with facilities owned by such a qualifying utility and that are capable of carrying electricity at transmission voltage. The qualifying utility may only use an amount of renewable energy credits associated with qualified biomass energy that are equivalent to the proportionate amount of its annual targets under (a)(ii) and (iii) of this subsection that was created by the load of the industrial facility. A qualifying utility that owns a qualified biomass energy facility may not transfer or sell renewable energy credits associated with qualified biomass energy to another person, entity, or qualifying utility.

(3) Utilities that become qualifying utilities after December 31, 2006, shall meet the requirements in this section on a time frame comparable in length to that provided for qualifying utilities as of December 7, 2006.

Passed by the Senate March 8, 2013.

Passed by the House April 17, 2013.

Approved by the Governor May 7, 2013.

Filed in Office of Secretary of State May 7, 2013.

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## CHAPTER 159

[Engrossed Second Substitute Senate Bill 5329]

K-12 EDUCATION—FAILING SCHOOLS

AN ACT Relating to transforming persistently failing schools; amending RCW 28A.657.005, 28A.657.010, 28A.657.020, 28A.657.030, 28A.657.050, 28A.657.050, 28A.657.060, 28A.657.070,

28A.657.090, 28A.657.100, and 28A.657.110; adding new sections to chapter 28A.657 RCW; repealing RCW 28A.657.125; providing an effective date; and providing an expiration date.

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

**Sec. 1.** RCW 28A.657.005 and 2010 c 235 s 101 are each amended to read as follows:

(1) The legislature finds that an effective educational accountability system is premised on creating and maintaining partnerships between the state and local school district boards of directors. The legislature also recognizes it takes time to make significant changes that are sustainable over the long term in an educational system that serves more than one million students from diverse communities.

(2) The legislature further finds that it is the state's responsibility to create a coherent and effective accountability framework for the continuous improvement ~~((for))~~ of all schools and school districts. This system must provide an excellent and equitable education for all students~~((;))~~, an aligned ~~((federal/state))~~ federal and state accountability system~~((;))~~, and the tools necessary for schools and school districts to be accountable. These tools include ~~((the necessary))~~ accounting and data reporting systems, assessment systems to monitor student achievement, and a comprehensive system of ~~((general))~~ differentiated support, targeted assistance, and, if necessary, intervention.

(3) The office of the superintendent of public instruction is responsible for developing and implementing the accountability tools to build district capacity and working within federal and state guidelines. The legislature assigned the state board of education responsibility and oversight for creating an accountability framework. This framework provides a unified system of support for challenged schools that aligns with basic education, increases the level of support based upon the magnitude of need, and uses data for decisions. Such a system will identify schools and their districts for recognition as well as for additional state support.

(4) For a specific group of ~~((challenged schools, defined as))~~ persistently lowest-achieving schools~~((;))~~ and their districts, it is necessary to provide a required action process that creates a partnership between the state and local district to target funds and assistance to turn around the identified ~~((lowest-achieving))~~ schools. The legislature finds that state takeover of persistently lowest-achieving schools is unlikely to produce long-term improvement in student achievement because takeover is an unsustainable approach to school governance and an inadequate response to addressing the underlying barriers to improved outcomes for all students. However, in the rare case of a persistently lowest-achieving school that continues to fail to improve even after required action and supplemental assistance, it is appropriate and necessary to assign the superintendent of public instruction the responsibility to intercede, provide robust technical assistance, and direct the necessary interventions. Even though the superintendent of public instruction continues to work in partnership with the local school board, the superintendent of public instruction is accountable for assuring that adequate steps are taken to improve student achievement in these schools.

(5) Phase I of this accountability system will recognize schools that have done an exemplary job of raising student achievement and closing the achievement gaps using the ~~((state board of education's accountability))~~

Washington achievement index adopted by the state board of education. The state board of education shall have ongoing collaboration with the ~~((achievement))~~ educational opportunity gap oversight and accountability committee regarding the measures used to measure the closing of the achievement gaps and ~~((the))~~ recognition provided to the school districts for closing the achievement gaps. Phase I will also target the lowest five percent of persistently lowest-achieving schools defined under federal guidelines to provide federal funds and federal intervention models through a voluntary option in 2010, and for those who do not volunteer and have not improved student achievement, a required action process beginning in 2011.

~~(6) Phase II of this accountability system will work toward implementing the ((state board of education's accountability))~~ Washington achievement index for identification of challenged schools in need of improvement, including those that are not Title I schools, and the use of state and local intervention models and federal and state funds through a ~~((required action process))~~ comprehensive system of differentiated support, targeted assistance, and intervention beginning in ~~((2013, in addition to the federal program))~~ the 2014-15 school year. If federal approval of the ((state board of education's accountability)) Washington achievement index ((must be)) is not obtained ((or else)), the federal guidelines for ((persistently lowest achieving)) identifying schools will continue to be used. If it ever becomes necessary, a process is established to assign responsibility to the superintendent of public instruction to intervene in persistently lowest-achieving schools that have failed to improve despite required action.

~~(7)~~ The expectation from implementation of this accountability system is the improvement of student achievement for all students to prepare them for postsecondary education, work, and global citizenship in the twenty-first century.

**Sec. 2.** RCW 28A.657.010 and 2010 c 235 s 112 are each amended to read as follows:

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

(1) "All students group" means those students in grades three through eight and high school who take the state's assessment in reading or English language arts and mathematics required under 20 U.S.C. Sec. 6311(b)(3).

(2) "Title I" means Title I, part A of the federal elementary and secondary education act of 1965 (ESEA) (20 U.S.C. Secs. 6311-6322).

(3) "Turnaround principles" include but are not limited to the following:

(a) Providing strong leadership;

(b) Ensuring teachers are effective and able to improve instruction;

(c) Increasing learning time;

(d) Strengthening the school's instructional program;

(e) Using data to inform instruction;

(f) Establishing a safe and supportive school environment; and

(g) Engaging families and communities.

**Sec. 3.** RCW 28A.657.020 and 2010 c 235 s 102 are each amended to read as follows:

(1) Beginning in 2010, and each year thereafter~~((by))~~ through December ~~((4st))~~ 1, 2012, the superintendent of public instruction shall annually identify

schools as one of the state's persistently lowest-achieving schools if the school is a Title I school, or a school that is eligible for but does not receive Title I funds, that is among the lowest-achieving five percent of Title I or Title I eligible schools in the state.

(2) The criteria for determining whether a school is among the persistently lowest-achieving five percent of Title I schools, or Title I eligible schools, under subsection (1) of this section shall be established by the superintendent of public instruction. The criteria must meet all applicable requirements for the receipt of a federal school improvement grant under the American recovery and reinvestment act of 2009 and Title I of the elementary and secondary education act of 1965, and take into account both:

(a) The academic achievement of the "all students" group in a school in terms of proficiency on the state's assessment, and any alternative assessments, in reading and mathematics combined; and

(b) The school's lack of progress on the mathematics and reading assessments over a number of years in the "all students" group.

(3)(a) Beginning December 1, 2013, and each December thereafter, the superintendent of public instruction shall annually identify challenged schools in need of improvement and a subset of such schools that are the persistently lowest-achieving schools in the state.

(b) The criteria for determining whether a school is a challenged school in need of improvement shall be adopted by the superintendent of public instruction in rule. The criteria must meet all applicable federal requirements under Title I of the elementary and secondary education act of 1965 and other federal rules or guidance, including applicable requirements for the receipt of federal school improvement funds if available, but shall apply equally to Title I, Title I-eligible, and non-Title I schools in the state. The criteria must take into account the academic achievement of the "all students" group and subgroups of students in a school in terms of proficiency on the state assessments in reading or English language arts and mathematics and a high school's graduation rate for all students and subgroups of students. The superintendent may establish tiered categories of challenged schools based on the relative performance of all students, subgroups of students, and other factors.

(c) The superintendent of public instruction shall also adopt criteria in rule for determining whether a challenged school in need of improvement is also a persistently lowest-achieving school for purposes of the required action district process under this chapter, which shall include the school's lack of progress for all students and subgroups of students over a number of years. The criteria for identifying persistently lowest-achieving schools shall also take into account the level of state or federal resources available to implement a required action plan.

(d) If the Washington achievement index is approved by the United States department of education for use in identifying schools for federal purposes, the superintendent of public instruction shall use the approved index to identify schools under (b) and (c) of this subsection.

**Sec. 4.** RCW 28A.657.030 and 2010 c 235 s 103 are each amended to read as follows:

(1) Beginning in January 2011, the superintendent of public instruction shall annually recommend to the state board of education school districts for designation as required action districts. A district with at least one school



identified as a persistently lowest-achieving school according to the criteria established by the superintendent of public instruction under RCW 28A.657.020 shall be designated as a required action district (~~(if it meets the criteria developed by the superintendent of public instruction)~~). However, a school district shall not be recommended for designation as a required action district if the district was awarded a federal school improvement grant by the superintendent in 2010 or 2011 and for three consecutive years following receipt of the grant implemented a federal school intervention model at each school identified for improvement. The state board of education may designate a district that received a school improvement grant in 2010 or 2011 as a required action district if after three years of voluntarily implementing a plan the district continues to have a school identified as persistently lowest-achieving and meets the criteria for designation established by the superintendent of public instruction.

(2) The superintendent of public instruction shall provide a school district superintendent with written notice of the recommendation for designation as a required action district by certified mail or personal service. A school district superintendent may request reconsideration of the superintendent of public instruction's recommendation. The reconsideration shall be limited to a determination of whether the school district met the criteria for being recommended as a required action district. A request for reconsideration must be in writing and served on the superintendent of public instruction within ten days of service of the notice of the superintendent's recommendation.

(3) The state board of education shall annually designate those districts recommended by the superintendent in subsection (1) of this section as required action districts. A district designated as a required action district shall be required to notify all parents of students attending a school identified as a persistently lowest-achieving school in the district of the state board of education's designation of the district as a required action district and the process for complying with the requirements set forth in RCW 28A.657.040 through 28A.657.100.

**Sec. 5.** RCW 28A.657.050 and 2012 c 53 s 10 are each amended to read as follows:

(1)(a) The local district superintendent and local school board of a school district designated as a required action district must submit a required action plan to the state board of education for approval. Unless otherwise required by subsection (3) of this section, the plan must be submitted under a schedule as required by the state board. A required action plan must be developed in collaboration with administrators, teachers, and other staff, parents, unions representing any employees within the district, students, and other representatives of the local community.

(b) The superintendent of public instruction shall provide a district with assistance in developing its plan if requested, and shall develop and publish guidelines for the development of required action plans. The superintendent of public instruction, in consultation with the state board of education, shall also publish a list of research and evidence-based school improvement models, consistent with turnaround principles, that are approved for use in required action plans.

(c) The school board must conduct a public hearing to allow for comment on a proposed required action plan. The local school district shall submit the plan first to the office of the superintendent of public instruction to review and approve that the plan is consistent with federal and state guidelines, as applicable. After the office of the superintendent of public instruction has approved that the plan is consistent with federal and state guidelines, the local school district must submit its required action plan to the state board of education for approval.

(2) A required action plan must include all of the following:

(a) Implementation of ~~((one of the four federal intervention))~~ an approved school improvement model ~~((s))~~ required for the receipt of ~~((a))~~ federal or state funds for school improvement ~~((grant))~~ for those persistently lowest-achieving schools that the district will be focusing on for required action. ~~((However, a district may not establish a charter school under a federal intervention model without express legislative authority. The intervention models are the turnaround, restart, school closure, and transformation models.))~~ The ~~((intervention))~~ approved school improvement model selected must address the concerns raised in the academic performance audit and be intended to improve student performance to allow a school district to be removed from the list of districts designated as a required action district by the state board of education within three years of implementation of the plan. The required action plan for districts with multiple persistently lowest-achieving schools must include separate plans for each school as well as a plan for how the school district will support the schools collectively;

(b) Submission of an application for ~~((a federal school improvement grant or a grant from other))~~ federal or state funds for school improvement to the superintendent of public instruction;

(c) A budget that provides for adequate resources to implement the ~~((federal))~~ model selected and any other requirements of the plan;

(d) A description of the changes in the district's or school's existing policies, structures, agreements, processes, and practices that are intended to attain significant achievement gains for all students enrolled in the school and how the district intends to address the findings of the academic performance audit; and

(e) Identification of the measures that the school district will use in assessing student achievement at a school identified as a persistently lowest-achieving school, which include closing the educational opportunity gap, improving mathematics and reading or English language arts student achievement, and improving graduation rates as defined by the office of the superintendent of public instruction that enable the school to no longer be identified as a persistently lowest-achieving school.

(3)(a) For any district designated for required action, the parties to any collective bargaining agreement negotiated, renewed, or extended under chapter 41.59 or 41.56 RCW after June 10, 2010, must reopen the agreement, or negotiate an addendum, if needed, to make changes to terms and conditions of employment that are necessary to implement a required action plan. For any district applying to participate in a collaborative schools for innovation and success pilot project under RCW 28A.630.104, the parties to any collective bargaining agreement negotiated, renewed, or extended under chapter 41.59 or 41.56 RCW after June 7, 2012, must reopen the agreement, or negotiate an

addendum, if needed, to make changes to terms and conditions of employment that are necessary to implement an innovation and success plan.

(b) If the school district and the employee organizations are unable to agree on the terms of an addendum or modification to an existing collective bargaining agreement, the parties, including all labor organizations affected under the required action plan, shall request the public employment relations commission to, and the commission shall, appoint an employee of the commission to act as a mediator to assist in the resolution of a dispute between the school district and the employee organizations. Beginning in 2011, and each year thereafter, mediation shall commence no later than April 15th. All mediations held under this section shall include the employer and representatives of all affected bargaining units.

(c) If the executive director of the public employment relations commission, upon the recommendation of the assigned mediator, finds that the employer and any affected bargaining unit are unable to reach agreement following a reasonable period of negotiations and mediation, but by no later than May 15th of the year in which mediation occurred, the executive director shall certify any disputed issues for a decision by the superior court in the county where the school district is located. The issues for determination by the superior court must be limited to the issues certified by the executive director.

(d) The process for filing with the court in this subsection (3)(d) must be used in the case where the executive director certifies issues for a decision by the superior court.

(i) The school district shall file a petition with the superior court, by no later than May 20th of the same year in which the issues were certified, setting forth the following:

(A) The name, address, and telephone number of the school district and its principal representative;

(B) The name, address, and telephone number of the employee organizations and their principal representatives;

(C) A description of the bargaining units involved;

(D) A copy of the unresolved issues certified by the executive director for a final and binding decision by the court; and

(E) The academic performance audit that the office of the superintendent of public instruction completed for the school district in the case of a required action district, or the comprehensive needs assessment in the case of a collaborative schools for innovation and success pilot project.

(ii) Within seven days after the filing of the petition, each party shall file with the court the proposal it is asking the court to order be implemented in a required action plan or innovation and success plan for the district for each issue certified by the executive director. Contemporaneously with the filing of the proposal, a party must file a brief with the court setting forth the reasons why the court should order implementation of its proposal in the final plan.

(iii) Following receipt of the proposals and briefs of the parties, the court must schedule a date and time for a hearing on the petition. The hearing must be limited to argument of the parties or their counsel regarding the proposals submitted for the court's consideration. The parties may waive a hearing by written agreement.

(iv) The court must enter an order selecting the proposal for inclusion in a required action plan that best responds to the issues raised in the school district's academic performance audit, and allows for the award of (~~(a federal school improvement grant or a grant from other)~~) federal or state funds for school improvement to the district from the office of the superintendent of public instruction to implement (~~(one of the four federal intervention)~~) an approved school improvement model((s)). In the case of an innovation and success plan, the court must enter an order selecting the proposal for inclusion in the plan that best responds to the issues raised in the school's comprehensive needs assessment. The court's decision must be issued no later than June 15th of the year in which the petition is filed and is final and binding on the parties; however the court's decision is subject to appeal only in the case where it does not allow the school district to implement a required action plan consistent with the requirements for the award of (~~(a federal school improvement grant or other)~~) federal or state funds for school improvement by the superintendent of public instruction.

(e) Each party shall bear its own costs and attorneys' fees incurred under this statute.

(f) Any party that proceeds with the process in this section after knowledge that any provision of this section has not been complied with and who fails to state its objection in writing is deemed to have waived its right to object.

(4) All contracts entered into between a school district and an employee must be consistent with this section and allow school districts designated as required action districts to implement (~~(one of the four federal)~~) an approved school improvement model((s)) in a required action plan.

**Sec. 6.** RCW 28A.657.050 and 2010 c 235 s 105 are each amended to read as follows:

(1)(a) The local district superintendent and local school board of a school district designated as a required action district must submit a required action plan to the state board of education for approval. Unless otherwise required by subsection (3) of this section, the plan must be submitted under a schedule as required by the state board. A required action plan must be developed in collaboration with administrators, teachers, and other staff, parents, unions representing any employees within the district, students, and other representatives of the local community.

(b) The superintendent of public instruction shall provide a district with assistance in developing its plan if requested, and shall develop and publish guidelines for the development of required action plans. The superintendent of public instruction, in consultation with the state board of education, shall also publish a list of research and evidence-based school improvement models, consistent with turnaround principles, that are approved for use in required action plans.

(c) The school board must conduct a public hearing to allow for comment on a proposed required action plan. The local school district shall submit the plan first to the office of the superintendent of public instruction to review and approve that the plan is consistent with federal and state guidelines, as applicable. After the office of the superintendent of public instruction has approved that the plan is consistent with federal and state guidelines, the local

school district must submit its required action plan to the state board of education for approval.

(2) A required action plan must include all of the following:

(a) Implementation of ~~((one of the four federal intervention))~~ an approved school improvement model(s) required for the receipt of ~~((a))~~ federal or state funds for school improvement ~~((grant))~~ for those persistently lowest-achieving schools that the district will be focusing on for required action. ~~((However, a district may not establish a charter school under a federal intervention model without express legislative authority. The intervention models are the turnaround, restart, school closure, and transformation models.))~~ The ~~((intervention))~~ approved school improvement model selected must address the concerns raised in the academic performance audit and be intended to improve student performance to allow a school district to be removed from the list of districts designated as a required action district by the state board of education within three years of implementation of the plan. The required action plan for districts with multiple persistently lowest-achieving schools must include separate plans for each school as well as a plan for how the school district will support the schools collectively;

(b) Submission of an application for ~~((a federal school improvement grant or a grant from other))~~ federal or state funds for school improvement to the superintendent of public instruction;

(c) A budget that provides for adequate resources to implement the ~~((federal))~~ model selected and any other requirements of the plan;

(d) A description of the changes in the district's or school's existing policies, structures, agreements, processes, and practices that are intended to attain significant achievement gains for all students enrolled in the school and how the district intends to address the findings of the academic performance audit; and

(e) Identification of the measures that the school district will use in assessing student achievement at a school identified as a persistently lowest-achieving school, which include closing the educational opportunity gap, improving mathematics and reading or English language arts student achievement, and improving graduation rates as defined by the office of the superintendent of public instruction that enable the school to no longer be identified as a persistently lowest-achieving school.

(3)(a) For any district designated for required action, the parties to any collective bargaining agreement negotiated, renewed, or extended under chapter 41.59 or 41.56 RCW after June 10, 2010, must reopen the agreement, or negotiate an addendum, if needed, to make changes to terms and conditions of employment that are necessary to implement a required action plan.

(b) If the school district and the employee organizations are unable to agree on the terms of an addendum or modification to an existing collective bargaining agreement, the parties, including all labor organizations affected under the required action plan, shall request the public employment relations commission to, and the commission shall, appoint an employee of the commission to act as a mediator to assist in the resolution of a dispute between the school district and the employee organizations. Beginning in 2011, and each year thereafter, mediation shall commence no later than April 15th. All mediations held under this section shall include the employer and representatives of all affected bargaining units.

(c) If the executive director of the public employment relations commission, upon the recommendation of the assigned mediator, finds that the employer and any affected bargaining unit are unable to reach agreement following a reasonable period of negotiations and mediation, but by no later than May 15th of the year in which mediation occurred, the executive director shall certify any disputed issues for a decision by the superior court in the county where the school district is located. The issues for determination by the superior court must be limited to the issues certified by the executive director.

(d) The process for filing with the court in this subsection (3)(d) must be used in the case where the executive director certifies issues for a decision by the superior court.

(i) The school district shall file a petition with the superior court, by no later than May 20th of the same year in which the issues were certified, setting forth the following:

(A) The name, address, and telephone number of the school district and its principal representative;

(B) The name, address, and telephone number of the employee organizations and their principal representatives;

(C) A description of the bargaining units involved;

(D) A copy of the unresolved issues certified by the executive director for a final and binding decision by the court; and

(E) The academic performance audit that the office of the superintendent of public instruction completed for the school district.

(ii) Within seven days after the filing of the petition, each party shall file with the court the proposal it is asking the court to order be implemented in a required action plan for the district for each issue certified by the executive director. Contemporaneously with the filing of the proposal, a party must file a brief with the court setting forth the reasons why the court should order implementation of its proposal in the final plan.

(iii) Following receipt of the proposals and briefs of the parties, the court must schedule a date and time for a hearing on the petition. The hearing must be limited to argument of the parties or their counsel regarding the proposals submitted for the court's consideration. The parties may waive a hearing by written agreement.

(iv) The court must enter an order selecting the proposal for inclusion in a required action plan that best responds to the issues raised in the school district's academic performance audit, and allows for the award of ~~((a federal school improvement grant or a grant from other))~~ federal or state funds for school improvement to the district from the office of the superintendent of public instruction to implement ~~((one of the four federal intervention))~~ an approved school improvement model~~((s))~~. The court's decision must be issued no later than June 15th of the year in which the petition is filed and is final and binding on the parties; however the court's decision is subject to appeal only in the case where it does not allow the school district to implement a required action plan consistent with the requirements for the award of ~~((a federal school improvement grant or other))~~ federal or state funds for school improvement by the superintendent of public instruction.

(e) Each party shall bear its own costs and attorneys' fees incurred under this statute.

(f) Any party that proceeds with the process in this section after knowledge that any provision of this section has not been complied with and who fails to state its objection in writing is deemed to have waived its right to object.

(4) All contracts entered into between a school district and an employee must be consistent with this section and allow school districts designated as required action districts to implement ~~((one of the four federal))~~ an approved school improvement model((\$)) in a required action plan.

**Sec. 7.** RCW 28A.657.060 and 2010 c 235 s 106 are each amended to read as follows:

A required action plan developed by a district's school board and superintendent must be submitted to the state board of education for approval. The state board must accept for inclusion in any required action plan the final decision by the superior court on any issue certified by the executive director of the public employment relations commission under the process in RCW 28A.657.050. The state board of education shall approve a plan proposed by a school district only if the plan meets the requirements in RCW 28A.657.050 and provides sufficient remedies to address the findings in the academic performance audit to improve student achievement. Any addendum or modification to an existing collective bargaining agreement, negotiated under RCW 28A.657.050 or by agreement of the district and the exclusive bargaining unit, related to student achievement or school improvement shall not go into effect until approval of a required action plan by the state board of education. If the state board does not approve a proposed plan, it must notify the local school board and local district's superintendent in writing with an explicit rationale for why the plan was not approved. Nonapproval by the state board of education of the local school district's initial required action plan submitted is not intended to trigger any actions under RCW 28A.657.080. With the assistance of the office of the superintendent of public instruction, the superintendent and school board of the required action district shall either: ~~((a) [(1)])~~ (1) Submit a new plan to the state board of education for approval within forty days of notification that its plan was rejected, or ~~((b) [(2)])~~ (2) submit a request to the required action plan review panel established under RCW 28A.657.070 for reconsideration of the state board's rejection within ten days of the notification that the plan was rejected. If federal or state funds for school improvement are not available, the plan is not required to be implemented until such funding becomes available. If federal or state funds for this purpose are available, a required action plan must be implemented in the immediate school year following the district's designation as a required action district.

**Sec. 8.** RCW 28A.657.070 and 2010 c 235 s 107 are each amended to read as follows:

(1) A required action plan review panel shall be established to offer an objective, external review of a request from a school district for reconsideration of the state board of education's rejection of the district's required action plan or reconsideration of a level two required action plan developed only by the superintendent of public instruction as provided under section 11 of this act. The review and reconsideration by the panel shall be based on whether the state board of education or the superintendent of public instruction gave appropriate consideration to the unique circumstances and characteristics identified in the

academic performance audit or level two needs assessment and review of the local school district (~~((whose required action plan was rejected))~~).

(2)(a) The panel shall be composed of five individuals with expertise in school improvement, school and school district restructuring, or parent and community involvement in schools. Two of the panel members shall be appointed by the speaker of the house of representatives; two shall be appointed by the president of the senate; and one shall be appointed by the governor.

(b) The speaker of the house of representatives, president of the senate, and governor shall solicit recommendations for possible panel members from the Washington association of school administrators, the Washington state school directors' association, the association of Washington school principals, the ~~((achievement))~~ educational opportunity gap oversight and accountability committee, and associations representing certificated teachers, classified school employees, and parents.

(c) Members of the panel shall be appointed no later than December 1, 2010, but the superintendent of public instruction shall convene the panel only as needed to consider a school district's request for reconsideration. Appointments shall be for a four-year term, with opportunity for reappointment. Reappointments in the case of a vacancy shall be made expeditiously so that all requests are considered in a timely manner.

(3)(a) In the case of a rejection of a required action plan, the required action plan review panel may reaffirm the decision of the state board of education, recommend that the state board reconsider the rejection, or recommend changes to the required action plan that should be considered by the district and the state board of education to secure approval of the plan. The state board of education shall consider the recommendations of the panel and issue a decision in writing to the local school district and the panel. If the school district must submit a new required action plan to the state board of education, the district must submit the plan within forty days of the board's decision.

(b) In the case of a level two required action plan where the local school district and the superintendent of public instruction have not come to agreement, the required action plan review panel may reaffirm the level two required action plan submitted by the superintendent of public instruction or recommend changes to the plan that should be considered by the state board of education, the superintendent of public instruction, and the local school district. The state board of education shall consider the recommendations of the panel and issue a decision in writing to the local school district, the superintendent of public instruction, and the panel.

(4) The state board of education and superintendent of public instruction must develop timelines and procedures for the deliberations under this section so that school districts can implement a required action plan within the time frame required under RCW 28A.657.060.

**Sec. 9.** RCW 28A.657.090 and 2010 c 235 s 109 are each amended to read as follows:

A school district must implement a required action plan upon approval by the state board of education. The office of ~~((the))~~ the superintendent of public instruction must provide the required action district with technical assistance and ~~((federal school improvement grant funds or other))~~ federal or state funds for school improvement, if available, to implement an approved plan. The district



must submit a report to the superintendent of public instruction that provides the progress the district is making in meeting the student achievement goals based on the state's assessments, identifying strategies and assets used to solve audit findings, and establishing evidence of meeting plan implementation benchmarks as set forth in the required action plan.

**Sec. 10.** RCW 28A.657.100 and 2010 c 235 s 110 are each amended to read as follows:

(1) The superintendent of public instruction must provide a report twice per year to the state board of education regarding the progress made by all school districts designated as required action districts.

(2) The superintendent of public instruction must recommend to the state board of education that a school district be released from the designation as a required action district after the district implements a required action plan for a period of three years; has made progress, as defined by the superintendent of public instruction (~~(, in reading and mathematics on the state's assessment over the past three consecutive years)~~) using the criteria adopted under RCW 28A.657.020 including progress in closing the educational opportunity gap; and no longer has a school within the district identified as persistently lowest-achieving. The state board shall release a school district from the designation as a required action district upon confirmation that the district has met the requirements for a release.

(3) If the state board of education determines that the required action district has not met the requirements for release ~~((;))~~ after at least three years of implementing a required action plan, the board may recommend that the district remain((s)) in required action and ((must)) submit a new or revised plan under the process in RCW 28A.657.050, or the board may direct that the school district be assigned to level two of the required action process as provided in section 11 of this act. If the required action district received a federal school improvement grant for the same persistently lowest-achieving school in 2010 or 2011, the board may direct that the school district be assigned to level two of the required action process after one year of implementing a required action plan under this chapter if the district is not making progress. Before making a determination of whether to recommend that a school district that is not making progress remain in required action or be assigned to level two of the required action process, the state board of education must submit its findings to the education accountability system oversight committee under section 13 of this act and provide an opportunity for the oversight committee to review and comment.

**NEW SECTION. Sec. 11.** A new section is added to chapter 28A.657 RCW to read as follows:

(1) School districts assigned by the state board of education to level two of the required action process under this chapter are those with one or more schools that have remained as persistently lowest-achieving for more than three years and have not demonstrated recent and significant improvement or progress toward exiting persistently lowest-achieving status, despite implementation of a required action plan.

(2) Within ninety days following assignment of a school district to level two of the required action process, the superintendent of public instruction shall direct that a needs assessment and review be conducted to determine the reasons

why the previous required action plan did not succeed in improving student achievement.

(3)(a) Based on the results of the needs assessment and review, the superintendent of public instruction shall work collaboratively with the school district board of directors to develop a revised required action plan for level two.

(b) The level two required action plan must explicitly address the reasons why the previous plan did not succeed and must specify the interventions that the school district must implement, which may include assignment or reassignment of personnel, reallocation of resources, use of specified curriculum or instructional strategies, use of a specified school improvement model, or any other conditions determined by the superintendent of public instruction to be necessary for the level two required action plan to succeed, which conditions shall be binding on the school district. The level two required action plan shall also include the specific technical assistance and support to be provided by the office of the superintendent of public instruction, which may include assignment of school improvement specialists to have a regular on-site presence in the school and technical assistance provided through the educational service district. Individuals assigned as on-site school improvement specialists must have demonstrated experience in school turnaround and cultural competence.

(c) The level two required action plan must be submitted to the state board of education for approval.

(4) If the superintendent of public instruction and the school district board of directors are unable to come to an agreement on a level two required action plan within ninety days of the completion of the needs assessment and review conducted under subsection (2) of this section, the superintendent of public instruction shall complete and submit a level two required action plan directly to the state board of education for approval. The school district board of directors may submit a request to the required action plan review panel established under RCW 28A.657.070 for reconsideration of the superintendent's level two required action plan within ten days of the submission of the plan to the state board of education. After the state board of education considers the recommendations of the required action plan review panel, the decision of the board regarding the level two required action plan is final and not subject to further reconsideration.

(5) If changes to a collective bargaining agreement are necessary to implement a level two required action plan, the parties must reopen the agreement, or negotiate an addendum, using the process outlined under RCW 28A.657.050. If the level two required action plan is developed by the superintendent of public instruction under subsection (4) of this section, a designee of the superintendent shall participate in the discussions among the parties to the collective bargaining agreement.

(6) While a school district is assigned to level two of the required action process under this chapter, the superintendent of public instruction is responsible and accountable for assuring that the level two required action plan is implemented with fidelity. The superintendent of public instruction shall defer to the school district board of directors as the governing authority of the school district and continue to work in partnership with the school district to implement the level two required action plan. However, if the superintendent of public instruction finds that the level two required action plan is not being implemented as specified, including the implementation of any binding conditions within the

plan, the superintendent may direct actions that must be taken by school district personnel to implement the level two required action plan or the binding conditions. If necessary, the superintendent of public instruction may exercise authority under RCW 28A.505.120 regarding allocation of funds.

(7) The superintendent of public instruction shall include in the budget estimates and information submitted to the governor under RCW 28A.300.170 a request for sufficient funds to support implementation of the level two required action plans established under this section.

(8) The superintendent of public instruction must recommend to the state board of education that a school district be released from assignment to level two of the required action process after the district implements the level two required action plan for a period of three years; has made progress, as defined by the superintendent of public instruction using the criteria established under RCW 28A.657.020; and no longer has a school within the district identified as persistently lowest-achieving. The state board of education shall release a school district from the level two assignment upon confirmation that the school district has met the requirements for a release.

**Sec. 12.** RCW 28A.657.110 and 2010 c 235 s 111 are each amended to read as follows:

(1) By November 1, 2013, the state board of education shall ((continue to refine the development of)) propose rules for adoption establishing an accountability framework that creates a unified system of support for challenged schools((-)) that aligns with basic education, increases the level of support based upon the magnitude of need, and uses data for decisions. The board must seek input from the public and interested groups in developing the framework. Based on the framework, the superintendent of public instruction shall design a comprehensive system of specific strategies for recognition, provision of differentiated support and targeted assistance, and, if necessary, requiring intervention in schools and school districts. The superintendent shall submit the system design to the state board of education for review. The state board of education shall recommend approval or modification of the system design to the superintendent no later than January 1, 2014, and the system must be implemented statewide no later than the 2014-15 school year. To the extent state funds are appropriated for this purpose, the system must apply equally to Title I, Title I-eligible, and non-Title I schools in the state.

(2) The state board of education shall develop ((an accountability)) a Washington achievement index to identify schools and school districts for recognition, for continuous improvement, and for additional state support. The index shall be based on criteria that are fair, consistent, and transparent. Performance shall be measured using multiple outcomes and indicators including, but not limited to, graduation rates and results from statewide assessments. The index shall be developed in such a way as to be easily understood by both employees within the schools and school districts, as well as parents and community members. It is the legislature's intent that the index provide feedback to schools and school districts to self-assess their progress, and enable the identification of schools with exemplary ((student)) performance and those that need assistance to overcome challenges in order to achieve exemplary ((student)) performance.

(3) The state board of education, in cooperation with the office of the superintendent of public instruction, shall annually recognize schools for exemplary performance as measured on the (~~(state board of education accountability)~~) Washington achievement index. The state board of education shall have ongoing collaboration with the (~~(achievement)~~) educational opportunity gap oversight and accountability committee regarding the measures used to measure the closing of the achievement gaps and the recognition provided to the school districts for closing the achievement gaps.

(4) In coordination with the superintendent of public instruction, the state board of education shall seek approval from the United States department of education for use of the (~~(accountability)~~) Washington achievement index and the state system of differentiated support, assistance, and intervention(7) to replace the federal accountability system under P.L. 107-110, the no child left behind act of 2001.

(5) The state board of education shall work with the education data center established within the office of financial management and the technical working group established in (~~(section 112, chapter 548, Laws of 2009)~~) RCW 28A.290.020 to determine the feasibility of using the prototypical funding allocation model as not only a tool for allocating resources to schools and school districts but also as a tool for schools and school districts to report to the state legislature and the state board of education on how the state resources received are being used.

**NEW SECTION. Sec. 13.** A new section is added to chapter 28A.657 RCW to read as follows:

(1) The education accountability system oversight committee is established to provide ongoing monitoring of the outcomes of the comprehensive system of recognition, support, and intervention for schools and school districts established under this chapter.

(2) The oversight committee shall be composed of the following members:

(a) Two members from each of the largest caucuses of the house of representatives, to be appointed by the speaker of the house of representatives;

(b) Two members from each of the largest caucuses of the senate, to be appointed by the president of the senate;

(c) Two members appointed by the governor; and

(d) One nonlegislative member of the educational opportunity gap oversight and accountability committee.

(3) The oversight committee shall choose a chair from among its membership who shall serve as chair for no more than one consecutive year.

(4) The committee shall:

(a) Monitor the progress and outcomes of the education accountability system established under this chapter, including but not limited to the effectiveness in improving student achievement of the tiered system of assistance and intervention provided to challenged schools in need of improvement, persistently lowest-achieving schools in required action districts, and level two required action districts;

(b) Review and make recommendations to the state board of education regarding the proposed assignment of a required action district to level two of the required action process under section 11 of this act;

(c) Make recommendations to the state board of education, the superintendent of public instruction, the governor, and the legislature as necessary if the oversight committee finds that changes to the accountability system should be made; and

(d) Report biennially to the education committees of the legislature.

(5) Staff support for the oversight committee must be provided by the senate committee services and the house of representatives office of program research.

(6) Legislative members of the oversight committee may be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 14. RCW 28A.657.125 (Joint select committee on education accountability—Reports) and 2010 c 235 s 114 are each repealed.

NEW SECTION. Sec. 15. Section 5 of this act expires June 30, 2019.

NEW SECTION. Sec. 16. Section 6 of this act takes effect June 30, 2019.

Passed by the Senate April 19, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 7, 2013.

Filed in Office of Secretary of State May 7, 2013.

## CHAPTER 160

[Senate Bill 5411]

### PORT COMMISSIONERS—TERMS OF OFFICE—BALLOT PROPOSITION

AN ACT Relating to requiring the ballot proposition to reduce the terms of office of port commissioners to be submitted at the next general election; and amending RCW 53.12.175.

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

**Sec. 1.** RCW 53.12.175 and 1994 c 223 s 89 are each amended to read as follows:

A ballot proposition to reduce the terms of office of port commissioners from six years to four years shall be submitted to the voters of any port district that otherwise would have commissioners with six-year terms of office upon either resolution of the port commissioners or petition of voters of the port district proposing the reduction in terms of office, which petition has been signed by voters of the port district equal in number to at least ten percent of the number of voters in the port district voting at the last general election. The petition shall be submitted to the county auditor. If the petition was signed by sufficient valid signatures, the ballot proposition shall be submitted at the next general ~~((or special))~~ election that occurs sixty or more days after the adoption of the resolution or submission of the petition.

If the ballot proposition reducing the terms of office of port commissioners is approved by a simple majority vote of the voters voting on the proposition, the commissioner or commissioners who are elected at that election shall be elected to four-year terms of office. The terms of office of the other commissioners shall not be reduced, but each successor shall be elected to a four-year term of office.

Passed by the Senate March 12, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 7, 2013.  
Filed in Office of Secretary of State May 7, 2013.

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## CHAPTER 161

[Senate Bill 5496]

### K-12 EDUCATION—ONLINE EDUCATION—PRIVATE SCHOOLS

AN ACT Relating to authorizing approval of online school programs in private schools; adding a new section to chapter 28A.195 RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** The legislature supports student access to a variety of educational options, both public and private. However, state policies regarding the approval of private schools were created before online learning was possible. Consequently, these policies do not provide for approval criteria that are sufficiently flexible to accommodate online learning. While some policy adjustments have been made to permit public online choices, current law does not provide a clear process for private schools to obtain state approval to offer similar learning options.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.195 RCW to read as follows:

(1) If a private school that has been approved under this chapter by the state board of education seeks approval also to offer and administer an online school program as defined under RCW 28A.250.010, including under contract with a third party, the requirements for minimum instructional hour offerings under RCW 28A.195.010(1) shall be deemed met for the online school program. A residential dwelling of a parent, guardian, or custodian shall be deemed an adequate physical facility for students enrolled in the online school program. The online school program is not required to be offered for the same grade levels as the approved private school.

(2) The state board of education may approve an online school program under this section that meets other applicable requirements under this chapter.

(3) No private school offering and administering an online program under this section, third party that contracts with a private school to offer and administer an online program, or parent or guardian providing an online program may receive state funding to provide the program.

**NEW SECTION. Sec. 3.** The private school advisory committee appointed under RCW 28A.195.050 shall examine issues associated with state approval of online school programs offered by private schools and shall consider whether criteria or procedures for approval in addition to those provided in section 2 of this act should be considered by the legislature. The committee must submit a report on its deliberations, with recommendations if necessary, to the education committees of the legislature by January 10, 2014. In developing recommendations, the committee shall be mindful of the legislature's intent that private schools should be subject only to those minimum state controls necessary to ensure the health and safety of all the students in the state and to ensure a sufficient basic education to meet usual graduation requirements.

Passed by the Senate March 7, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 7, 2013.  
Filed in Office of Secretary of State May 7, 2013.

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## CHAPTER 162

[Substitute Senate Bill 5565]

### BACKGROUND CHECKS—UNSUPERVISED ACCESS TO CHILDREN

AN ACT Relating to background checks; amending RCW 74.13.020 and 13.34.065; reenacting and amending RCW 74.13.020; adding new sections to chapter 74.13 RCW; creating new sections; 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 recognizes that the goals of the child welfare system are the safety, permanence, and well-being of the children it serves. The legislature further recognizes the importance of background checks conducted by the department of social and health services to assess an individual's character, suitability, and competence to determine whether an individual is appropriate to be provided a license under chapter 74.13 RCW or have unsupervised access to children. The legislature does not intend to change the current secretary of social and health services' list of crimes and negative actions. However, the legislature believes that either an unreasonable delay in a determination of whether to approve or deny a license under chapter 74.13 RCW or unsupervised access to children, when such unreasonable delay or denial is based solely on a crime or civil infraction not directly related to child safety, is not appropriate and is not in the best interest of the children being served by the child welfare system.

**NEW SECTION. Sec. 2.** A new section is added to chapter 74.13 RCW to read as follows:

(1) In determining the character, suitability, and competence of an individual, the department may not:

(a) Deny or delay a license or approval of unsupervised access to children to an individual solely because of a crime or civil infraction involving the individual or entity revealed in the background check process that is not on the secretary's list of crimes and negative actions and is not related directly to child safety, permanence, or well-being; or

(b) Delay the issuance of a license or approval of unsupervised access to children by requiring the individual to obtain records relating to a crime or civil infraction revealed in the background check process that is not on the secretary's list of crimes and negative actions and is not related directly to child safety, permanence, or well-being and is not a permanent disqualifier pursuant to department rule.

(2) If the department determines that an individual does not possess the character, suitability, or competence to provide care or have unsupervised access to a child, it must provide the reasons for its decision in writing with copies of the records or documents related to its decision to the individual within ten days of making the decision.

(3) For purposes of this section, "individual" means a relative as defined in RCW 74.15.020(2)(a), an "other suitable person" under chapter 13.34 RCW, a person pursuing licensing as a foster parent, or a person employed or seeking employment by a business or organization licensed by the department or with

whom the department has a contract to provide care, supervision, case management, or treatment of children in the care of the department. "Individual" does not include long-term care workers defined in RCW 74.39A.009(17)(a) whose background checks are conducted as provided in RCW 74.39A.056.

(4) The department or its officers, agents, or employees may not be held civilly liable based upon its decision to grant or deny unsupervised access to children if the background information it relied upon at the time the decision was made did not indicate that child safety, permanence, or well-being would be a concern.

**NEW SECTION. Sec. 3.** A new section is added to chapter 74.13 RCW to read as follows:

The department shall charge a fee to process a request made by a person in another state for an individual's child abuse or neglect history in this state or other background history on the individual possessed by the department. All proceeds from the fees collected must go directly to aiding the cost associated with the department conducting background checks.

**Sec. 4.** RCW 74.13.020 and 2012 c 205 s 12 are each amended to read as follows:

For purposes of this chapter:

(1) "Case management" means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child protective services" has the same meaning as in RCW 26.44.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

"Child welfare services" does not include child protection services.



(5) "Committee" means the child welfare transformation design committee.

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

(7) "Extended foster care services" means residential and other support services the department is authorized to provide to foster children. These services include, but are not limited to, placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(8) "Measurable effects" means a statistically significant change which occurs as a result of the service or services a supervising agency is assigned in a performance-based contract, in time periods established in the contract.

(9) "Out-of-home care services" means services provided after the shelter care hearing to or for children in out-of-home care, as that term is defined in RCW 13.34.030, and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family reunification, independent living, emergency shelter, residential group care, and foster care, including relative placement.

(10) "Performance-based contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts shall also include provisions that link the performance of the contractor to the level and timing of reimbursement.

(11) "Permanency services" means long-term services provided to secure a child's safety, permanency, and well-being, including foster care services, family reunification services, adoption services, and preparation for independent living services.

(12) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

(13) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services, as defined in this section. This definition is applicable on or after December 30, 2015.

(14) "Unsupervised" has the same meaning as in RCW 43.43.830.

**Sec. 5.** RCW 74.13.020 and 2012 c 259 s 7 and 2012 c 205 s 12 are each reenacted and amended to read as follows:

For purposes of this chapter:

(1) "Case management" means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child

is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child protective services" has the same meaning as in RCW 26.44.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

"Child welfare services" does not include child protection services.

(5) "Committee" means the child welfare transformation design committee.

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

(7) "Extended foster care services" means residential and other support services the department is authorized to provide to foster children. These services include, but are not limited to, placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(8) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

(9) "Measurable effects" means a statistically significant change which occurs as a result of the service or services a supervising agency is assigned in a performance-based contract, in time periods established in the contract.

(10) "Out-of-home care services" means services provided after the shelter care hearing to or for children in out-of-home care, as that term is defined in RCW 13.34.030, and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family reunification, independent living, emergency shelter, residential group care, and foster care, including relative placement.

(11) "Performance-based contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and

the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts shall also include provisions that link the performance of the contractor to the level and timing of reimbursement.

(12) "Permanency services" means long-term services provided to secure a child's safety, permanency, and well-being, including foster care services, family reunification services, adoption services, and preparation for independent living services.

(13) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

(14) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services, as defined in this section. This definition is applicable on or after December 30, 2015.

(15) "Unsupervised" has the same meaning as in RCW 43.43.830.

**Sec. 6.** RCW 13.34.065 and 2011 c 309 s 24 are each amended to read as follows:

(1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) If it is likely that the child will remain in shelter care longer than seventy-two hours, in those areas in which child welfare services are being provided by a supervising agency, the supervising agency shall assume case management responsibilities of the case. The department or supervising agency shall submit a recommendation to the court as to the further need for shelter care in all cases in which the child will remain in shelter care longer than the seventy-two hour period. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the department to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative. The court shall ask the parents whether the department discussed with them the placement of the child with a relative or other suitable person described in RCW 13.34.130(1)(b) and shall determine what efforts have been made toward such a placement;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home. If the dependency petition or other information before the court alleges that homelessness or the lack of suitable housing was a significant factor contributing to the removal of the child, the court shall inquire as to whether housing assistance was provided to the family to prevent or eliminate the need for removal of the child or children;

(e) Is the placement proposed by the department or supervising agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in RCW 13.38.040, whether the provisions of the federal Indian child welfare act or

chapter 13.38 RCW apply, and whether there is compliance with the federal Indian child welfare act and chapter 13.38 RCW, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. If such relative or other suitable person appears otherwise suitable and competent to provide care and treatment, the fingerprint-based background check need not be completed before placement, but as soon as possible after placement. The court must also determine whether placement with the relative or other suitable person is in the child's best interests. The relative or other suitable person must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department or supervising agency in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1). In determining placement, the court shall weigh the child's length of stay and attachment to the current provider in determining what is in the best interest of the child.

(d) If a relative or other suitable person is not available, the court shall order continued shelter care and shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other suitable person approved by the court pursuant to this section, shall be contingent upon cooperation with the department's or supervising agency's case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative or other suitable person under (b) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department.

**NEW SECTION. Sec. 7.** (1) The legislature finds that any person who has had a founded finding of child abuse or neglect or has been involved in a dependency action involving one or more of his or her children is able to turn his or her life around and establish good parenting relationships with his or her children. Unfortunately, his or her prior involvement with child protective services or the dependency court can hamper such a person's ability to find future employment, especially if the employment involves unsupervised access to children or other vulnerable populations.

(2) The legislature further finds that a number of states permit convicted offenders to seek a certificate of rehabilitation in certain situations. Generally, the certificate declares that a convicted individual is rehabilitated after completing a prison sentence or being released on parole or supervision. Usually, the applicant for a certificate must prove that he or she has met certain criteria before a certificate will be awarded. Such a certificate often restores certain rights to the applicant and makes him or her eligible for certain employment for which he or she would not be eligible without the certificate.

(3) A nonprofit with expertise in veteran parent programs shall convene a work group in consultation with the department of social and health services to explore options, including a certificate of rehabilitation, for addressing the impact of founded complaints on the ability of rehabilitated individuals to gain employment or care for children, including volunteer activities. The work group must contain, but not be limited to, persons representing the following: The courts, veteran parents, parent attorneys, foster parents, relative caregivers, kinship caregivers, child-placing agencies, the attorney general's office, the governor's policy office, the office of public defense parent representation program, and the legislature.

(4) The work group shall report recommendations to the appropriate committees of the legislature no later than December 31, 2013.

**NEW SECTION. Sec. 8.** The department of social and health services shall adopt all necessary rules to implement this act.

**NEW SECTION. Sec. 9.** Section 4 of this act expires December 1, 2013.

**NEW SECTION. Sec. 10.** Section 5 of this act takes effect December 1, 2013.

Passed by the Senate April 19, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 7, 2013.

Filed in Office of Secretary of State May 7, 2013.

## CHAPTER 163

[Second Engrossed Senate Bill 5701]

### K-12 EDUCATION—FRAUDULENT SUBMISSION OF TESTS

AN ACT Relating to authorizing penalties based on the fraudulent submission of tests for educators; and amending RCW 28A.410.090.

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

**Sec. 1.** RCW 28A.410.090 and 2009 c 396 s 5 are each amended to read as follows:

(1)(a) Any certificate or permit authorized under the provisions of this chapter, chapter 28A.405 RCW, or rules promulgated thereunder may be revoked or suspended by the authority authorized to grant the same based upon a criminal records report authorized by law, or upon the complaint of the professional educator standards board or 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. A reprimand may be issued as an alternative to suspension or revocation of a certificate or permit. School district superintendents, educational service district superintendents, the professional educator standards board, or private school administrators may file a complaint concerning any certificated employee of a school district, educational service district, or private school and this filing authority is not limited to employees of the complaining superintendent or administrator. Such written complaint shall state the grounds and summarize the factual basis upon which a determination has been made that an investigation by the superintendent of public instruction is warranted.

(b) If the superintendent of public instruction has reasonable cause to believe that an alleged violation of this chapter or rules adopted under it has occurred based on a written complaint alleging physical abuse or sexual misconduct by a certificated school employee filed by a parent or another person, but no complaint has been forwarded to the superintendent by a school district superintendent, educational service district superintendent, or private school administrator, and that a school district superintendent, educational service district superintendent, or private school administrator has sufficient notice of the alleged violation and opportunity to file a complaint, the superintendent of public instruction may cause an investigation to be made of the alleged violation, together with such other matters that may be disclosed in the course of the investigation related to certificated personnel.

(2) A parent or another person may file a written complaint with the superintendent of public instruction alleging physical abuse or sexual misconduct by a certificated school employee if:

(a) The parent or other person has already filed a written complaint with the educational service district superintendent concerning that employee;

(b) The educational service district superintendent has not caused an investigation of the allegations and has not forwarded the complaint to the superintendent of public instruction for investigation; and

(c) The written complaint states the grounds and factual basis upon which the parent or other person believes an investigation should be conducted.

(3) Any certificate or permit authorized under the provisions of this chapter, chapter 28A.405 RCW, or rules adopted thereunder may be revoked or suspended by the authority authorized to grant the same upon complaint from the professional educator standards board alleging unprofessional conduct in the form of a fraudulent submission of a test for educators. A reprimand may be issued as an alternative to suspension or revocation of a certificate or permit. The professional educator standards board must issue to the superintendent of public instruction a written complaint stating the grounds and factual basis upon



which the professional educator standards board believes an investigation should be conducted pursuant to this section. In all cases under this subsection, the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in RCW 28A.410.100.

(4)(a) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a guilty plea or the conviction of any felony crime specified under RCW 28A.400.322, in accordance with this section. The person whose certificate is in question shall be given an opportunity to be heard.

(b) Mandatory permanent revocation upon a guilty plea or the conviction of felony crimes specified under RCW 28A.400.322(1) shall apply to such convictions or guilty pleas which occur after July 23, 1989, and before July 26, 2009.

(c) Mandatory permanent revocation upon a guilty plea or conviction of felony crimes specified under RCW 28A.400.322(2) shall apply to such convictions or guilty pleas that occur on or after July 26, 2009.

(d) Revocation of any certificate or permit authorized under this chapter or chapter 28A.405 RCW for a guilty plea or criminal conviction of a crime specified under RCW 28A.400.322 occurring prior to July 23, 1989, shall be subject to the provisions of subsection (1) of this section.

~~((4))~~ (5)(a) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be suspended or revoked, according to the provisions of this subsection, by the authority authorized to grant the certificate upon a finding that an employee has engaged in an unauthorized use of school equipment to intentionally access material depicting sexually explicit conduct or has intentionally possessed on school grounds any material depicting sexually explicit conduct; except for material used in conjunction with established curriculum. A first time violation of this subsection shall result in either suspension or revocation of the employee's certificate or permit as determined by the office of the superintendent of public instruction. A second violation shall result in a mandatory revocation of the certificate or permit.

(b) In all cases under this subsection ~~((4))~~ (5), the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in RCW 28A.410.100. Certificates or permits shall be suspended or revoked under this subsection only if findings are made on or after July 24, 2005. For the purposes of this subsection, "sexually explicit conduct" has the same definition as provided in RCW 9.68A.011.

~~((5))~~ (6) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a finding that the certificate holder obtained the certificate through fraudulent means, including fraudulent misrepresentation of required academic credentials or prior criminal record. In all cases under this subsection, the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in RCW 28A.410.100. Certificates or permits shall be revoked under this subsection only if findings are made on or after July 26, 2009.

Passed by the Senate March 4, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 7, 2013.  
 Filed in Office of Secretary of State May 7, 2013.

## CHAPTER 164

[Senate Bill 5770]

### CONSERVATION DISTRICTS—DISBURSEMENT OF EMPLOYEE PAY

AN ACT Relating to conservation district electronic deposit of employee pay and compensation; and amending RCW 41.04.240 and 89.08.215.

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

**Sec. 1.** RCW 41.04.240 and 2012 c 230 s 3 are each amended to read as follows:

(1) Except with regard to institutions of higher education as defined in RCW 28B.10.016, any official of the state or of any political subdivision, municipal corporation, or quasi-municipal corporation authorized to disburse funds in payment of salaries and wages of employees is authorized upon written request of at least twenty-five employees to pay all or part of such salaries or wages to any financial institution for either: (a) Credit to the employees' accounts in such financial institution; or (b) immediate transfer therefrom to the employees' accounts in any other financial institutions.

(2) In disbursing funds for payment of salaries and wages of employees, institutions of higher education as defined in RCW 28B.10.016 are authorized to require the following payment methods:

(a) For employees who have an account in a financial institution, payment to any financial institution for either: (i) Credit to the employees' accounts in such financial institution; or (ii) immediate transfer therefrom to the employees' accounts in any other financial institutions; and

(b) For employees who do not have an account in a financial institution, payment by alternate methods such as payroll cards.

(3) Nothing in this section shall be construed as authorizing any employer to require the employees to have an account in any particular financial institution or type of financial institution. A single warrant may be drawn in favor of such financial institution, for the total amount due the employees involved, and written directions provided to such financial institution of the amount to be credited to the account of an employee or to be transferred to an account in another financial institution for such employee. The issuance and delivery by the disbursing officer of a warrant in accordance with the procedure set forth herein and proper indorsement thereof by the financial institution shall have the same legal effect as payment directly to the employee.

(4) Conservation districts as established and authorized under chapter 89.08 RCW are exempt from the requirement to obtain a written request of twenty-five employees as required in subsection (1) of this section, and may disburse funds in payment of salaries and wages of employees consistent with this chapter and RCW 89.08.215.

(5) For the purposes of this section "financial institution" means any bank or trust company established in this state pursuant to chapter 2, Title 12, United States Code, or Title 30 RCW, and any credit union established in this state pursuant to chapter 14, Title 12, United States Code, or chapter 31.12 RCW, and any mutual savings bank established in this state pursuant to Title 32 RCW, and

any savings and loan association established in this state pursuant to chapter 12, Title 12, United States Code, or Title 33 RCW.

**Sec. 2.** RCW 89.08.215 and 2000 c 45 s 2 are each amended to read as follows:

(1) The treasurer of the county in which a conservation district is located is ex officio treasurer of the district. However, the board of supervisors by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the conservation district. The board of supervisors shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the board of supervisors by resolution from time to time finds will protect the district against loss. The premium on this bond shall be paid by the district.

(2) All district funds shall be paid to the treasurer and disbursed only on warrants issued by an auditor appointed by the board of supervisors, upon orders or vouchers approved by it. The treasurer shall establish a conservation district fund into which shall be paid all district funds. The treasurer shall maintain any special funds created by the board of supervisors for the placement of all money as the board of supervisors may, by resolution, direct.

(3) If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositories under the same restrictions, contracts, and security as provided for county depositories. If the treasurer of the district is some other person, all funds shall be deposited in a bank or banks authorized to do business in this state as the board of supervisors, by resolution, designates.

(4) A district may provide and require a reasonable bond of any other person handling moneys or securities of the district, if the district pays the premium.

(5)(a) A district may disburse funds in payment of salaries, wages, and any other approved financial reimbursement to any employee or contractor of the district to any financial institution for either: (i) Credit to the employees' or contractors' accounts in such financial institution; or (ii) immediate transfer therefrom to the employees' or contractors' accounts in any other financial institutions.

(b) As used in this subsection (5), "financial institution" has the definition in RCW 41.04.240.

Passed by the Senate March 12, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 7, 2013.

Filed in Office of Secretary of State May 7, 2013.

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## CHAPTER 165

[Senate Bill 5809]

### HOME VISITING SERVICES ACCOUNT

AN ACT Relating to the home visiting services account; and amending RCW 43.215.130.

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

**Sec. 1.** RCW 43.215.130 and 2010 1st sp.s. c 37 s 933 are each amended to read as follows:

(1)(a) The home visiting services account is created in the ~~((custody of the state treasurer))~~ state treasury. Revenues to the account shall consist of appropriations by the legislature and all other sources deposited in the account. All federal funds received by the department for home visiting activities must be deposited into the account.

(b)(i) Expenditures from the account shall be used for state matching funds for the purposes of the program established in this section and federally funded activities for the home visiting program, including administrative expenses. ~~((Only the director or the director's designee may authorize expenditures from the account.))~~

(ii) The department oversees the account and is the lead state agency for home visiting system development. The nongovernmental private-public partnership administers the home visiting service delivery system and provides implementation support functions to funded programs.

(iii) It is the intent of the legislature that state funds invested in the account be matched at fifty percent by the private-public partnership each fiscal year. However, state funds in the account may be accessed in the event that the private-public partnership fails to meet the fifty percent match target. Should the private-public partnership not meet the fifty percent match target by the conclusion of the fiscal year ending on June 30th, the department and the private-public partnership, shall jointly submit a report to the relevant legislative committees detailing the reasons why the fifty percent match target was not met, the actual match rate achieved, and a plan to achieve fifty percent match in the subsequent fiscal year. This report shall be submitted as promptly as practicable, but the lack of receipt of this report shall not prevent state funds in the account from being accessed.

(iv) Amounts used for program administration by the department may not exceed an average of four percent in any two consecutive fiscal years.

(v) Authorizations for expenditures may be given only after private funds are committed ((and available)). The nongovernmental private-public partnership must report to the department quarterly to demonstrate sufficient investment of private match funds.

(c) Expenditures from the account are ~~((exempt from the appropriations and))~~ subject to appropriation and the allotment provisions of chapter 43.88 RCW. ((However, amounts used for program administration by the department are subject to the allotment and budgetary controls of chapter 43.88 RCW, and an appropriation is required for these expenditures.))

(2) The department must expend moneys from the account to provide state matching funds for partnership activities to implement home visiting services and administer the infrastructure necessary to develop, support, and evaluate evidence-based, research-based, and promising home visiting programs.

(3) Activities eligible for funding through the account include, but are not limited to:

(a) Home visiting services that achieve one or more of the following: (i) Enhancing child development and well-being by alleviating the effects on child development of poverty and other known risk factors; (ii) reducing the incidence of child abuse and neglect; or (iii) promoting school readiness for young children and their families; and

(b) Development and maintenance of the infrastructure for home visiting programs, including training, quality improvement, and evaluation.

(4) Beginning July 1, 2010, the department shall contract with the nongovernmental private-public partnership designated in RCW 43.215.070 to administer programs funded through the home visiting services account. The department shall monitor performance and provide periodic reports on the use outcomes of the home visiting services account.

(5) The nongovernmental private-public partnership shall, in the administration of the programs:

(a) Fund programs through a competitive bid process or in compliance with the regulations of the funding source; and

(b) Convene an advisory committee of early learning and home visiting experts, including one representative from the department, to advise the partnership regarding research and the distribution of funds from the account to eligible programs.

~~((6) To promote continuity for families receiving home visiting services through programs funded on May 4, 2010, those programs funded under chapter 43.121 RCW shall be funded through June 30, 2012, based on availability of funds and the achievement of stated performance goals. This section does not require any program to receive continuous funding beyond June 30, 2012. Organizations that may receive program funding include local health departments; nonprofit, neighborhood based, community, regional, or statewide organizations; and federally recognized Indian tribes located in the state.))~~

Passed by the Senate April 19, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 7, 2013.

Filed in Office of Secretary of State May 7, 2013.

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## CHAPTER 166

[Substitute House Bill 1093]

### STATE AGENCIES—LOBBYING

AN ACT Relating to state agencies' lobbying activities; amending RCW 42.17A.750 and 42.17A.055; prescribing penalties; and providing an effective date.

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

**Sec. 1.** RCW 42.17A.750 and 2011 c 145 s 6 are each amended to read as follows:

(1) In addition to the penalties in subsection (2) of this section, and any other remedies provided by law, one or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

(a) If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of that election may be held void and a special election held within sixty days of the finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

(b) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this chapter, his or her registration may be revoked or suspended and he or she may be enjoined from receiving compensation or making expenditures for lobbying. The imposition of a sanction shall not excuse the lobbyist from filing statements and reports required by this chapter.

(c) A person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each violation. However, a person or entity who violates RCW 42.17A.405 may be subject to a civil penalty of ten thousand dollars or three times the amount of the contribution illegally made or accepted, whichever is greater.

(d) A person who fails to file a properly completed statement or report within the time required by this chapter may be subject to a civil penalty of ten dollars per day for each day each delinquency continues.

(e) Each state agency director who knowingly fails to file statements required by RCW 42.17A.635 shall be subject to personal liability in the form of a civil penalty in the amount of one hundred dollars per statement. These penalties are in addition to any other civil remedies or sanctions imposed on the agency.

(f) A person who fails to report a contribution or expenditure as required by this chapter may be subject to a civil penalty equivalent to the amount not reported as required.

((#)) (g) Any state agency official, officer, or employee who is responsible for or knowingly directs or expends public funds in violation of RCW 42.17A.635 (2) or (3) may be subject to personal liability in the form of a civil penalty in an amount that is at least equivalent to the amount of public funds expended in the violation.

(h) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein.

(2) The commission may refer the following violations for criminal prosecution:

(a) A person who, with actual malice, violates a provision of this chapter is guilty of a misdemeanor under chapter 9.92 RCW;

(b) A person who, within a five-year period, with actual malice, violates three or more provisions of this chapter is guilty of a gross misdemeanor under chapter 9.92 RCW; and

(c) A person who, with actual malice, procures or offers any false or forged document to be filed, registered, or recorded with the commission under this chapter is guilty of a class C felony under chapter 9.94A RCW.

**Sec. 2.** RCW 42.17A.055 and 2010 c 204 s 202 are each amended to read as follows:

(1) The commission shall make available to candidates, public officials, and political committees that are required to file reports under this chapter an electronic filing alternative for submitting financial affairs reports, contribution reports, and expenditure reports.

(2) The commission shall make available to lobbyists and lobbyists' employers required to file reports under RCW 42.17A.600, 42.17A.615, 42.17A.625, or 42.17A.630 an electronic filing alternative for submitting these reports.

(3) State agencies required to report under RCW 42.17A.635 must file all reports electronically.

(4) The commission shall make available to candidates, public officials, political committees, lobbyists, and lobbyists' employers an electronic copy of the appropriate reporting forms at no charge.

NEW SECTION. Sec. 3. This act takes effect January 1, 2014.

Passed by the House April 22, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 167

[House Bill 1207]

### CEMETERY DISTRICTS—FORMATION REQUIREMENTS

AN ACT Relating to cemetery district formation requirements; and amending RCW 68.52.100, 68.52.110, 68.52.120, 68.52.130, 68.52.140, 68.52.150, 68.52.170, 68.52.180, and 68.52.220.

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

**Sec. 1.** RCW 68.52.100 and 2008 c 96 s 1 are each amended to read as follows:

~~((For the purpose of forming))~~ (1) To form a cemetery district, a petition designating the boundaries of the proposed district by metes and bounds or describing the lands to be included in the proposed district by government townships, ranges, and legal subdivisions, ~~((signed by not less than ten percent of the registered voters who reside within the boundaries of the proposed district,))~~ setting forth the object of the formation of ~~((such))~~ the proposed district, and stating that the ~~((establishment thereof))~~ formation of the proposed district will be conducive to the public welfare and convenience, ~~((shall))~~ must be filed with the county auditor of the county ~~((within))~~ in which the proposed district is located, accompanied by an obligation signed by two or more petitioners agreeing to pay the cost of publishing the notice ~~((hereinafter provided for.))~~ specified in RCW 68.52.120.

(2) The petition must be signed by at least ten percent of the registered voters in the proposed district. However, in counties with only one municipality the petition must be signed by at least ten percent of the registered voters in the proposed district, based on the total vote cast in the most recent county general election.

(3) The county auditor ((shall)) must, within thirty days from the date of filing of ((such)) the petition, examine the signatures and certify ((to)) the sufficiency or insufficiency ((thereof.)) of the petition.

(4) Notwithstanding subsection (3) of this section, in counties with only one municipality the county auditor must examine the signatures and certify the sufficiency or insufficiency of the petition within fifteen days from the date of filing of the petition. If the county auditor certifies that the petition is insufficient, the county auditor must afford the person who filed the petition ten days from that certification to add additional signatures to the petition. The petition must be refiled by the end of that period. Within fifteen days from the

date of refiling, the county auditor must examine the signatures and certify the sufficiency or insufficiency of the petition.

(5) The name of any person who signed a petition (~~((shall))~~) may not be withdrawn from the petition after it has been filed with the county auditor.

(6) If the petition is found to contain a sufficient number of valid signatures, the county auditor (~~((shall))~~) must transmit it, with a certificate of sufficiency attached, to the county legislative authority, which (~~((shall))~~) must thereupon, by resolution entered upon its minutes, receive the (~~((same))~~) petition and fix a day and hour when it will publicly hear the petition.

(7) For the purposes of this section, "municipality" means a city or town.

**Sec. 2.** RCW 68.52.110 and 1947 c 6 s 3 are each amended to read as follows:

The (~~((hearing on such petition shall be at the office of the board of county commissioners and shall be held))~~) county legislative authority must conduct a hearing on the petition not less than twenty nor more than forty days from the date of receipt (~~((thereof))~~) of the petition from the county auditor. The hearing may be completed on the day set (~~((therefor))~~) for hearing the petition or it may be adjourned from time to time as (~~((may be))~~) necessary, but (~~((such adjournment or adjournments shall not extend the time for determining said petition more than sixty days in all from the date of receipt by the board))~~) an adjournment may not extend the time for the county legislative authority's determination pursuant to RCW 68.52.140 more than sixty days from the date of receipt of the petition from the county auditor.

**Sec. 3.** RCW 68.52.120 and 2012 c 117 s 319 are each amended to read as follows:

(~~((A copy of))~~) The text of the petition with the names of petitioners omitted (~~((, together with))~~) and a notice signed by the clerk of the (~~((board of county commissioners))~~) county legislative authority stating the day, hour, and place of the hearing (~~((, shall))~~) must be published in three consecutive weekly issues of the official newspaper of the county prior to the date of the hearing. (~~((Said clerk shall))~~) The clerk must also cause a copy of the petition with the names of petitioners omitted, (~~((together))~~) with a copy of the notice attached, to be posted for not less than fifteen days before the date of the hearing in (~~((each of))~~) three public places (~~((within the boundaries of))~~) in the proposed district, to be previously designated by him or her and made a matter of record in the proceedings.

**Sec. 4.** RCW 68.52.130 and 1947 c 6 s 5 are each amended to read as follows:

At the time and place fixed for the hearing on the petition or at any adjournment thereof, the (~~((board of county commissioners shall hear said))~~) county legislative authority must hear the petition and receive such evidence as it may deem material in favor of or opposed to the formation of the proposed cemetery district or to the inclusion (~~((therein))~~) or exclusion (~~((therefrom))~~) of any lands in the proposed district, but no lands not within the boundaries of the proposed district as described in the petition (~~((shall))~~) may be included without a written waiver describing the land, executed by all persons having any interest of record therein, having been filed in the proceedings. No land within the



boundaries described in the petition (~~(shall)~~) may be excluded from the proposed district.

**Sec. 5.** RCW 68.52.140 and 1996 c 324 s 3 are each amended to read as follows:

~~((The county legislative authority shall have full authority to hear and determine the petition, and if it finds that the formation of the district will be conducive to the public welfare and convenience, it shall by resolution so declare, otherwise it shall deny the petition. If the county legislative authority finds in favor of the formation of the district, it shall designate the name and number of the district, fix the boundaries thereof, and cause an election to be held therein for the purpose of determining whether or not the district shall be organized under the provisions of this chapter, and for the purpose of electing its first cemetery district commissioners. At the same election three cemetery district commissioners shall be elected, but the election of the commissioners shall be null and void if the district is not created. No primary shall be held for the office of cemetery district commissioner. A special filing period shall be opened as provided in RCW 29.15.170 and 29.15.180. Candidates shall run for specific commissioner positions. The person receiving the greatest number of votes for each commissioner position shall be elected to that commissioner)) (1) After conducting the hearing on the petition, if the county legislative authority determines that the formation of the proposed cemetery district will be conducive to the public welfare and convenience, the county legislative authority must by resolution so declare, otherwise the county legislative authority must deny the petition.~~

(2) If the county legislative authority finds in favor of the formation of the proposed district, the county legislative authority must designate the name and number of the proposed district, fix the boundaries of the proposed district, and cause an election to be held in the proposed district to determine whether the proposed district will be formed under the provisions of this chapter, and to elect the first cemetery district commissioners.

(3) Three cemetery district commissioners must be elected at the election to determine whether the proposed district will be formed, but the election of the commissioners is null and void if the district is not formed. No primary will be held for the office of cemetery district commissioner. A special filing period must be opened as provided in RCW 29A.24.171 and 29A.24.181. Candidates must run for specific commissioner positions. The person receiving the greatest number of votes for each commissioner position is elected to that position. The terms of office of the initial commissioners (~~(shall be)~~) are as provided in RCW 68.52.220.

**Sec. 6.** RCW 68.52.150 and 1947 c 6 s 7 are each amended to read as follows:

Except as otherwise provided in this chapter, the election (~~(shall)~~) must insofar as possible be called, noticed, held, conducted, and canvassed in the same manner and by the same officials as provided by law for special elections in the county. ~~((For the purpose of such election county voting precincts may be combined or divided and redefined, and the territory in the district shall be included in one or more election precincts as may be deemed convenient, a polling place being designated for each such precinct. The notice of election~~

shall state generally and briefly the purpose thereof, shall give the boundaries of the proposed district, define the election precinct or precincts, designate the polling place for each, mention the names of the candidates for first cemetery district commissioners, and name the day of the election and the hours during which the polls will be open)) The notice of election must: State generally and briefly the purpose of the election; describe the boundaries of the proposed cemetery district; list the names of the candidates for first cemetery district commissioners; and specify the election date.

**Sec. 7.** RCW 68.52.170 and 1947 c 6 s 9 are each amended to read as follows:

~~((The returns of such election shall be canvassed at the court house on the Monday next following the day of the election, but the canvass may be adjourned from time to time if necessary to await the receipt of election returns which may be unavoidably delayed. The canvassing officials, upon conclusion of the canvass, shall forthwith certify the results thereof in writing to the board of county commissioners. If upon examination of the certificate of the canvassing officials it is found that two thirds of all the votes cast at said election were in favor of the formation of the cemetery district, the board of county commissioners shall, by resolution entered upon its minutes, declare such territory duly organized as a cemetery district under the name theretofore designated and shall declare the three candidates receiving the highest number of votes for cemetery commissioners, the duly elected first cemetery commissioners of the district. The clerk of the board of county commissioners shall certify a copy of the resolution and cause it to be filed for record in the offices of the county auditor and the county assessor of the county. The certified copy shall be entitled to record without payment of a recording fee. If the certificate of the canvassing officials shows that the proposition to organize the proposed cemetery district failed to receive two thirds of the votes cast at said election, the board of county commissioners shall enter a minute to that effect and all proceedings theretofore had shall become)) (1) The returns of the election must be canvassed following the election, but the canvass may be adjourned from time to time to await the receipt of election returns. Upon conclusion of the canvass, the canvassing officials must certify the results to the county legislative authority.~~

(2) The cemetery district is formed if two-thirds of all votes cast at the election were in favor of the formation of the proposed district. However, in counties with only one municipality the district is formed if a majority of all votes cast at the election were in favor of the formation of the proposed district.

(3) If the proposition to form the proposed district received the voter approval required under this section, the county legislative authority must by resolution recorded in the county legislative authority's minutes: Declare the district formed under the name and number previously designated; and declare the three candidates receiving the highest number of votes for cemetery district commissioners as the duly elected first commissioners of the district. The clerk of the county legislative authority must certify a copy of the resolution and cause it to be filed for record in the offices of the county auditor and the county assessor of the county. The certified copy may be recorded without payment of a recording fee.

(4) If the proposition to form the proposed district failed to receive the voter approval required under this section, the county legislative authority must record in the county legislative authority's minutes the failed vote, and all proceedings relating to the proposed district are null and void.

(5) For the purposes of this section, "municipality" means a city or town.

**Sec. 8.** RCW 68.52.180 and 1947 c 6 s 10 are each amended to read as follows:

(1) Any person, firm, or corporation having a substantial interest involved, and feeling aggrieved by any finding, determination, or resolution of the (~~board of county commissioners~~) county legislative authority under the provisions of this chapter, may appeal within five days after (~~such~~) the finding, determination, or resolution was made to the superior court of the county in the same manner as provided by law for appeals from orders of (~~said board~~) the county legislative authority.

(2) After the expiration of five days from the date of the resolution declaring the district (~~organized~~) formed, and upon filing of certified copies (~~thereof~~) of the resolution in the offices of the county auditor and county assessor, the formation of the cemetery district (~~shall be~~) is complete and its legal existence (~~shall~~) may not thereafter be questioned by any person by reason of any defect in the proceedings (~~had for the creation thereof~~) for the formation of the cemetery district.

**Sec. 9.** RCW 68.52.220 and 2011 c 60 s 47 are each amended to read as follows:

(1) The affairs of the cemetery district (~~shall~~) must be managed by a board of cemetery district commissioners composed of three members. The board may provide, by resolution passed by the commissioners, for the payment of compensation to each of its commissioners at a rate of up to ninety dollars for each day or portion of a day spent in actual attendance at official meetings of the district commission, or in performance of other official services or duties on behalf of the district. However, the compensation for each commissioner must not exceed eight thousand six hundred forty dollars per year.

(2) Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the clerk of the board. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver (~~shall~~) must specify the month or period of months for which it is made. The board (~~shall~~) must fix the compensation to be paid the secretary and other employees of the district. Cemetery district commissioners and candidates for cemetery district commissioner are exempt from the requirements of chapter 42.17A RCW.

(3) The initial cemetery district commissioners (~~shall~~) must assume office immediately upon their election and qualification. Staggering of terms of office (~~shall~~) must be accomplished as follows: ((+)) (a) The person elected receiving the greatest number of votes (~~shall be~~) is elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; ((-)) (b) the person who is elected receiving the next greatest number of votes (~~shall be~~) is elected to a

four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and ~~((3))~~ (c) the other person who is elected ~~((shall be))~~ is elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners ~~((shall))~~ must assume office immediately after they are elected and qualified but their terms of office ~~((shall))~~ must be calculated from the first day of January after the election.

(4) Thereafter, commissioners ~~((shall be))~~ are elected to six-year terms of office. Commissioners ~~((shall))~~ must serve until their successors are elected and qualified and assume office as provided in RCW 29A.20.040.

~~((The polling places for a cemetery district election may be located inside or outside the boundaries of the district, as determined by the auditor of the county in which the cemetery district is located, and no such election shall be held irregular or void on that account.))~~

(5) The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items ~~((shall))~~ must be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

(6) A person holding office as commissioner for two or more special purpose districts ~~((shall))~~ may receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions.

Passed by the House April 22, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

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## CHAPTER 168

[Substitute House Bill 1216]

### INSURANCE—EOSINOPHILIA GASTROINTESTINAL ASSOCIATED DISORDERS

AN ACT Relating to eosinophilia gastrointestinal associated disorders; and creating new sections.

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

**NEW SECTION. Sec. 1.** The department of health shall, using the procedures and standards set forth in chapter 48.47 RCW, conduct a sunrise review of the proposal, as set forth in House Bill No. 1216 (2013), requiring health carriers to include formulas necessary for the treatment of eosinophilia gastrointestinal associated disorders, regardless of the delivery method of the formula. The department shall report the results of the review no later than thirty days prior to the 2014 legislative session.

**NEW SECTION. Sec. 2.** Each carrier shall continue to apply a timely appeals and grievance process as outlined in RCW 48.43.530 to ensure medically necessary treatment is available. Expedited appeals must be completed when a delay in the appeal process could jeopardize the enrollees' life, health, or ability to regain maximum function.

Passed by the House April 18, 2013.

Passed by the Senate April 12, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 169

[Substitute House Bill 1242]

### COUNTY AUDITOR VEHICLE SUBAGENTS

AN ACT Relating to vehicle subagents; and amending RCW 46.01.140.

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

**Sec. 1.** RCW 46.01.140 and 2012 c 261 s 10 are each amended to read as follows:

(1) **County auditor/agent duties.** A county auditor or other agent appointed by the director must:

(a) Enter into a standard contract provided by the director;

(b) Provide all services authorized by the director for vehicle certificates of title and vehicle registration applications and issuance under the direction and supervision of the director including, but not limited to:

(i) Processing reports of sale;

(ii) Processing transitional ownership transactions;

(iii) Processing mail-in vehicle registration renewals until directed otherwise by legislative authority;

(iv) Issuing registrations and temporary ORV use permits for off-road vehicles as required under chapter 46.09 RCW;

(v) Issuing registrations for snowmobiles as required under chapter 46.10 RCW; and

(vi) Collecting fees and taxes as required;

(c) If authorized by the director, offer for sale discover passes as provided in chapter 79A.80 RCW.

(2) **County auditor/agent assistants and subagents.** A county auditor or other agent appointed by the director may, with approval of the director:

(a) Appoint assistants as special deputies to accept applications for vehicle certificates of title and to issue vehicle registrations; and

(b) Recommend and request that the director appoint subagencies within the county to accept applications for vehicle certificates of title and vehicle registration application issuance.

(3) **Appointing subagents.** A county auditor or other agent appointed by the director who requests a subagency must, with approval of the director:

(a) Use an open competitive process including, but not limited to, a written business proposal and oral interview to determine the qualifications of all interested applicants; and

(b) Submit all proposals to the director with a recommendation for appointment of one or more subagents who have applied through the open competitive process. If a qualified successor who is an existing subagent's sibling, spouse, or child, or a subagency employee has applied, the county auditor must provide the name of the qualified successor and the name of one other applicant who is qualified and was chosen through the open competitive process.

(4) **Subagent duties.** A subagent appointed by the director must:

(a) Enter into a standard contract with the county auditor or agent provided by the director;

(b) Provide all services authorized by the director for vehicle certificates of title and vehicle registration applications and issuance under the direction and supervision of the county auditor or agent and the director including, but not limited to:

(i) Processing reports of sale;

(ii) Processing transitional ownership transactions;

(iii) Mailing out vehicle registrations and replacement plates to internet payment option customers until directed otherwise by legislative authority;

(iv) Issuing registrations and temporary ORV use permits for off-road vehicles as required under chapter 46.09 RCW;

(v) Issuing registrations for snowmobiles as required under chapter 46.10 RCW; and

(vi) Collecting fees and taxes as required; and

(c) If authorized by the director, offer for sale discover passes as provided in chapter 79A.80 RCW.

(5) **Subagent successorship.** A subagent appointed by the director who no longer wants his or her appointment may recommend a successor who is the subagent's sibling, spouse, or child, or a subagency employee. The recommended successor must participate in the open competitive process used to select an applicant. In making successor recommendations and appointment determinations, the following provisions apply:

(a) If a subagency is held by a partnership or corporate entity, the nomination must be submitted on behalf of, and agreed to by, all partners or corporate officers;

(b) A subagent may not receive any direct or indirect compensation or remuneration from any party or entity in recognition of a successor nomination. A subagent may not receive any financial benefit from the transfer or termination of an appointment; ~~(and)~~

(c) The appointment of a successor is intended to assist in the efficient transfer of appointments to minimize public inconvenience. The appointment of a successor does not create a proprietary or property interest in the appointment;

(d) A subagent appointee who is planning to retire within twelve months may recommend a successor without resigning his or her appointment by submitting a letter of intent to retire with a successor recommendation to the county auditor or other agent appointed by the director. The county auditor or other agent appointed by the director shall, within sixty days, respond in writing to the subagent appointee indicating if the recommended successor would be considered in the open competitive process. If there are negative factors or deficiencies pertaining to the subagency operation or the recommended successor, the county auditor or other agent appointed by the director must state these factors in writing to the subagent appointee. The subagent appointee may withdraw the letter of intent to retire any time prior to the start of the open competitive process by writing to the county auditor or other agent appointed by the director and filing a copy with the director;

(e) A subagent appointee may name a recommended successor at any time during his or her appointment by notifying the county auditor or other agent appointed by the director in writing and filing a copy with the director. The purpose of this recommendation is for the county auditor or other agent appointed by the director to know the wishes of the subagent appointee in the event of the death or incapacitation of a sole subagent appointee or last remaining subagent appointee that could lead to the inability of the subagent to continue to fulfill the obligations of the appointment; and

(f) If the county auditor or other agent appointed by the director does not select the recommended successor for appointment as a result of the open competitive process, the county auditor or other agent appointed by the director must contact the subagent appointee by letter and explain the decision. The subagent appointee must be provided an opportunity to respond in writing. Any response by the subagent appointee must be included in the open competitive process materials submitted to the department.

**(6) Standard contracts.** The standard contracts provided by the director in this section may include provisions that the director deems necessary to ensure that readily accessible and acceptable service is provided to the citizens of the state, including the full collection of fees and taxes. The standard contracts must include provisions that:

(a) Describe responsibilities and liabilities of each party related to service expectations and levels;

(b) Describe the equipment to be supplied by the department and equipment maintenance;

(c) Require specific types of insurance or bonds, or both, to protect the state against any loss of collected revenue or loss of equipment;

(d) Specify the amount of training that will be provided by each of the parties;

(e) Describe allowable costs that may be charged for vehicle registration activities as described in subsection (7) of this section; and

(f) Describe causes and procedures for termination of the contract, which may include mediation and binding arbitration.

**(7) County auditor/agent cost reimbursement.** A county auditor or other agent appointed by the director who does not cover expenses for services provided by the standard contract may submit to the department a request for cost-coverage moneys. The request must be submitted on a form developed by

the department. The department must develop procedures to standardize and identify allowable costs and to verify whether a request is reasonable. Payment must be made on those requests found to be allowable from the licensing services account.

(8) **County auditor/agent revenue disbursement.** County revenues that exceed the cost of providing services described in the standard contract, calculated in accordance with the procedures in subsection (7) of this section, must be expended as determined by the county legislative authority during the process established by law for adoption of county budgets.

(9) **Appointment authority.** The director has final appointment authority for county auditors or other agents or subagents.

(10) **Rules.** The director may adopt rules to implement this section.

Passed by the House April 23, 2013.

Passed by the Senate April 11, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 170

[Substitute House Bill 1265]

### TRAFFIC INFRACTION NOTICES

AN ACT Relating to modifying provisions in the forms for traffic infraction notices; and amending RCW 46.63.060.

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

**Sec. 1.** RCW 46.63.060 and 2011 c 233 s 1 are each amended to read as follows:

(1) A notice of traffic infraction represents a determination that an infraction has been committed. The determination will be final unless contested as provided in this chapter.

(2) The form for the notice of traffic infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that a traffic infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that a traffic infraction is a noncriminal offense for which imprisonment may not be imposed as a sanction; that the penalty for a traffic infraction may include sanctions against the person's driver's license including suspension, revocation, or denial; that the penalty for a traffic infraction related to standing, stopping, or parking may include nonrenewal of the vehicle (~~license~~) registration;

(c) A statement of the specific traffic infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the traffic infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination the state has the burden of proving, by a preponderance of the evidence, that the infraction



was committed; and that the person may subpoena witnesses including the officer who issued the notice of infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person will be deemed to have committed the infraction and may not subpoena witnesses;

(h) A statement that the person must respond to the notice as provided in this chapter within fifteen days or the person's driver's license or driving privilege (~~(will)~~) may be suspended by the department until any penalties imposed pursuant to this chapter have been satisfied; and

(i) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances (~~(will)~~) may result in the suspension of the person's driver's license or driving privilege, or in the case of a standing, stopping, or parking violation, refusal of the department to renew the vehicle (~~(license)~~) registration, until any penalties imposed pursuant to this chapter have been satisfied.

(3)(a) A form for a notice of traffic infraction printed after July 22, 2011, must include a statement that the person may be able to enter into a payment plan with the court under RCW 46.63.110.

(b) The forms for a notice of traffic infraction must include the changes in section 1, chapter . . . , Laws of 2013 (this act) by July 1, 2015.

Passed by the House April 22, 2013.

Passed by the Senate April 9, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

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## CHAPTER 171

[Substitute House Bill 1270]

### DENTURISTS—BOARD OF DENTURISTS—LICENSING

AN ACT Relating to making the board of denturists the disciplining authority for licensed denturists; amending RCW 18.30.030, 18.30.065, 18.30.090, 18.30.095, 18.30.130, and 18.30.135; reenacting and amending RCW 18.130.040 and 18.130.040; providing an effective date; and providing an expiration date.

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

**Sec. 1.** RCW 18.30.030 and 1995 c 1 s 4 are each amended to read as follows:

No person may represent himself or herself as a licensed denturist or use any title or description of services without applying for licensure, meeting the required qualifications, and being licensed as a denturist by the (~~(department)~~) board, unless otherwise exempted by this chapter.

**Sec. 2.** RCW 18.30.065 and 2002 c 160 s 5 are each amended to read as follows:

The board shall:

(1) Determine the qualifications of persons applying for licensure under this chapter;

(2) Prescribe, administer, and determine the requirements for examinations under this chapter and establish a passing grade for licensure under this chapter;

(3) Adopt rules under chapter 34.05 RCW to carry out the provisions of this chapter (~~(in consultation and in agreement with the secretary)~~);

(4) Have authority to provide requirements for continuing competency as a condition of license renewal by rule (~~(in agreement with the secretary)~~); and

(5) Evaluate and approve those schools from which graduation is accepted as proof of an applicant's completion of coursework requirements for licensure.

**Sec. 3.** RCW 18.30.090 and 2002 c 160 s 6 are each amended to read as follows:

The secretary shall issue a license to practice denturism to an applicant who submits a completed application, pays the appropriate fees, and meets the following requirements:

(1) A person currently licensed to practice denturism under statutory provisions of another state, territory of the United States, District of Columbia, or Puerto Rico, with substantially equivalent licensing standards to this chapter shall be licensed without examination upon providing the (~~(department)~~) board with the following:

(a) Proof of successfully passing a written and clinical examination for denturism in a state, territory of the United States, District of Columbia, or Puerto Rico, that the board has determined has substantially equivalent licensing standards as those in this chapter, including but not limited to both the written and clinical examinations; and

(b) An affidavit from the licensing agency where the person is licensed or certified attesting to the fact of the person's licensure or certification.

(2) A person graduating from a formal denturism program shall be licensed if he or she:

(a) Documents successful completion of formal training with a major course of study in denturism of not less than two years in duration at an educational institution approved by the board; and

(b) Passes a written and clinical examination approved by the board.

**Sec. 4.** RCW 18.30.095 and 2011 c 32 s 1 are each amended to read as follows:

An applicant with military training or experience satisfies the training or experience requirements of this chapter unless the (~~(secretary)~~) board determines that the military training or experience is not substantially equivalent to the standards of the state.

**Sec. 5.** RCW 18.30.130 and 1996 c 191 s 13 are each amended to read as follows:

The (~~(secretary)~~) board shall establish by rule the requirements for renewal of licenses to practice denturism, but shall not increase the licensure requirements provided in this chapter. The secretary shall establish administrative procedures, administrative requirements, and fees for license periods and renewals as provided in RCW 43.70.250 and 43.70.280.

**Sec. 6.** RCW 18.30.135 and 1995 c 336 s 3 are each amended to read as follows:

The Uniform Disciplinary Act, chapter 18.130 RCW, shall govern the issuance and denial of licenses, unauthorized practice, and the discipline of persons licensed under this chapter. The (~~(secretary)~~) board shall be the disciplinary authority under this chapter.

**Sec. 7.** RCW 18.130.040 and 2012 c 208 s 10, 2012 c 153 s 16, 2012 c 137 s 19, and 2012 c 23 s 6 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 and designated apprentices under chapter 18.34 RCW;

(ii) Midwives licensed under chapter 18.50 RCW;

(iii) Ocularists licensed under chapter 18.55 RCW;

(iv) Massage practitioners and businesses licensed under chapter 18.108 RCW;

(v) Dental hygienists licensed under chapter 18.29 RCW;

(vi) East Asian medicine practitioners licensed under chapter 18.06 RCW;

(vii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(viii) Respiratory care practitioners licensed under chapter 18.89 RCW;

(ix) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

(x) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates—advanced, and social work associates—independent clinical under chapter 18.225 RCW;

(xi) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xii) Nursing assistants registered or certified or medication assistants endorsed under chapter 18.88A RCW;

(xiii) Health care assistants certified under chapter 18.135 RCW;

(xiv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xv) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;

(xvi) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xvii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

~~(xviii) (Denturists licensed under chapter 18.30 RCW;~~

~~(xix))~~ Orthotists and prosthetists licensed under chapter 18.200 RCW;

~~((xx))~~ (xix) Surgical technologists registered under chapter 18.215 RCW;

~~((xxi))~~ (xx) Recreational therapists under chapter 18.230 RCW;

~~((xxii))~~ (xxi) Animal massage practitioners certified under chapter 18.240 RCW;

~~((xxiii))~~ (xxii) Athletic trainers licensed under chapter 18.250 RCW;

~~((xxiv))~~ (xxiii) Home care aides certified under chapter 18.88B RCW;

~~((xxv))~~ (xxiv) Genetic counselors licensed under chapter 18.290 RCW;

and

~~((xxvi))~~ (xxv) Reflexologists certified under chapter 18.108 RCW; and

~~((xxvii))~~ (xxvi) Medical assistants-certified, medical assistants-hemodialysis technician, medical assistants-phlebotomist, and medical assistants-registered certified and registered under chapter 18.360 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 governing licenses issued under chapter 18.32 RCW, licenses and registrations issued under chapter 18.260 RCW, and certifications issued under chapter 18.350 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;

(xiv) The veterinary board of governors as established in chapter 18.92 RCW; ~~(and)~~

(xv) The board of naturopathy established in chapter 18.36A RCW; and

(xvi) the board of denturists established in chapter 18.30 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the uniform disciplinary act, among the disciplining authorities listed in subsection (2) of this section.

**Sec. 8.** RCW 18.130.040 and 2012 c 208 s 10, 2012 c 153 s 17, 2012 c 137 s 19, and 2012 c 23 s 6 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 and designated apprentices under chapter 18.34 RCW;

(ii) Midwives licensed under chapter 18.50 RCW;

(iii) Ocularists licensed under chapter 18.55 RCW;

(iv) Massage practitioners and businesses licensed under chapter 18.108 RCW;

(v) Dental hygienists licensed under chapter 18.29 RCW;

(vi) East Asian medicine practitioners licensed under chapter 18.06 RCW;

(vii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(viii) Respiratory care practitioners licensed under chapter 18.89 RCW;

(ix) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

(x) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates—advanced, and social work associates—independent clinical under chapter 18.225 RCW;

(xi) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xii) Nursing assistants registered or certified or medication assistants endorsed under chapter 18.88A RCW;

(xiii) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xiv) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;

(xv) Sex offender treatment providers and certified affiliate 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) (Denturists licensed under chapter 18.30 RCW;~~

~~(xviii))~~ (xviii) Orthotists and prosthetists licensed under chapter 18.200 RCW;

~~((xix))~~ (xviii) Surgical technologists registered under chapter 18.215 RCW;

~~((xx))~~ (xix) Recreational therapists under chapter 18.230 RCW;

~~((xxi))~~ (xx) Animal massage practitioners certified under chapter 18.240 RCW;

~~((xxii))~~ (xxi) Athletic trainers licensed under chapter 18.250 RCW;

~~((xxiii))~~ (xxii) Home care aides certified under chapter 18.88B RCW;

~~((xxiv))~~ (xxiii) Genetic counselors licensed under chapter 18.290 RCW;

~~((and~~

~~(xxv))~~ (xxiv) Reflexologists certified under chapter 18.108 RCW; and

~~((xxvi))~~ (xxv) Medical assistants-certified, medical assistants-hemodialysis technician, medical assistants-phlebotomist, and medical assistants-registered certified and registered under chapter 18.360 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 governing licenses issued under chapter 18.32 RCW, licenses and registrations issued under chapter 18.260 RCW, and certifications issued under chapter 18.350 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;

(xiv) The veterinary board of governors as established in chapter 18.92 RCW; ~~(and)~~

(xv) The board of naturopathy established in chapter 18.36A RCW; and

(xvi) The board of denturists established in chapter 18.30 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the uniform disciplinary act, among the disciplining authorities listed in subsection (2) of this section.

NEW SECTION. Sec. 9. Section 7 of this act expires July 1, 2016.

NEW SECTION. Sec. 10. Section 8 of this act takes effect July 1, 2016.

Passed by the House March 5, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 172

[Substitute House Bill 1271]

## DENTURISTS—PRACTICE OF DENTURISM

AN ACT Relating to the practice of denturism; amending RCW 18.30.010; adding a new section to chapter 18.30 RCW; and providing an effective date.

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

**Sec. 1.** RCW 18.30.010 and 2002 c 160 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the Washington state board of denturists.

(2) "Denture" means a removable full or partial upper or lower dental appliance to be worn in the mouth to replace missing natural teeth.

(3) "Denturist" means a person licensed under this chapter to engage in the practice of denturism.

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

(5) "Practice of denturism" means:

(a) Making, placing, constructing, altering, reproducing, or repairing a denture; ~~(and)~~

(b) Taking impressions and furnishing or supplying a denture directly to a person or advising the use of a denture, and maintaining a facility for the same;

(c) Making, placing, constructing, altering, reproducing, or repairing the following nonorthodontic removable oral devices, excluding devices intended to treat obstructive sleep apnea or to treat temporomandibular joint dysfunction, where accompanied by written encouragement to have regular dental checkups with a licensed dentist:

(i) Bruxism devices;

(ii) Sports mouth guards;

(iii) Removable cosmetic appliances, regardless of whether the patient is missing teeth; and

(iv) Snoring devices, only after a physician has ruled out snoring associated with sleep breathing disorders, including obstructive sleep apnea; and

(d) Providing teeth whitening services, including fabricating whitening trays, providing whitening solutions determined to be safe for public use, and providing required follow-up care and instructions for use of the trays and solutions at home.

(6) "Secretary" means the secretary of health or the secretary's designee.

**NEW SECTION. Sec. 2.** A new section is added to chapter 18.30 RCW to read as follows:

Prior to providing the services mentioned in RCW 18.30.010(5) (c) and (d), a licensed denturist must provide documentation to the board that he or she received education and training on providing the services. The board must, by rule, specify the education and training necessary to provide the services mentioned in RCW 18.30.010(5) (c) and (d).

**NEW SECTION. Sec. 3.** This act takes effect July 1, 2014.

Passed by the House March 5, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 8, 2013.  
Filed in Office of Secretary of State May 8, 2013.

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## CHAPTER 173

[Substitute House Bill 1284]

### INCARCERATED PERSONS—PARENTS—PROCEEDINGS INVOLVING CHILDREN

AN ACT Relating to the rights of parents who are incarcerated; amending RCW 13.34.067, 13.34.136, and 13.34.145; and reenacting and amending RCW 13.34.180.

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

**Sec. 1.** RCW 13.34.067 and 2009 c 520 s 23 are each amended to read as follows:

(1)(a) Following shelter care and no later than thirty days prior to fact-finding, the department or supervising agency shall convene a case conference as required in the shelter care order to develop and specify in a written service agreement the expectations of both the department or supervising agency and the parent regarding voluntary services for the parent.

(b) The case conference shall include the parent, counsel for the parent, caseworker, counsel for the state, guardian ad litem, counsel for the child, and any other person agreed upon by the parties. Once the shelter care order is entered, the department or supervising agency is not required to provide additional notice of the case conference to any participants in the case conference.

(c) The written service agreement expectations must correlate with the court's findings at the shelter care hearing. The written service agreement must set forth specific services to be provided to the parent.

(d) The case conference agreement must be agreed to and signed by the parties. The court shall not consider the content of the discussions at the case conference at the time of the fact-finding hearing for the purposes of establishing that the child is a dependent child, and the court shall not consider any documents or written materials presented at the case conference but not incorporated into the case conference agreement, unless the documents or written materials were prepared for purposes other than or as a result of the case conference and are otherwise admissible under the rules of evidence.

(2) At any other stage in a dependency proceeding, the department or supervising agency, upon the parent's request, shall convene a case conference.

(3) If a case conference is convened pursuant to subsection (1) or (2) of this section and the parent is unable to participate in person due to incarceration, the parent must have the option to participate through the use of a teleconference or videoconference.

**Sec. 2.** RCW 13.34.136 and 2011 c 309 s 29 are each amended to read as follows:

(1) Whenever a child is ordered removed from the home, a permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is



achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the department's or supervising agency's proposed permanency plan must be provided to the department or supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption, including a tribal customary adoption as defined in RCW 13.38.040; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to RCW 13.34.130(~~(6)~~) (8), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the supervising agency or the department will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the department or supervising agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The department's or supervising agency's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement. If the parent is incarcerated, the plan must address how the parent will participate in the case conference and permanency planning meetings and, where possible, must include treatment that reflects the resources available at the facility where the parent is confined. The plan must provide for visitation opportunities, unless visitation is not in the best interests of the child.

(ii) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The supervising agency or department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. The court and the department or supervising agency should rely upon community resources, relatives, foster

parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department or supervising agency.

(v) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

(vi) The supervising agency or department shall provide all reasonable services that are available within the department or supervising agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(~~((4))~~) (8), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The department or supervising agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for fifteen of the most recent twenty-two months, and the court has not made a good cause exception, the court shall require the department or supervising agency to file a petition seeking termination of parental rights in accordance with RCW 13.34.145(3)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(~~((4))~~) (6). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child

adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and when it is in the best interests of the child adoptee and his or her siblings, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department of social and health services or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe.

**Sec. 3.** RCW 13.34.145 and 2011 c 330 s 6 are each amended to read as follows:

(1) The purpose of a permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and reach decisions regarding the permanent placement of the child.

(a) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as provided in this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or a permanent custody order is entered, or the dependency is dismissed. Every effort shall be made to provide stability in long-term placement, and to avoid disruption of placement, unless the child is being returned home or it is in the best interest of the child.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning

goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(3) At the permanency planning hearing, the court shall conduct the following inquiry:

(a) If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate.

(b) In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. The court shall review the permanency plan prepared by the agency and make explicit findings regarding each of the following:

(i) The continuing necessity for, and the safety and appropriateness of, the placement;

(ii) The extent of compliance with the permanency plan by the department or supervising agency and any other service providers, the child's parents, the child, and the child's guardian, if any;

(iii) The extent of any efforts to involve appropriate service providers in addition to department or supervising agency staff in planning to meet the special needs of the child and the child's parents;

(iv) The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child;

(v) The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement; and

(vi) If the child has been placed outside of his or her home for fifteen of the most recent twenty-two months, not including any period during which the child was a runaway from the out-of-home placement or the first six months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan, whether reasonable efforts were made by the department or supervising agency to achieve the goal of the permanency plan, and the circumstances which prevent the child from any of the following:

(A) Being returned safely to his or her home;

(B) Having a petition for the involuntary termination of parental rights filed on behalf of the child;

(C) Being placed for adoption;

(D) Being placed with a guardian;

(E) Being placed in the home of a fit and willing relative of the child; or

(F) Being placed in some other alternative permanent placement, including independent living or long-term foster care.

~~((At this))~~ (4) Following this inquiry, at the permanency planning hearing, the court shall order the department or supervising agency to file a petition

seeking termination of parental rights if the child has been in out-of-home care for fifteen of the last twenty-two months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not appropriate. Any good cause finding shall be reviewed at all subsequent hearings pertaining to the child.

(a) For purposes of this ~~(section)~~ subsection, "good cause exception" includes but is not limited to the following:

(i) The child is being cared for by a relative;

(ii) The department has not provided to the child's family such services as the court and the department have deemed necessary for the child's safe return home; ~~(or)~~

(iii) The department has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the child's best interests; or

(iv) The parent is incarcerated, or the parent's prior incarceration is a significant factor in why the child has been in foster care for fifteen of the last twenty-two months, the parent maintains a meaningful role in the child's life, and the department has not documented another reason why it would be otherwise appropriate to file a petition pursuant to this section.

(b) The court's assessment of whether a parent who is incarcerated maintains a meaningful role in the child's life may include consideration of the following:

(i) The parent's expressions or acts of manifesting concern for the child, such as letters, telephone calls, visits, and other forms of communication with the child;

(ii) The parent's efforts to communicate and work with the department or supervising agency or other individuals for the purpose of complying with the service plan and repairing, maintaining, or building the parent-child relationship;

(iii) A positive response by the parent to the reasonable efforts of the department or the supervising agency;

(iv) Information provided by individuals or agencies in a reasonable position to assist the court in making this assessment, including but not limited to the parent's attorney, correctional and mental health personnel, or other individuals providing services to the parent;

(v) Limitations in the parent's access to family support programs, therapeutic services, and visiting opportunities, restrictions to telephone and mail services, inability to participate in foster care planning meetings, and difficulty accessing lawyers and participating meaningfully in court proceedings; and

(vi) Whether the continued involvement of the parent in the child's life is in the child's best interest.

(c) The constraints of a parent's current or prior incarceration and associated delays or barriers to accessing court-mandated services may be considered in rebuttal to a claim of aggravated circumstances under RCW 13.34.132(4)(g) for a parent's failure to complete available treatment.

~~((e)(f))~~ (5)(a) If the permanency plan identifies independent living as a goal, the court at the permanency planning hearing shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial, personal,

social, educational, and nonfinancial affairs prior to approving independent living as a permanency plan of care. The court will inquire whether the child has been provided information about extended foster care services.

~~((iii))~~ (b) The permanency plan shall also specifically identify the services, including extended foster care services, where appropriate, that will be provided to assist the child to make a successful transition from foster care to independent living.

~~((iii))~~ (c) The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

~~((d))~~ (6) If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall:

~~((i))~~ (a) Enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280, 13.34.215(6), and 13.34.096; and

~~((ii))~~ (b) If the department or supervising agency is recommending a placement other than the child's current placement with a foster parent, relative, or other suitable person, enter a finding as to the reasons for the recommendation for a change in placement.

~~((4))~~ (7) In all cases, at the permanency planning hearing, the court shall:

(a)(i) Order the permanency plan prepared by the supervising agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

~~((5))~~ (8) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

~~((6))~~ (9) Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

~~((7))~~ (10) If the court orders the child returned home, casework supervision by the department or supervising agency shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

~~((8))~~ (11) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of

determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

~~((9))~~ (12) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection ~~((8))~~ (11) of this section are met.

~~((10))~~ (13) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the department or supervising agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

~~((11))~~ (14) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

~~((12))~~ (15) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter.

**Sec. 4.** RCW 13.34.180 and 2009 c 520 s 34 and 2009 c 477 s 5 are each reenacted and amended to read as follows:

(1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party, including the supervising agency, to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection ~~((2) or)~~ (3) or (4) of this section applies:

(a) That the child has been found to be a dependent child;

(b) That the court has entered a dispositional order pursuant to RCW 13.34.130;

(c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;

(d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;

(e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been

clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts;

(ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; or

(iii) Failure of the parent to have contact with the child for an extended period of time after the filing of the dependency petition if the parent was provided an opportunity to have a relationship with the child by the department or the court and received documented notice of the potential consequences of this failure, except that the actual inability of a parent to have visitation with the child including, but not limited to, mitigating circumstances such as a parent's current or prior incarceration or service in the military does not in and of itself constitute failure to have contact with the child; and

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home. If the parent is incarcerated, the court shall consider whether a parent maintains a meaningful role in his or her child's life based on factors identified in RCW 13.34.145(4)(b); whether the department or supervising agency made reasonable efforts as defined in this chapter; and whether particular barriers existed as described in RCW 13.34.145(4)(b) including, but not limited to, delays or barriers experienced in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.

(2) As evidence of rebuttal to any presumption established pursuant to subsection (1)(e) of this section, the court may consider the particular constraints of a parent's current or prior incarceration. Such evidence may include, but is not limited to, delays or barriers a parent may experience in keeping the agency apprised of his or her location and in accessing visitation or other meaningful contact with the child.

(3) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

~~((3))~~ (4) In lieu of the allegations in subsection (1)(b) through (f) of this section, the petition may allege that the parent has been convicted of:

(a) Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW against another child of the parent;

(b) Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW against another child of the parent;



(c) Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or

(d) Assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.

~~((4))~~ (5) When a parent has been sentenced to a long-term incarceration and has maintained a meaningful role in the child's life considering the factors provided in RCW 13.34.145(4)(b), and it is in the best interest of the child, the department should consider a permanent placement that allows the parent to maintain a relationship with his or her child, such as, but not limited to, a guardianship pursuant to chapter 13.36 RCW.

(6) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

#### NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services or the supervising agency and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)."

Passed by the House April 22, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

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#### CHAPTER 174

[Substitute House Bill 1334]

#### MOTORCYCLES—CONVERSION KITS

AN ACT Relating to conversion kits on motorcycles; amending RCW 46.04.330 and 46.20.500; and reenacting and amending RCW 46.81A.010.

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

**Sec. 1.** RCW 46.04.330 and 2009 c 275 s 2 are each amended to read as follows:

"Motorcycle" means a motor vehicle designed to travel on not more than three wheels (~~(in contact with the ground)~~), not including any stabilizing conversion kits, on which the driver:

(1) Rides on a seat or saddle and the motor vehicle is designed to be steered with a handlebar; or

(2) Rides on a seat in a partially or completely enclosed seating area that is equipped with safety belts and the motor vehicle is designed to be steered with a steering wheel.

"Motorcycle" excludes a farm tractor, a power wheelchair, an electric personal assistive mobility device, a motorized foot scooter, an electric-assisted bicycle, and a moped.

**Sec. 2.** RCW 46.20.500 and 2009 c 275 s 4 are each amended to read as follows:

(1) No person may drive either a two-wheeled or a three-wheeled motorcycle, or a motor-driven cycle unless such person has a valid driver's license specially endorsed by the director to enable the holder to drive such vehicles.

(2) However, a person sixteen years of age or older, holding a valid driver's license of any class issued by the state of the person's residence, may operate a moped without taking any special examination for the operation of a moped.

(3) No driver's license is required for operation of an electric-assisted bicycle if the operator is at least sixteen years of age. Persons under sixteen years of age may not operate an electric-assisted bicycle.

(4) No driver's license is required to operate an electric personal assistive mobility device or a power wheelchair.

(5) No driver's license is required to operate a motorized foot scooter. Motorized foot scooters may not be operated at any time from a half hour after sunset to a half hour before sunrise without reflectors of a type approved by the state patrol.

(6) A person holding a valid driver's license may operate a motorcycle as defined under RCW 46.04.330(2) without a motorcycle endorsement.

(7) A person operating a motorcycle with a stabilizing conversion kit must have a valid driver's license specially endorsed by the director for a three-wheeled motorcycle to enable the holder to operate such a motorcycle.

**Sec. 3.** RCW 46.81A.010 and 2003 c 353 s 11 and 2003 c 41 s 4 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Motorcycle skills education program" means a motorcycle rider skills training program to be administered by the department.

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

(3) "Director" means the director of licensing.

(4) "Motorcycle" (~~means a motor vehicle designed to travel on not more than three wheels in contact with the ground, on which the driver rides astride the motor unit or power train and is designed to be steered with a handlebar, but excluding farm tractors, electric personal assistive mobility devices, mopeds,~~

~~motorized foot scooters, motorized bicycles,))~~ has the same meaning as provided in RCW 46.04.330 and excludes off-road motorcycles.

Passed by the House April 22, 2013.

Passed by the Senate April 11, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

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## CHAPTER 175

[Engrossed Substitute House Bill 1341]

### WRONGFUL CONVICTION AND IMPRISONMENT—COMPENSATION

AN ACT Relating to creating a claim for compensation for wrongful conviction and imprisonment; amending RCW 4.92.130; adding a new section to chapter 28B.15 RCW; adding a new section to chapter 72.09 RCW; and adding a new chapter to Title 4 RCW.

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

**NEW SECTION. Sec. 1.** The legislature recognizes that persons convicted and imprisoned for crimes they did not commit have been uniquely victimized. Having suffered tremendous injustice by being stripped of their lives and liberty, they are forced to endure imprisonment and are later stigmatized as felons. A majority of those wrongly convicted in Washington state have no remedy available under the law for the destruction of their personal lives resulting from errors in our criminal justice system. The legislature intends to provide an avenue for those who have been wrongly convicted in Washington state to redress the lost years of their lives, and help to address the unique challenges faced by the wrongly convicted after exoneration.

**NEW SECTION. Sec. 2.** (1) Any person convicted in superior court and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation against the state.

(2) For purposes of this chapter, a person is:

(a) "Actually innocent" of a felony if he or she did not engage in any illegal conduct alleged in the charging documents; and

(b) "Wrongly convicted" if he or she was charged, convicted, and imprisoned for one or more felonies of which he or she is actually innocent.

(3)(a) If the person entitled to file a claim under subsection (1) of this section is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be filed on behalf of the claimant by an authorized agent.

(b) A claim filed under this chapter survives to the personal representative of the claimant as provided in RCW 4.20.046.

**NEW SECTION. Sec. 3.** (1) All claims under this chapter must be filed in superior court. The venue for such actions is governed by RCW 4.12.020.

(2) Service of the summons and complaint is governed by RCW 4.28.080.

**NEW SECTION. Sec. 4.** (1) In order to file an actionable claim for compensation under this chapter, the claimant must establish by documentary evidence that:

(a) The claimant has been convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the charging document dismissed on the basis of significant new exculpatory information or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the charging document dismissed; and

(d) The claim is not time barred by section 9 of this act.

(2) In addition to the requirements in subsection (1) of this section, the claimant must state facts in sufficient detail for the finder of fact to determine that:

(a) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.

(3) Convictions vacated, overturned, or subject to resentencing pursuant to *In re: Personal Detention of Andress*, 147 Wn.2d 602 (2002) may not serve as the basis for a claim under this chapter unless the claimant otherwise satisfies the qualifying criteria set forth in section 2 of this act and this section.

(4) The claimant must verify the claim unless he or she is incapacitated, in which case the personal representative or agent filing on behalf of the claimant must verify the claim.

(5) If the attorney general concedes that the claimant was wrongly convicted, the court must award compensation as provided in section 6 of this act.

(6)(a) If the attorney general does not concede that the claimant was wrongly convicted and the court finds after reading the claim that the claimant does not meet the filing criteria set forth in this section, it may dismiss the claim, either on its own motion or on the motion of the attorney general.

(b) If the court dismisses the claim, the court must set forth the reasons for its decision in written findings of fact and conclusions of law.

**NEW SECTION. Sec. 5.** Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action is de novo.

**NEW SECTION. Sec. 6.** (1) In order to obtain a judgment in his or her favor, the claimant must show by clear and convincing evidence that:

(a) The claimant was convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any conviction other than those that are the basis for the claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the charging document dismissed on the basis of significant new exculpatory information or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the charging document dismissed;

(d) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(e) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.

(2) Any pardon or proclamation issued to the claimant must be certified by the officer having lawful custody of the pardon or proclamation, and be affixed with the seal of the office of the governor, or with the official certificate of such officer before it may be offered as evidence.

(3) In exercising its discretion regarding the weight and admissibility of evidence, the court must give due consideration to difficulties of proof caused by the passage of time or by release of evidence pursuant to a plea, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the parties.

(4) The claimant may not be compensated for any period of time in which he or she was serving a term of imprisonment or a concurrent sentence for any conviction other than the felony or felonies that are the basis for the claim.

(5) If the jury or, in the case where the right to a jury is waived, the court finds by clear and convincing evidence that the claimant was wrongly convicted, the court must order the state to pay the actually innocent claimant the following compensation award, as adjusted for partial years served and to account for inflation from the effective date of this section:

(a) Fifty thousand dollars for each year of actual confinement including time spent awaiting trial and an additional fifty thousand dollars for each year served under a sentence of death pursuant to chapter 10.95 RCW;

(b) Twenty-five thousand dollars for each year served on parole, community custody, or as a registered sex offender pursuant only to the felony or felonies which are grounds for the claim;

(c) Compensation for child support payments owed by the claimant that became due and interest on child support arrearages that accrued while the claimant was in custody on the felony or felonies that are grounds for the compensation claim. The funds must be paid on the claimant's behalf in a lump sum payment to the department of social and health services for disbursement under Title 26 RCW;

(d) Reimbursement for all restitution, assessments, fees, court costs, and all other sums paid by the claimant as required by pretrial orders and the judgment and sentence; and

(e) Attorneys' fees for successfully bringing the wrongful conviction claim calculated at ten percent of the monetary damages awarded under subsection (5)(a) and (b) of this section, plus expenses. However, attorneys' fees and expenses may not exceed seventy-five thousand dollars. These fees may not be deducted from the compensation award due to the claimant and counsel is not entitled to receive additional fees from the client related to the claim. The court may not award any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongly convicted.

(6) The compensation award may not include any punitive damages.

(7) The court may not offset the compensation award by any expenses incurred by the state, the county, or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant. The court may not offset against the compensation award the value of any services or reduction in fees for services to be provided to the claimant as part of the award under this section.

(8) The compensation award is not income for tax purposes, except attorneys' fees awarded under subsection (5)(e) of this section.

(9)(a) Upon finding that the claimant was wrongly convicted, the court must seal the claimant's record of conviction.

(b) Upon request of the claimant, the court may order the claimant's record of conviction vacated if the record has not already been vacated, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 do not apply.

(10) Upon request of the claimant, the court must refer the claimant to the department of corrections or the department of social and health services for access to reentry services, if available, including but not limited to counseling on the ability to enter into a structured settlement agreement and where to obtain free or low-cost legal and financial advice if the claimant is not already represented, the community-based transition programs and long-term support programs for education, mentoring, life skills training, assessment, job skills development, mental health and substance abuse treatment.

(11) The claimant or the attorney general may initiate and agree to a claim with a structured settlement for the compensation awarded under subsection (5) of this section. During negotiation of the structured settlement agreement, the claimant must be given adequate time to consult with the legal and financial advisor of his or her choice. Any structured settlement agreement binds the parties with regard to all compensation awarded. A structured settlement agreement entered into under this section must be in writing and signed by the parties or their representatives and must clearly state that the parties understand and agree to the terms of the agreement.

(12) Before approving any structured settlement agreement, the court must ensure that the claimant has an adequate understanding of the agreement. The court may approve the agreement only if the judge finds that the agreement is in the best interest of the claimant and actuarially equivalent to the lump sum compensation award under subsection (5) of this section before taxation. When

determining whether the agreement is in the best interest of the claimant, the court must consider the following factors:

- (a) The age and life expectancy of the claimant;
- (b) The marital or domestic partnership status of the claimant; and
- (c) The number and age of the claimant's dependants.

**NEW SECTION. Sec. 7.** (1) On or after the effective date of this section, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in section 4 of this act, the court must provide to the claimant a copy of sections 2 through 12 of this act at the time the relief is granted.

(2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after the effective date of this section, must provide a copy of sections 2 through 12 of this act to the individual pardoned.

(3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she has an additional twelve months, beyond the statute of limitations under section 9 of this act, to bring a claim under this chapter.

**NEW SECTION. Sec. 8.** (1) It is the intent of the legislature that the remedies and compensation provided under this chapter shall be exclusive to all other remedies at law and in equity against the state or any political subdivision of the state. As a requirement to making a request for relief under this chapter, the claimant waives any and all other remedies, causes of action, and other forms of relief or compensation against the state, any political subdivision of the state, and their officers, employees, agents, and volunteers related to the claimant's wrongful conviction and imprisonment. This waiver shall also include all state, common law, and federal claims for relief, including claims pursuant to 42 U.S.C. Sec. 1983. A wrongfully convicted person who elects not to pursue a claim for compensation pursuant to this chapter shall not be precluded from seeking relief through any other existing remedy. The claimant must execute a legal release prior to the payment of any compensation under this chapter. If the release is held invalid for any reason and the claimant is awarded compensation under this chapter and receives a tort award related to his or her wrongful conviction and incarceration, the claimant must reimburse the state for the lesser of:

- (a) The amount of the compensation award, excluding the portion awarded pursuant to section 6(5) (c) through (e) of this act; or
- (b) The amount received by the claimant under the tort award.

(2) A release dismissal agreement, plea agreement, or any similar agreement whereby a prosecutor's office or an agent acting on its behalf agrees to take or refrain from certain action if the accused individual agrees to forgo legal action against the county, the state of Washington, or any political subdivision, is admissible and should be evaluated in light of all the evidence. However, any such agreement is not dispositive of the question of whether the claimant was wrongfully convicted or entitled to compensation under this chapter.

**NEW SECTION. Sec. 9.** Except as provided in section 7 of this act, an action for compensation under this chapter must be commenced within three

years after the grant of a pardon, the grant of judicial relief and satisfaction of other conditions described in section 2 of this act, or release from custody, whichever is later. However, any action by the state challenging or appealing the grant of judicial relief or release from custody tolls the three-year period. Any persons meeting the criteria set forth in section 2 of this act who was wrongly convicted before the effective date of this section may commence an action under this chapter within three years after the effective date of this section.

**\*NEW SECTION. Sec. 10.** *All payments by the state under this chapter shall be paid from the liability account established under RCW 4.92.130.*

**\*Sec. 10 was vetoed. See message at end of chapter.**

**NEW SECTION. Sec. 11.** A new section is added to chapter 28B.15 RCW to read as follows:

(1) Subject to the conditions in subsection (2) of this section and the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, must waive all tuition and fees for the following persons:

(a) A wrongly convicted person; and

(b) Any child or stepchild of a wrongly convicted person who was born or became the stepchild of, or was adopted by, the wrongly convicted person before compensation is awarded under section 6 of this act.

(2) The following conditions apply to waivers under subsection (1) of this section:

(a) A wrongly convicted person must be a Washington domiciliary to be eligible for the tuition waiver.

(b) A child must be a Washington domiciliary ages seventeen through twenty-six years to be eligible for the tuition waiver. A child's marital status does not affect eligibility.

(c) Each recipient's continued participation is subject to the school's satisfactory progress policy.

(d) Tuition waivers for graduate students are not required for those who qualify under subsection (1) of this section but are encouraged.

(e) Recipients who receive a waiver under subsection (1) of this section may attend full time or part time. Total credits earned using the waiver may not exceed two hundred quarter credits, or the equivalent of semester credits.

(3) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms of this section.

(4) For the purposes of this section:

(a) "Child" means a biological child, stepchild, or adopted child who was born of, became the stepchild of, or was adopted by a wrongly convicted person before compensation is awarded under section 6 of this act.

(b) "Fees" includes all assessments for costs incurred as a condition to a student's full participation in coursework and related activities at an institution of higher education.

(c) "Washington domiciliary" means a person whose true, fixed, and permanent house and place of habitation is the state of Washington. In ascertaining whether a wrongly convicted person or child is domiciled in the state of Washington, public institutions of higher education must, to the fullest extent possible, rely upon the standards provided in RCW 28B.15.013.



(d) "Wrongly convicted person" means a Washington domiciliary who was awarded damages under section 6 of this act.

**NEW SECTION. Sec. 12.** A new section is added to chapter 72.09 RCW to read as follows:

When a court refers a person to the department under section 6 of this act as part of the person's award in a wrongful conviction claim, the department must provide reasonable access to existing reentry programs and services. Nothing in this section requires the department to establish new reentry programs or services.

*\*Sec. 13. RCW 4.92.130 and 2011 1st sp.s. c 43 s 513 are each amended to read as follows:*

*A liability account in the custody of the treasurer is hereby created as a nonappropriated account to be used solely and exclusively for the payment of liability settlements and judgments against the state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of its officers, employees, and volunteers and all related legal defense costs.*

*(1) The purpose of the liability account is to: (a) Expediently pay legal liabilities and defense costs of the state resulting from tortious conduct; (b) promote risk control through a cost allocation system which recognizes agency loss experience, levels of self-retention, and levels of risk exposure, including the payment of compensation awarded by a court under section 6 of this act; and (c) establish an actuarially sound system to pay incurred losses, within defined limits.*

*(2) The liability account shall be used to pay claims for injury and property damages and legal defense costs exclusive of agency-retained expenses otherwise budgeted.*

*(3) No money shall be paid from the liability account, except for defense costs, unless all proceeds available to the claimant from any valid and collectible liability insurance shall have been exhausted and unless:*

*(a) The claim shall have been reduced to final judgment in a court of competent jurisdiction; or*

*(b) The claim has been approved for payment.*

*(4) The liability account shall be financed through annual premiums assessed to state agencies, based on sound actuarial principles, and shall be for liability coverage in excess of agency-budgeted self-retention levels.*

*(5) Annual premium levels shall be determined by the risk manager. An actuarial study shall be conducted to assist in determining the appropriate level of funding.*

*(6) Disbursements for claims from the liability account shall be made to the claimant, or to the clerk of the court for judgments, upon written request to the state treasurer from the risk manager.*

*(7) The director may direct agencies to transfer moneys from other funds and accounts to the liability account if premiums are delinquent.*

*(8) The liability account shall not exceed fifty percent of the actuarial value of the outstanding liability as determined annually by the office of risk management. If the account exceeds the maximum amount specified in this section, premiums may be adjusted by the office of risk management in order to maintain the account balance at the maximum limits. If, after adjustment*

*of premiums, the account balance remains above the limits specified, the excess amount shall be prorated back to the appropriate funds.*

**(9) The payment of compensation for wrongful conviction awarded by a court under section 6 of this act does not constitute a finding that the wrongful conviction resulted from tortious conduct by the officers or employees of the state or the political subdivisions, municipal corporations, and quasi-municipal corporations of the state.**

\*Sec. 13 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 14.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 15.** Sections 1 through 10 of this act constitute a new chapter in Title 4 RCW.

Passed by the House April 22, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 8, 2013, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 8, 2013.

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

"I am returning herewith, without my approval as to Sections 10 and 13, Engrossed Substitute House Bill 1341 entitled:

"AN ACT Relating to creating a claim for compensation for wrongful conviction and imprisonment."

I am pleased to join 27 states and the District of Columbia to provide compensation to individuals who have been wrongly convicted in Washington state of a felony offense and imprisoned as a result. While the impact on the person and his or her family cannot be quantified, some measure of compensation will help those wrongly convicted get back on their feet.

Under this bill, persons who clearly demonstrate that they have been wrongly convicted of a felony offense in superior court and subsequently imprisoned may bring a claim for compensation. Those individuals will receive monetary compensation based on the amount of time spent in prison and be eligible for other assistance programs to help them reintegrate in the community.

Sections 10 and 13 of the bill require payment of any wrongful conviction and imprisonment claims to be made from the state's liability account. This account is a self-insurance pool used to pay state tort claims, judgments, and settlements. State agencies pay premiums to the account based on an analysis for the claim loss history of the state agency. This methodology has passed state and federal audit scrutiny because it is based on the sound actuarial principle of examining actual claims experience. However, payments of wrongful conviction and imprisonment claims from this fund could draw a challenge from state and federal auditors because there is no state agency engaged in the conduct for which compensation is awarded under the bill. To avoid this risk, I am vetoing Sections 10 and 13 of this bill. Payments of such claims will be paid out of the General Fund and handled in accordance with RCW 4.92.040.

For these reasons, I have vetoed Sections 10 and 13 of Engrossed Substitute House Bill 1341.

With the exception of Sections 10 and 13, Engrossed Substitute House Bill 1341 is approved."

**CHAPTER 176**

[Engrossed Substitute House Bill 1412]

**K-12 EDUCATION—HIGH SCHOOL GRADUATION—COMMUNITY SERVICE**

AN ACT Relating to community service as a high school graduation requirement; adding a new section to chapter 28A.320 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that volunteering connects students to their communities and provides an opportunity for students to practice and apply their academic and social skills in preparation for entering the workforce. Community service can better prepare and inspire students to continue their education beyond high school. Community service is also associated with increased civic awareness and participation by students.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.320 RCW to read as follows:

By September 1, 2013, each school district shall adopt a policy that is supportive of community service and provides an incentive, such as recognition or credit, for students who participate in community service.

Passed by the House April 23, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

**CHAPTER 177**

[Second Substitute House Bill 1416]

**IRRIGATION DISTRICTS—IMPROVEMENTS—FINANCING**

AN ACT Relating to the financing of irrigation district improvements; amending RCW 84.34.310, 87.03.480, 87.03.485, 87.03.490, 87.03.495, 87.03.510, 87.03.515, 87.03.527, 87.06.020, 87.28.103, 87.28.200, and 89.12.050; and adding a new section to chapter 87.03 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 87.03 RCW to read as follows:

Any local improvement district bonds, and interest thereon, issued against a bond redemption fund of a local improvement district pursuant to RCW 87.03.485 shall be a valid claim of the owner thereof only as against the local improvement guarantee fund, the local improvement district redemption fund, and the assessments or revenues pledged to such fund or funds and do not constitute a general indebtedness against the issuing irrigation district unless the board of directors by resolution expressly provides for a pledge of general indebtedness. Except where the board provides for a pledge of general indebtedness, each such bond must state upon its face that it is payable from the local improvement district redemption fund and the local improvement guarantee fund only.

**Sec. 2.** RCW 84.34.310 and 1999 c 153 s 71 are each amended to read as follows:

As used in RCW 84.34.300 through 84.34.380, unless a different meaning is required, the words defined in this section shall have the meanings indicated.

(1) "Farm and agricultural land" shall mean the same as defined in RCW 84.34.020(2).

(2) "Timber land" shall mean the same as defined in RCW 84.34.020(3).

(3) "Local government" shall mean any city, town, county, water-sewer district, public utility district, port district, ~~((irrigation district,))~~ flood control district, or any other municipal corporation, quasi-municipal corporation, or other political subdivision authorized to levy special benefit assessments for sanitary and/or storm sewerage systems, domestic water supply and/or distribution systems, or road construction or improvement purposes. "Local government" does not include an irrigation district with respect to any local improvement district created or local improvement assessment levied by that irrigation district.

(4) "Local improvement district" shall mean any local improvement district, utility local improvement district, local utility district, road improvement district, or any similar unit created by a local government for the purpose of levying special benefit assessments against property specially benefited by improvements relating to such districts.

(5) "Owner" shall mean the same as defined in RCW 84.34.020(5) or the applicable statutes relating to special benefit assessments.

(6) The term "average rate of inflation" shall mean the annual rate of inflation as determined by the department of revenue averaged over the period of time as provided in RCW 84.34.330 (1) and (2). Such determination shall be published not later than January 1 of each year for use in that assessment year.

(7) "Special benefit assessments" shall mean special assessments levied or capable of being levied in any local improvement district or otherwise levied or capable of being levied by a local government to pay for all or part of the costs of a local improvement and which may be levied only for the special benefits to be realized by property by reason of that local improvement.

**Sec. 3.** RCW 87.03.480 and 1959 c 75 s 9 are each amended to read as follows:

Any desired special construction, reconstruction, betterment or improvement or purchase or acquisition of improvements already constructed, for any authorized district service, including but not limited to the safeguarding of open canals or ditches for the protection of the public therefrom, which are for the special benefit of the lands tributary thereto and within an irrigation district may be constructed or acquired and provision made to meet the cost thereof as follows:

The holders of title or evidence of title to one-quarter of the acreage proposed to be assessed, may file with the district board their petition reciting the nature and general plan of the desired improvement and specifying the lands proposed to be specially assessed therefor. ~~((The petition shall be accompanied by a bond in the sum of one hundred dollars with surety to be approved by the board, conditioned that the petitioners will pay the cost of an investigation of the project and of the hearing thereon if it is not established. The board may at any time require a bond in an additional sum.))~~ A local improvement district may include adjoining, vicinal, or neighboring improvements even though the improvements and the properties benefited are not connected or continuous. Such improvements may be owned by the United States, the state of Washington, the irrigation district, or another local government. Upon approval

of the board of an adjoining irrigation district, an irrigation district may form local improvement districts or utility local improvement districts that are composed entirely or in part of territory within that adjoining district. Upon the filing of the petition the board, with the assistance of a competent engineer, shall make an investigation of the feasibility, cost, and need of the proposed local improvement together with the ability of the lands to pay the cost, and if it appears feasible, they ~~((shall))~~ may elect to have plans and an estimate of the cost prepared. If a protest against the establishment of the proposed improvement signed by a majority of the holders of title in the proposed local district is presented at or before the hearing, or if the proposed improvement should be found not feasible, too expensive, or not in the best interest of the district, or the lands to be benefited insufficient security for the costs, they shall dismiss the petition ~~((at the expense of the petitioners)).~~

**Sec. 4.** RCW 87.03.485 and 1983 c 167 s 222 are each amended to read as follows:

In the event that the ~~((said))~~ board ~~((shall))~~ approves ~~((said))~~ the petition, the board shall fix a time and place for the hearing thereof and shall publish a notice once a week for two consecutive weeks preceding the date of such hearing and the last publication shall not be more than seven days before such date and shall mail such a notice on or before the second publication date by first-class mail, postage prepaid, to each owner or reputed owner of real property within the proposed local improvement district, as shown on the rolls of the county treasurer as of a date not more than twenty days immediately prior to the date such notice was mailed. Such notice must be published in a newspaper of general circulation in each county in which any portion of the land proposed to be included in such local improvement district lies. Such notice shall state that the lands within ~~((said))~~ the described boundaries are proposed to be organized as a local improvement district, stating generally the nature of the proposed improvement; that bonds for such local improvement district are proposed to be issued as the bonds of the irrigation district, or that a contract is proposed to be entered into between the district and the United States or the state of Washington, or both, that the lands within ~~((said))~~ the local improvement district are to be assessed for such improvement, that such bonds or contract will be ~~((a primary))~~ the obligation of such local improvement district ~~((and a general obligation of the irrigation district))~~ and stating a time and place of hearing thereon. At the time and place of hearing named in ~~((said))~~ the notice, all persons interested may appear before the board and show cause for or against the formation of the proposed improvement district and the issuance of bonds or the entering into of a contract as aforesaid. The board may designate a hearing officer to conduct the hearing, and the hearing officer shall report recommendations on the establishment of the local improvement district to the board for final action. Upon the hearing the board shall determine as to the establishment of the proposed local improvement district. Any landowner whose lands can be served or will be benefited by the proposed improvement, may make application to the board at the time of hearing to include such land and the board of directors in such cases shall, at its discretion, include such lands within such district. The board of directors may exclude any land specified in ~~((said))~~ the notice from ~~((said))~~ the district provided, that in the judgment of the board, the inclusion thereof will not be practicable.

As an alternative plan and subject to all of the provisions of this chapter, the board of directors may initiate the organization of a local improvement district as herein provided. To so organize a local improvement district the board shall adopt and record in its minutes a resolution specifying the lands proposed to be included in such local improvement district or by describing the exterior boundaries of such proposed district or by both. ~~((Said))~~ The resolution shall state generally the plan, character and extent of the proposed improvements, that the land proposed to be included in such improvement district will be assessed for such improvements; and that local improvement district bonds of the irrigation district will be issued or a contract entered into as hereinabove in this section provided to meet the cost thereof and that such bonds or contract will be ~~((a primary))~~ the obligation of such local improvement district ~~((and a general obligation of the irrigation district))~~. ~~((Said))~~ The resolution shall fix a time and place of hearing thereon and shall state that unless a majority of the holders of title or of evidence of title to lands within the proposed local improvement district file their written protest at or before ~~((said))~~ the hearing, consent to the improvement will be implied.

A notice containing a copy of ~~((said))~~ the resolution must be published once a week for two consecutive weeks preceding the date of such hearing and the last publication shall not be more than seven days before such date, and shall be mailed on or before the second publication date by first-class mail, postage prepaid, to each owner or reputed owner of real property within the proposed local improvement district, as shown on the rolls of the county treasurer as of a date not more than twenty days immediately prior to the date such notice was mailed, and the hearing thereon shall not be held in less than twenty days from the adoption of such resolution. Such notice must be published in one newspaper, of general circulation, in each county in which any portion of the land proposed to be included in such local improvement district lies. ~~((Said))~~ The hearing shall be held and all subsequent proceedings conducted in accordance with the provisions of this act relating to the organization of local improvement districts initiated upon petition.

**Sec. 5.** RCW 87.03.490 and 2003 c 53 s 412 are each amended to read as follows:

(1) If decision shall be rendered in favor of the improvement, the board shall enter an order establishing the boundaries of the improvement district and shall adopt plans for the proposed improvement and determine the number of annual installments not exceeding fifty in which the cost of the improvement shall be paid. The cost of the improvement shall be provided for by the issuance of local improvement district bonds of the district from time to time, therefor, either directly for the payment of the labor and material or for the securing of funds for such purpose, or by the irrigation district entering into a contract with the United States or the state of Washington, or both, to repay the cost of the improvement. The bonds shall bear interest at a rate or rates determined by the board, payable semiannually, and shall state upon their face that they are issued as bonds of the irrigation district; that all lands within the local improvement district shall be ~~((primarily))~~ liable to assessment for the principal and interest of the local improvement district bonds ~~((and that the bonds are also a general obligation of the district))~~. The bonds may be in such denominations as the board of directors may in its discretion determine, except that bonds other than bond number one of

any issue shall be in a denomination that is a multiple of one (~~hundred~~) thousand dollars(~~(, and no bond shall be sold for less than par. Any contract entered into for the local improvement by the district with the United States or the state of Washington, or both although all the lands within the local improvement district shall be primarily liable to assessment for the principal and interest thereon, shall be a general obligation of the irrigation district)~~). Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

(2) No election shall be necessary to authorize the issuance of such local improvement bonds or the entering into of such a contract. (~~Such bonds, when issued, shall be signed by the president and secretary of the irrigation district with the seal of the district affixed. The printed, engraved, or lithographed facsimile signatures of the president and secretary of the district's board of directors shall be sufficient signatures on the bonds or any coupons: PROVIDED, That such facsimile signatures on the bonds may be used only after the filing, by the officer whose facsimile signature is to be used, with the secretary of state of his or her manual signature certified by him or her under oath, whereupon that officer's facsimile signature has the same legal effect as his or her manual signature: PROVIDED, FURTHER, That either the president of the board of directors' or the secretary's signature on the bonds shall be manually subscribed: AND PROVIDED FURTHER, That whenever such facsimile reproduction of the signature of any officer is used in place of the manual signature of such officer, the district's board of directors shall specify in a written order or requisition to the printer, engraver, or lithographer the number of bonds or any coupons upon which such facsimile signature is to be printed, engraved, or lithographed and the manner of numbering the bonds or any coupons upon which such signature shall be placed. Within ninety days after the completion of the printing, engraving, or lithographing of such bonds or any coupons, the plate or plates used for the purpose of affixing the facsimile signature shall be destroyed, and it shall be the duty of the district's board of directors, within ninety days after receipt of the completed bonds or any coupons, to ascertain that such plate or plates have been destroyed. Every printer, engraver, or lithographer who, with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or coupon without written order of the district's board of directors, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, is guilty of a class B felony punishable according to chapter 9A.20 RCW-)~~)

(3) The proceeds from the sale of such bonds shall be deposited with the treasurer of the district, who shall place them in a special fund designated "Construction fund of local improvement district number . . . . ."

(4) Whenever such improvement district has been organized, the (~~boundaries thereof may be enlarged~~) board may enlarge the boundaries of the improvement district to include other lands which can be served or will be benefited by the proposed improvement upon petition of the owners thereof and the consent of the United States or the state of Washington, or both, in the event the irrigation district has contracted with the United States or the state of Washington, or both, to repay the cost of the improvement: PROVIDED, That at such time the lands so included shall pay their equitable proportion upon the basis of benefits of the improvement theretofore made by the local improvement

district and shall be liable for the indebtedness of the local improvement district in the same proportion and same manner and subject to assessment as if the lands had been incorporated in the improvement district at the beginning of its organization.

(5) Notwithstanding this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW.

**Sec. 6.** RCW 87.03.495 and 1988 c 127 s 45 are each amended to read as follows:

(1)(a) The cost of the improvement and of the operation and maintenance thereof, if any, shall be especially assessed against the lands within such local improvement district in proportion to the benefits accruing thereto, and shall be levied and collected in the manner provided by law for the levy and collection of land assessments or toll assessments or both such form of assessments.

(b) The costs of the improvement must include, but not be limited to:

(i) The cost of all of the construction or improvement authorized for the district;

(ii) The estimated cost and expense of all engineering and surveying necessary for the improvement done under the supervision of the irrigation district engineer;

(iii) The estimated cost and expense of ascertaining the ownership of the lots or parcels of land included in the assessment district;

(iv) The estimated cost and expense of advertising, mailing, and publishing all necessary notices;

(v) The estimated cost and expense of accounting and clerical labor, and of books and blanks extended or used on the part of the irrigation district treasurer in connection with the improvement;

(vi) All cost of the acquisition of rights-of-way, property, easements, or other facilities or rights, including without limitation rights to use property, facilities, or other improvements appurtenant, related to, or useful in connection with the local improvement, whether by eminent domain, purchase, gift, payment of connection charges, capacity charges, or other similar charges or in any other manner; and

(vii) The cost for legal, financial, and appraisal services and any other expenses incurred by the irrigation district for the district or in the formation thereof, or by irrigation district in connection with such construction or improvement and in the financing thereof, including the issuance of any bonds and the cost of providing for increases in the local improvement guaranty fund, or providing for a separate reserve fund or other security for the payment of principal of and interest on such bonds.

(c) Any of the costs set forth in this section may be excluded from the cost and expense to be assessed against the property in the local improvement district and may be paid from any other moneys available therefor if the board of directors so designates by resolution at any time.

(d) The board may give credit for all or any portion of any property or other donation against an assessment, charge, or other required financial contribution for improvements within a local improvement district.

(2) All provisions for the assessment, equalization, levy, and collection of assessments for irrigation district purposes shall be applicable to assessments for local improvements except that no election shall be required to authorize ~~((said))~~



the improvement or the expenditures therefor or the bonds issued to meet the cost thereof or the contract authorized in RCW 87.03.485 to repay the cost thereof. In addition or as an alternative, an irrigation district may elect to apply all or a portion of the provisions for the assessment, equalization, levy, and collection of assessments applicable to city or town local improvement districts; however any duties of the city or town treasurer shall be the duties of the treasurer of the county in which the office of the district is located or other treasurer of the district if appointed pursuant to RCW 87.03.440. In connection with a hearing on the assessment roll, the board may designate a hearing officer to conduct the hearing, and the hearing officer must report recommendations on the assessment roll to the board for final action. Assessments when collected by the county treasurer for the payment for the improvement of any local improvement district shall constitute a special fund to be called "bond redemption or contract repayment fund of local improvement district No. . . . ."

(3) Bonds issued under this chapter shall be eligible for disposal to and purchase by the director of ecology under the provisions of the state reclamation act.

(4) The cost or any unpaid portion thereof, of any such improvement, charged or to be charged or assessed against any tract of land may be paid in one payment under and pursuant to such rules as the board of directors may adopt, and all such amounts shall be paid over to the county treasurer who shall place the same in the appropriate fund. No such payment shall thereby release such tract from liability to assessment for deficiencies or delinquencies of the levies in such improvement district until all of the bonds or the contract, both principal and interest, issued or entered into for such local improvement district have been paid in full. The receipt given for any such payment shall have the foregoing provision printed thereon. The amount so paid shall be included on the annual assessment roll for the current year, provided, such roll has not then been delivered to the treasurer, with an appropriate notation by the secretary that the amount has been paid. If the roll for that year has been delivered to the treasurer then the payment so made shall be added to the next annual assessment roll with appropriate notation that the amount has been paid.

**Sec. 7.** RCW 87.03.510 and 1983 c 167 s 224 are each amended to read as follows:

There is hereby established for each irrigation district in this state having local improvement districts therein a fund for the purpose of guaranteeing to the extent of such fund and in the manner herein provided, the payment of its local improvement bonds and warrants issued or contract entered into to pay for the improvements provided for in this act. Such fund shall be designated "local improvement guarantee fund" and for the purpose of maintaining the same, every irrigation district shall hereafter levy from time to time, as other assessments authorized by RCW 87.03.240 are levied, such sums as may be necessary to meet the financial requirements thereof: PROVIDED, That such sums so assessed pursuant to RCW 87.03.240 in any year shall not be more than sufficient to pay the outstanding warrants or contract indebtedness on ~~((said))~~ the fund and to establish therein a balance which shall not exceed ~~((five))~~ ten percent of the outstanding obligations thereby guaranteed. The balance may also be established from the deposit of prepaid local improvement assessments or

proceeds of local improvement district bonds. Whenever any bond redemption payment, interest payment, or contract payment of any local improvement district shall become due and there is insufficient funds in the local improvement district fund for the payment thereof, there shall be paid from ~~((said))~~ the local improvement district guarantee fund, by warrant or by such other means as is called for in the contract, a sufficient amount, which together with the balance in the local improvement district fund shall be sufficient to redeem and pay ~~((said))~~ the bond or coupon or contract payment in full. ~~((said))~~ The warrants against ~~((said))~~ the guarantee fund shall draw interest at a rate determined by the board and ~~((said))~~ the bonds and interest payments shall be paid in their order of presentation or serial order. Whenever there shall be paid out of the guarantee fund any sum on account of principal or interest of a local improvement bond or warrant or contract the irrigation district, as trustee for the fund, shall be subrogated to all of the rights of the owner of the bond or contract amount so paid, and the proceeds thereof, or of the assessment underlying the same shall become part of the guarantee fund. There shall also be paid into such guarantee fund any interest received from bank deposits of the fund, as well as any surplus remaining in any local improvement district fund, after the payment of all of its outstanding bonds or warrants or contract indebtedness which are payable primarily out of such local improvement district fund.

**Sec. 8.** RCW 87.03.515 and 1983 c 167 s 225 are each amended to read as follows:

It shall be lawful for any irrigation district which has issued local improvement district bonds for ~~((said))~~ the improvements, as in this chapter provided, to issue in place thereof an amount of ~~((general))~~ local improvement district or revenue refunding bonds of the irrigation district ~~((not in excess of such issue of local improvement district bonds, and to sell the same, or any part thereof, or exchange the same, or any part thereof, with the owners of such previously issued local improvement district bonds for the purpose of redeeming said bonds))~~ in accordance with chapter 39.53 RCW: PROVIDED, HOWEVER, ((That all the provisions of this chapter regarding the authorization and issuing of bonds shall apply, and: PROVIDING, FURTHER,)) That the issuance of ~~((said))~~ the bonds shall not release the lands of the local improvement district or districts from liability for special assessments for the payment thereof: AND PROVIDED FURTHER, That the lien of any issue of bonds of the district prior in point of time to the issue of bonds or local improvement district bonds herein provided for ~~((;))~~ shall be deemed a prior lien.

**Sec. 9.** RCW 87.03.527 and 1959 c 104 s 7 are each amended to read as follows:

Whenever ~~((a local improvement district is sought to be established within an irrigation))~~ the board establishes a local improvement district, in addition or as an alternative to the procedures provided in RCW 87.03.480 through 87.03.525, there may be employed any method authorized by law for the formation of ~~((districts or))~~ improvement districts ~~((so that when formed it will qualify under the provisions of chapter 89.16 RCW))~~ and the levying, collection, and enforcement by foreclosure of assessments therein, including without limitation the formation method employed by cities or towns.

**Sec. 10.** RCW 87.06.020 and 1988 c 134 s 2 are each amended to read as follows:

(1) After thirty-six calendar months from the month of the date of delinquency, or twenty-four months from the month of the date of delinquency with respect to any local improvement district assessment, the treasurer shall prepare certificates of delinquency on the property for the unpaid irrigation district assessments, and for costs and interest. An individual certificate of delinquency may be prepared for each property or the individual certificates may be compiled and issued in one general certificate including all delinquent properties. Each certificate shall contain the following information:

- (a) Description of the property assessed;
- (b) Street address of property, if available;
- (c) Years for which assessed;
- (d) Amount of delinquent assessments, costs, and interest;
- (e) Name appearing on the treasurer's most current assessment roll for the property; and
- (f) A statement that interest will be charged on the amount listed in (d) of this subsection at a rate of twelve percent per year, computed monthly and without compounding, from the date of the issuance of the certificate and that additional costs, incurred as a result of the delinquency, will be imposed, including the costs of a title search(€).

(2) The treasurer may provide for the posting of the certificates or other measures designed to advertise the certificates and encourage the payment of the amounts due.

**Sec. 11.** RCW 87.28.103 and 1979 ex.s. c 185 s 14 are each amended to read as follows:

When the directors of the district have decided to issue revenue bonds as herein provided, they shall call a special election in the irrigation district at which election shall be submitted to the electors thereof possessing the qualifications prescribed by law the question whether revenue bonds of the district in the amount and payable according to the plan of payment adopted by the board and for the purposes therein stated shall be issued. ~~((Said)) The~~ election shall be called, noticed, conducted, and canvassed in the same manner as provided by law for irrigation district elections to authorize an original issue of bonds payable from revenues derived from annual assessments upon the real property in the district: PROVIDED, That the board of directors shall have full authority to issue revenue bonds as herein provided payable within a maximum period of forty years without a special election(~~(€—AND PROVIDED, FURTHER, That any irrigation district indebted to the state of Washington shall get the written consent of the director of the department of ecology prior to the issuance of said revenue bonds)~~).

**Sec. 12.** RCW 87.28.200 and 1979 ex.s. c 185 s 19 are each amended to read as follows:

Any irrigation district shall have the power to establish utility local improvement districts within its territory and to levy special assessments within such utility local improvement districts in the same manner as provided for irrigation district local improvement districts: PROVIDED, That it must be specified in any petition for the establishment of a utility local improvement

district that the sole purpose of the assessments levied against the real property located within the utility local improvement district shall be the payment of the proceeds of those assessments into ~~((the))~~ a revenue bond fund for the payment of revenue bonds, that no warrants or bonds shall be issued in any such utility local improvement district, and that the collection of interest and principal on all assessments in such utility local improvement district, when collected, shall be paid into ~~((the))~~ that revenue bond fund, except that special assessments paid before the issuance and sale of bonds may be deposited in a fund for the payment of costs of improvements in the utility local improvement district.

**Sec. 13.** RCW 89.12.050 and 2009 c 145 s 3 are each amended to read as follows:

(1) A district may enter into repayment and other contracts with the United States under the terms of the federal reclamation laws in matters relating to federal reclamation projects, and may with respect to lands within its boundaries include in the contract, among others, an agreement that:

(a) The district will not deliver water by means of the project works provided by the United States to or for excess lands not eligible therefor under applicable federal law.

(b) As a condition to receiving water by means of the project works, each excess landowner in the district, unless his excess lands are otherwise eligible to receive water under applicable federal law, shall be required to execute a recordable contract covering all of his excess lands within the district.

(c) All excess lands within the district not eligible to receive water by means of the project works shall be subject to assessment in the same manner and to the same extent as lands eligible to receive water, subject to such provisions as the secretary may prescribe for postponement in payment of all or part of the assessment but not beyond a date five years from the time water would have become available for such lands had they been eligible therefor.

(d) The secretary is authorized to amend any existing contract, deed, or other document to conform to the provisions of applicable federal law as it now exists. Any such amendment may be filed for record under RCW 89.12.080.

(2) A district may enter into a contract with the United States for the transfer of operations and maintenance of the works of a federal reclamation project, but the contract does not impute to the district negligence for design or construction defects or deficiencies of the transferred works. Any contract, covenant, promise, agreement, or understanding purporting to indemnify against liability for damages caused by or resulting from the negligent acts or omissions of the United States, its employees, or agents is not enforceable unless expressly authorized by state law.

**NEW SECTION. Sec. 14.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the House April 22, 2013.

Passed by the Senate April 12, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 178

[Engrossed Second Substitute House Bill 1445]

## COMPLEX REHABILITATION TECHNOLOGY PRODUCTS

AN ACT Relating to complex rehabilitation technology products; adding a new section to chapter 74.09 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 intends to:

- (1) Protect access for complex needs patients to important technology and supporting services;
- (2) Establish and improve safeguards relating to the delivery and provision of medically necessary complex rehabilitation technology; and
- (3) Provide supports for complex needs patients to stay in the home or community setting, prevent institutionalization, and prevent hospitalizations and other costly secondary complications.

**NEW SECTION. Sec. 2.** A new section is added to chapter 74.09 RCW to read as follows:

(1) The authority shall establish a separate recognition for individually configured, complex rehabilitation technology products and services for complex needs patients with the medical assistance program. This separate recognition shall:

- (a) Establish a budget and services category separate from other categories, such as durable medical equipment and supplies;
- (b) Take into consideration the customized nature of complex rehabilitation technology and the broad range of services necessary to meet the unique medical and functional needs of people with complex medical needs; and
- (c) Establish standards for the purchase of complex rehabilitation technology exclusively from qualified complex rehabilitation technology suppliers.

(2) The authority shall require complex needs patients receiving complex rehabilitation technology to be evaluated by:

- (a) A licensed health care provider who performs specialty evaluations within his or her scope of practice, including a physical therapist licensed under chapter 18.74 RCW and an occupational therapist licensed under chapter 18.59 RCW, and has no financial relationship with the qualified complex rehabilitation technology supplier; and
- (b) A qualified complex rehabilitation technology professional, as identified in subsection (3)(d)(iii) of this section.

(3) As used in this section:

(a) "Complex needs patient" means an individual with a diagnosis or medical condition that results in significant physical or functional needs and capacities. "Complex needs patient" does not negate the requirement that an individual meet medical necessity requirements under authority rules to qualify for receiving a complex rehabilitation product.

(b) "Complex rehabilitation technology" means wheelchairs and seating systems classified as durable medical equipment within the medicare program as of January 1, 2013, that:

- (i) Are individually configured for individuals to meet their specific and unique medical, physical, and functional needs and capacities for basic activities

of daily living and instrumental activities of daily living identified as medically necessary to prevent hospitalization or institutionalization of a complex needs patient;

(ii) Are primarily used to serve a medical purpose and generally not useful to a person in the absence of an illness or injury; and

(iii) Require certain services to allow for appropriate design, configuration, and use of such item, including patient evaluation and equipment fitting and configuration.

(c) "Individually configured" means a device has a combination of features, adjustments, or modifications specific to a complex needs patient that a qualified complex rehabilitation technology supplier provides by measuring, fitting, programming, adjusting, or adapting the device as appropriate so that the device is consistent with an assessment or evaluation of the complex needs patient by a health care professional and consistent with the complex needs patient's medical condition, physical and functional needs and capacities, body size, period of need, and intended use.

(d) "Qualified complex rehabilitation technology supplier" means a company or entity that:

(i) Is accredited by a recognized accrediting organization as a supplier of complex rehabilitation technology;

(ii) Meets the supplier and quality standards established for durable medical equipment suppliers under the medicare program;

(iii) For each site that it operates, employs at least one complex rehabilitation technology professional, who has been certified by the rehabilitation engineering and assistive technology society of North America as an assistive technology professional, to analyze the needs and capacities of complex needs patients, assist in selecting appropriate covered complex rehabilitation technology items for such needs and capacities, and provide training in the use of the selected covered complex rehabilitation technology items;

(iv) Has the complex rehabilitation technology professional physically present for the evaluation and determination of the appropriate individually configured complex rehabilitation technologies for the complex needs patient;

(v) Provides service and repairs by qualified technicians for all complex rehabilitation technology products it sells; and

(vi) Provides written information to the complex needs patient at the time of delivery about how the individual may receive service and repair.

**NEW SECTION. Sec. 3.** This act takes effect January 1, 2014.

Passed by the House April 22, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 179

[Engrossed Substitute House Bill 1524]

## JUVENILE JUSTICE SYSTEM—MENTAL HEALTH ISSUES

AN ACT Relating to juvenile mental health diversion and disposition strategies; amending RCW 13.40.070, 13.40.080, and 13.40.127; adding a new section to chapter 13.40 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that the large number of youth involved in the juvenile justice system with mental health challenges is of significant concern. Access to effective treatment is critical to the successful treatment of youth in the early stages of their contact with the juvenile justice system. Such access may prevent further involvement in the system after an initial contact or assist a youth in avoiding any further contact with the juvenile justice system altogether. There is growing evidence that mental health diversion strategies, in particular, are effective in connecting youth with needed treatment and preventing additional offending behaviors. These strategies allow a continuum of opportunities for connecting youth who may be facing a mental illness or disorder to community mental health services at multiple decision points, such as law enforcement diversion, prosecutor diversion, court-based diversion, and court disposition. The effective use of these strategies can result not only in significant cost savings for the juvenile justice system, but can create the benefit of improved lives of the youth who face mental health challenges and barriers.

**NEW SECTION. Sec. 2.** A new section is added to chapter 13.40 RCW to read as follows:

(1) When a police officer has reasonable cause to believe that a juvenile has committed acts constituting a nonfelony crime that is not a serious offense as identified in RCW 10.77.092, and the officer believes that the juvenile suffers from a mental disorder, and the local prosecutor has entered into an agreement with law enforcement regarding the detention of juveniles who may have a mental disorder, the arresting officer, instead of taking the juvenile to the local juvenile detention facility, may take the juvenile to:

(a) An evaluation and treatment facility as defined in RCW 71.34.020 if the facility has been identified as an alternative location by agreement of the prosecutor, law enforcement, and the mental health provider;

(b) A facility or program identified by agreement of the prosecutor and law enforcement; or

(c) A location already identified and in use by law enforcement for the purpose of mental health diversion.

(2) For the purposes of this section, an "alternative location" means a facility or program that has the capacity to evaluate a youth and, if determined to be appropriate, develop a behavioral health intervention plan and initiate treatment.

(3) If a juvenile is taken to any location described in subsection (1)(a) or (b) of this section, the juvenile may be held for up to twelve hours and must be examined by a mental health professional within three hours of arrival.

(4) The authority provided pursuant to this section is in addition to existing authority under RCW 10.31.110.

**Sec. 3.** RCW 13.40.070 and 2010 c 289 s 7 are each amended to read as follows:

(1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1)(a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (8) of this section. If the prosecutor finds that the requirements of subsection (1)(a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Except as provided in RCW 13.40.213 and subsection (7) of this section, where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class C felony listed in RCW 9.94A.411(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or 9.41.040(2)(a)(iii); or

(b) An alleged offender is accused of a felony and has a criminal history of any felony, or at least two gross misdemeanors, or at least two misdemeanors; or

(c) An alleged offender has previously been committed to the department;  
or

(d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or

(e) An alleged offender has ~~((two))~~ three or more diversion agreements on the alleged offender's criminal history; or

(f) A special allegation has been filed that the offender or an accomplice was armed with a firearm when the offense was committed.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (8) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient to charge an alleged offender with either prostitution or prostitution loitering and the alleged offense is the offender's first prostitution or prostitution loitering offense, the prosecutor shall divert the case.



(8) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(9) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversion interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversion unit, the victim shall be notified of the referral and informed how to contact the unit.

(10) The responsibilities of the prosecutor under subsections (1) through (9) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

(11) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such mediation or victim offender reconciliation programs shall be voluntary for victims.

**Sec. 4.** RCW 13.40.080 and 2012 c 201 s 2 are each amended to read as follows:

(1) A diversion agreement shall be a contract between a juvenile accused of an offense and a diversion 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 restitution 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 any victim;

(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; literacy; and life skills. If an assessment identifies mental health needs, a youth may access up to thirty hours of counseling. The counseling sessions may include services demonstrated to improve behavioral health and reduce recidivism. For purposes of this section, "community agency" may also mean a community-based nonprofit organization, a physician, a counselor, a school, or a treatment provider, if approved by the diversion unit. The state shall not be liable for costs resulting from the diversion unit exercising the option to permit diversion agreements to mandate attendance

at up to ~~((ten))~~ thirty hours of counseling and/or up to twenty hours of educational or informational sessions;

(d) A fine, not to exceed one hundred dollars;

(e) Requirements to remain during specified hours at home, school, or work, and restrictions on leaving or entering specified geographical areas; and

(f) Upon request of any victim or witness, requirements to refrain from any contact with victims or witnesses of offenses committed by the juvenile.

(3) Notwithstanding the provisions of subsection (2) of this section, youth courts are not limited to the conditions imposed by subsection (2) of this section in imposing sanctions on juveniles pursuant to RCW 13.40.630.

(4) In assessing periods of community restitution 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. To the extent possible, the court officer shall advise the victims of the juvenile offender of the diversion process, offer victim impact letter forms and restitution claim forms, and 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.

(5)(a) A diversion agreement may not exceed a period of six months and may include a period extending beyond the eighteenth birthday of the diverttee.

(b) If additional time is necessary for the juvenile to complete restitution to a 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 (5)(c), the juvenile shall remain under the court's jurisdiction for a maximum term of ten years after the juvenile's eighteenth birthday. Prior to the expiration of the initial ten-year period, the juvenile court may extend the judgment for restitution an additional ten years. The court may relieve the juvenile of the requirement 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. If the court relieves the juvenile of the requirement to pay full or partial restitution, the court may order an amount of community restitution that the court deems appropriate. 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.

(6) The juvenile shall retain the right to be referred to the court at any time prior to the signing of the diversion agreement.

(7) Divertees and potential divertees shall be afforded due process in all contacts with a diversion 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.

(8) 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.

(9) The diversion unit shall be responsible for advising a divertee of his or her rights as provided in this chapter.

(10) The diversion unit may refer a juvenile to a restorative justice program, community-based counseling, or treatment programs.

(11) 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(7). A signed acknowledgment of such advisement shall be obtained from the juvenile, and the document shall be maintained by the diversion 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.

(12) 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.

(13) A diversion unit may refuse to enter into a diversion agreement with a juvenile. When a diversion 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 diversion unit shall also immediately refer the case to the prosecuting attorney for action if such juvenile violates the terms of the diversion agreement.

(14) A diversion 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 includes the authority to refer the juvenile to community-based counseling or treatment programs or a restorative justice program. 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(7). 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 diversion 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.

(15) 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.

(16) 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 restitution. 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 restitution in lieu of a monetary penalty shall be converted at the rate of the prevailing state minimum wage per hour.

(17) 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. 5.** RCW 13.40.127 and 2012 c 177 s 1 are each amended to read as follows:

- (1) A juvenile is eligible for deferred disposition unless he or she:
  - (a) Is charged with a sex or violent offense;
  - (b) Has a criminal history which includes any felony;
  - (c) Has a prior deferred disposition or deferred adjudication; or
  - (d) Has two or more adjudications.

(2) The juvenile court may, upon motion at least fourteen days before commencement of trial and, after consulting the juvenile's custodial parent or parents or guardian and with the consent of the juvenile, continue the case for disposition for a period not to exceed one year from the date the juvenile is found guilty. The court shall consider whether the offender and the community will benefit from a deferred disposition before deferring the disposition. The court may waive the fourteen-day period anytime before the commencement of trial for good cause.

- (3) Any juvenile who agrees to a deferral of disposition shall:

(a) Stipulate to the admissibility of the facts contained in the written police report;

(b) Acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with terms of supervision;

(c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses; and

(d) Acknowledge the direct consequences of being found guilty and the direct consequences that will happen if an order of disposition is entered.

The adjudicatory hearing shall be limited to a reading of the court's record.

(4) Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(5) Any juvenile granted a deferral of disposition under this section shall be placed under community supervision. The court may impose any conditions of supervision that it deems appropriate including posting a probation bond. Payment of restitution under RCW 13.40.190 shall be a condition of community supervision under this section.

The court may require a juvenile offender convicted of animal cruelty in the first degree to submit to a mental health evaluation to determine if the offender would benefit from treatment and such intervention would promote the safety of the community. After consideration of the results of the evaluation, as a condition of community supervision, the court may order the offender to attend treatment to address issues pertinent to the offense.

The court may require the juvenile to undergo a mental health or substance abuse assessment, or both. If the assessment identifies a need for treatment, conditions of supervision may include treatment for the assessed need that has been demonstrated to improve behavioral health and reduce recidivism.

(6) A parent who signed for a probation bond has the right to notify the counselor if the juvenile fails to comply with the bond or conditions of supervision. The counselor shall notify the court and surety of any failure to comply. A surety shall notify the court of the juvenile's failure to comply with the probation bond. The state shall bear the burden to prove, by a preponderance

of the evidence, that the juvenile has failed to comply with the terms of community supervision.

(7)(a) Anytime prior to the conclusion of the period of supervision, the prosecutor or the juvenile's juvenile court community supervision counselor may file a motion with the court requesting the court revoke the deferred disposition based on the juvenile's lack of compliance or treat the juvenile's lack of compliance as a violation pursuant to RCW 13.40.200.

(b) If the court finds the juvenile failed to comply with the terms of the deferred disposition, the court may:

- (i) Revoke the deferred disposition and enter an order of disposition; or
- (ii) Impose sanctions for the violation pursuant to RCW 13.40.200.

(8) At any time following deferral of disposition the court may, following a hearing, continue supervision for an additional one-year period for good cause.

(9)(a) At the conclusion of the period of supervision, the court shall determine whether the juvenile is entitled to dismissal of the deferred disposition only when the court finds:

- (i) The deferred disposition has not been previously revoked;
- (ii) The juvenile has completed the terms of supervision;
- (iii) There are no pending motions concerning lack of compliance pursuant to subsection (7) of this section; and

(iv) The juvenile has either paid the full amount of restitution, or, made a good faith effort to pay the full amount of restitution during the period of supervision.

(b) If the court finds the juvenile is entitled to dismissal of the deferred disposition pursuant to (a) of this subsection, the juvenile's conviction shall be vacated and the court shall dismiss the case with prejudice, except that a conviction under RCW 16.52.205 shall not be vacated. Whenever a case is dismissed with restitution still owing, the court shall enter a restitution order pursuant to RCW 13.40.190 for any unpaid restitution. Jurisdiction to enforce payment and modify terms of the restitution order shall be the same as those set forth in RCW 13.40.190.

(c) If the court finds the juvenile is not entitled to dismissal of the deferred disposition pursuant to (a) of this subsection, the court shall revoke the deferred disposition and enter an order of disposition. A deferred disposition shall remain a conviction unless the case is dismissed and the conviction is vacated pursuant to (b) of this subsection or sealed pursuant to RCW 13.50.050.

(10)(a)(i) Any time the court vacates a conviction pursuant to subsection (9) of this section, if the juvenile is eighteen years of age or older and the full amount of restitution ordered has been paid, the court shall enter a written order sealing the case.

(ii) Any time the court vacates a conviction pursuant to subsection (9) of this section, if the juvenile is not eighteen years of age or older and full restitution ordered has been paid, the court shall schedule an administrative sealing hearing to take place no later than thirty days after the respondent's eighteenth birthday, at which time the court shall enter a written order sealing the case. The respondent's presence at the administrative sealing hearing is not required.

(iii) Any deferred disposition vacated prior to June 7, 2012, is not subject to sealing under this subsection.

(b) Nothing in this subsection shall preclude a juvenile from petitioning the court to have the records of his or her deferred dispositions sealed under RCW 13.50.050 (11) and (12).

(c) Records sealed under this provision shall have the same legal status as records sealed under RCW 13.50.050.

Passed by the House March 6, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 180

[Substitute House Bill 1541]

### K-12 EDUCATION—NASAL SPRAY ADMINISTRATION

AN ACT Relating to expanding the types of medications that a public or private school employee may administer to include nasal spray; and amending RCW 28A.210.260 and 28A.210.270.

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

**Sec. 1.** RCW 28A.210.260 and 2012 c 16 s 1 are each amended to read as follows:

Public school districts and private schools which conduct any of grades kindergarten through the twelfth grade may provide for the administration of oral medication, topical medication, eye drops, ~~((or))~~ ear drops, or nasal spray, of any nature to students who are in the custody of the school district or school at the time of administration, but are not required to do so by this section, subject to the following conditions:

(1) The board of directors of the public school district or the governing board of the private school or, if none, the chief administrator of the private school shall adopt policies which address the designation of employees who may administer oral medications, topical medications, eye drops, ~~((or))~~ ear drops, or nasal spray to students, the acquisition of parent requests and instructions, and the acquisition of requests from licensed health professionals prescribing within the scope of their prescriptive authority and instructions regarding students who require medication for more than fifteen consecutive school days, the identification of the medication to be administered, the means of safekeeping medications with special attention given to the safeguarding of legend drugs as defined in chapter 69.41 RCW, and the means of maintaining a record of the administration of such medication;

(2) The board of directors shall seek advice from one or more licensed physicians or nurses in the course of developing the foregoing policies;

(3) The public school district or private school is in receipt of a written, current and unexpired request from a parent, or a legal guardian, or other person having legal control over the student to administer the medication to the student;

(4) The public school district or the private school is in receipt of (a) a written, current and unexpired request from a licensed health professional prescribing within the scope of his or her prescriptive authority for administration of the medication, as there exists a valid health reason which makes administration of such medication advisable during the hours when school is in session or the hours in which the student is under the supervision of

school officials, and (b) written, current and unexpired instructions from such licensed health professional prescribing within the scope of his or her prescriptive authority regarding the administration of prescribed medication to students who require medication for more than fifteen consecutive workdays;

(5) The medication is administered by an employee designated by or pursuant to the policies adopted pursuant to subsection (1) of this section and in substantial compliance with the prescription of a licensed health professional prescribing within the scope of his or her prescriptive authority or the written instructions provided pursuant to subsection (4) of this section. If a school nurse is on the premises, a nasal spray that is a legend drug or a controlled substance must be administered by the school nurse. If no school nurse is on the premises, a nasal spray that is a legend drug or a controlled substance may be administered by a trained school employee or parent-designated adult who is not a school nurse. The board of directors shall allow school personnel, who have received appropriate training and volunteered for such training, to administer a nasal spray that is a legend drug or a controlled substance. After a school employee who is not a school nurse administers a nasal spray that is a legend drug or a controlled substance, the employee shall summon emergency medical assistance as soon as practicable;

(6) The medication is first examined by the employee administering the same to determine in his or her judgment that it appears to be in the original container and to be properly labeled; and

(7) The board of directors shall designate a professional person licensed pursuant to chapter 18.71 RCW or chapter 18.79 RCW as it applies to registered nurses and advanced registered nurse practitioners, to delegate to, train, and supervise the designated school district personnel in proper medication procedures.

(8)(a) For the purposes of this section, "parent-designated adult" means a volunteer, who may be a school district employee, who receives additional training from a health care professional or expert in epileptic seizure care selected by the parents, and who provides care for the child consistent with the individual health plan.

(b) To be eligible to be a parent-designated adult, a school district employee not licensed under chapter 18.79 RCW must file, without coercion by the employer, a voluntary written, current, and unexpired letter of intent stating the employee's willingness to be a parent-designated adult. If a school employee who is not licensed under chapter 18.79 RCW chooses not to file a letter under this section, the employee shall not be subject to any employer reprisal or disciplinary action for refusing to file a letter.

(9) The board of directors shall designate a professional person licensed under chapter 18.71, 18.57, or 18.79 RCW as it applies to registered nurses and advanced registered nurse practitioners, to consult and coordinate with the student's parents and health care provider, and train and supervise the appropriate school district personnel in proper procedures for care for students with epilepsy to ensure a safe, therapeutic learning environment. Training may also be provided by an epilepsy educator who is nationally certified. Parent-designated adults who are school employees are required to receive the training provided under this subsection. Parent-designated adults who are not school employees must show evidence of comparable training. The parent-designated



adult must also receive additional training as established in subsection (8)(a) of this section for the additional care the parents have authorized the parent-designated adult to provide. The professional person designated under this subsection is not responsible for the supervision of the parent-designated adult for those procedures that are authorized by the parents.

**Sec. 2.** RCW 28A.210.270 and 2012 c 16 s 2 are each amended to read as follows:

(1) In the event a school employee administers oral medication, topical medication, eye drops, ~~((ø#))~~ ear drops, or nasal spray to a student pursuant to RCW 28A.210.260 in substantial compliance with the prescription of the student's licensed health professional prescribing within the scope of the professional's prescriptive authority or the written instructions provided pursuant to RCW 28A.210.260(4), and the other conditions set forth in RCW 28A.210.260 have been substantially complied with, then the employee, the employee's school district or school of employment, and the members of the governing board and chief administrator thereof shall not be liable in any criminal action or for civil damages in their individual or marital or governmental or corporate or other capacities as a result of the administration of the medication.

(2) The administration of oral medication, topical medication, eye drops, ~~((ø#))~~ ear drops, or nasal spray to any student pursuant to RCW 28A.210.260 may be discontinued by a public school district or private school and the school district or school, its employees, its chief administrator, and members of its governing board shall not be liable in any criminal action or for civil damages in their governmental or corporate or individual or marital or other capacities as a result of the discontinuance of such administration: PROVIDED, That the chief administrator of the public school district or private school, or his or her designee, has first provided actual notice orally or in writing in advance of the date of discontinuance to a parent or legal guardian of the student or other person having legal control over the student.

Passed by the House April 18, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

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## CHAPTER 181

[Substitute House Bill 1556]

### K-12 EDUCATION—CARDIAC ARREST EMERGENCIES—CPR INSTRUCTION

AN ACT Relating to initiatives in high schools to save lives in the event of cardiac arrest; adding a new section to chapter 28A.300 RCW; adding a new section to chapter 28A.230 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 more than three hundred sixty thousand people in the United States experience cardiac arrest outside of a hospital every year, and only ten percent survive because the remainder do not receive timely cardiopulmonary resuscitation. When administered immediately, cardiopulmonary resuscitation doubles or triples

survival rates from cardiac arrest. Sudden cardiac arrest can happen to anyone at any time. Many victims appear healthy and have no known heart disease or other risk factors. The legislature finds that schools are the hearts of our community, and preparing students to help with a sudden cardiac arrest emergency could save the life of a child, parent, or teacher. Washington state has a longstanding history of training members of the public in cardiopulmonary resuscitation with community-based training programs. The legislature finds that training students will continue the legacy of providing high quality emergency cardiac care to its citizens. Therefore, the legislature intends to create a generation of lifesavers by putting cardiopulmonary resuscitation skills in the hands of all high school graduates and providing schools with a flexible framework to prepare for an emergency.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.300 RCW to read as follows:

(1) An automated external defibrillator is often a critical component in the chain of survival for a cardiac arrest victim.

(2) The office of the superintendent of public instruction, in consultation with school districts and stakeholder groups, shall develop guidance for a medical emergency response and automated external defibrillator program for high schools.

(3) The medical emergency response and automated external defibrillator program must comply with current evidence-based guidance from the American heart association or other national science organization.

(4) The office of the superintendent of public instruction, in consultation with the department of health, shall assist districts in carrying out a program under this section, including providing guidelines and advice for seeking grants for the purchase of automated external defibrillators or seeking donations of automated external defibrillators. The superintendent may coordinate with local health districts or other organizations in seeking grants and donations for this purpose.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28A.230 RCW to read as follows:

(1) Each school district that operates a high school must offer instruction in cardiopulmonary resuscitation to students as provided in this section. Beginning with the 2013-14 school year, instruction in cardiopulmonary resuscitation must be included in at least one health class necessary for graduation.

(2) Instruction in cardiopulmonary resuscitation under this section must:

(a) Be an instructional program developed by the American heart association or the American red cross or be nationally recognized and based on the most current national evidence-based emergency cardiovascular care guidelines for cardiopulmonary resuscitation;

(b) Include appropriate use of an automated external defibrillator, which may be taught by video; and

(c) Incorporate hands-on practice in addition to cognitive learning.

(3) School districts may offer the instruction in cardiopulmonary resuscitation directly or arrange for the instruction to be provided by available community-based providers. The instruction is not required to be provided by a certificated teacher. Certificated teachers providing the instruction are not

required to be certified trainers of cardiopulmonary resuscitation. A student is not required to earn certification in cardiopulmonary resuscitation to successfully complete the instruction for the purposes of this section.

Passed by the House April 22, 2013.

Passed by the Senate April 12, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 182

[Second Substitute House Bill 1566]

### FOSTER CARE—EDUCATIONAL OUTCOMES

AN ACT Relating to educational outcomes of youth in out-of-home care; amending RCW 13.34.069, 28B.117.030, and 28A.225.330; reenacting and amending RCW 13.34.030; adding new sections to chapter 13.34 RCW; adding new sections to chapter 74.13 RCW; adding a new section to chapter 28A.225 RCW; and providing an expiration date.

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

**NEW SECTION. Sec. 1.** The legislature believes that youth residing in foster care are capable of achieving success in school with appropriate support. Youth residing in foster care in Washington state lag behind their nonfoster youth peers in educational outcomes. Reasonable efforts by the department of social and health services to monitor educational outcomes and encourage academic achievement for youth in out-of-home care should be a responsibility of the child welfare system. When a youth is removed from his or her school district, it is the expectation of the legislature that the department of social and health services recognizes the impact this move may have on a youth's academic success and provide the youth with necessary supports to be successful in school. The legislature believes that active oversight and advocacy by an educational liaison and collaborations will encourage youth to reach their fullest academic potential.

**Sec. 2.** RCW 13.34.030 and 2011 1st sp.s. c 36 s 13 are each reenacted and amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child," "juvenile," and "youth" means:

(a) Any individual under the age of eighteen years; or

(b) Any individual age eighteen to twenty-one years who is eligible to receive and who elects to receive the extended foster care services authorized under RCW 74.13.031. A youth who remains dependent and who receives extended foster care services under RCW 74.13.031 shall not be considered a "child" under any other statute or for any other purpose.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

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

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; or

(d) Is receiving extended foster care services, as authorized by RCW 74.13.031.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Educational liaison" means a person who has been appointed by the court to fulfill responsibilities outlined in section 5 of this act.

(9) "Extended foster care services" means residential and other support services the department is authorized to provide under RCW 74.13.031.

~~((9))~~ (10) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

~~((10))~~ (11) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any manner which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

~~((11))~~ (12) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

~~((12))~~ (13) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

~~((13))~~ (14) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

~~((14))~~ (15) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

~~((15))~~ (16) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

~~((16))~~ (17) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

~~((17))~~ (18) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in RCW 13.38.040.

~~((18))~~ (19) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive

services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

~~((19))~~ (20) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020.

**NEW SECTION. Sec. 3.** A new section is added to chapter 13.34 RCW to read as follows:

(1) The department must identify an educational liaison for youth in grades six through twelve who are subject to a proceeding under this chapter and who meet one of the following requirements:

(a) All parental rights have been terminated;

(b) Parents are unavailable because of incarceration or other limitations;

(c) The court has restricted contact between the youth and parents; or

(d) The youth is placed in a behavioral rehabilitative setting and the court has limited the educational rights of parents.

(2) If a child is placed in the custody of the department at the shelter care hearing, the department shall recommend the identified educational liaison at the shelter care hearing and all subsequent review hearings for the given case. The purpose of identifying the educational liaison at each hearing during the dependency case is to determine if the identified educational liaison remains appropriate for the case as youth change placements.

(3) It is presumed that the educational liaison is the youth's parent. If a youth's parent is not able to serve as the educational liaison, the department must identify another person to act as the educational liaison. It is preferred that the educational liaison be known to the youth and be a relative, other suitable person as described in RCW 13.34.130(1)(b), or the youth's foster parent. Birth parents with a primary plan of family reunification may serve as the educational liaison. The identified educational liaison should be a person committed to providing enduring educational support to the youth. If the department is not able to identify an adult with an existing relationship to the youth who is able to serve as the educational liaison, the court may appoint another adult as the educational liaison, such as the court-appointed special advocate if applicable, but may not appoint the youth's caseworker. In the event that any party disagrees with the department's recommendation, the court shall determine who will serve as the educational liaison based on who is most appropriate and available to act in the youth's educational interest.

**Sec. 4.** RCW 13.34.069 and 2007 c 409 s 2 are each amended to read as follows:

If a child is placed in the custody of the department of social and health services or other supervising agency, immediately following the shelter care hearing, an order and authorization regarding health care and education records for the child shall be entered. The order shall:

(1) Provide the department or other supervising agency with the right to inspect and copy all health, medical, mental health, and education records of the child;

(2) Authorize and direct any agency, hospital, doctor, nurse, dentist, orthodontist, or other health care provider, therapist, drug or alcohol treatment provider, psychologist, psychiatrist, or mental health clinic, or health or medical records custodian or document management company, or school or school organization to permit the department or other supervising agency to inspect and to obtain copies of any records relating to the child involved in the case, without the further consent of the parent or guardian of the child; and

(3) Identify the person who will serve as the educational liaison; and

(4) Grant the department or other supervising agency or its designee the authority and responsibility, where applicable, to:

(a) Notify the child's school that the child is in out-of-home placement;

(b) Enroll the child in school;

(c) Request the school transfer records;

(d) Request and authorize evaluation of special needs;

(e) Attend parent or teacher conferences;

(f) Excuse absences;

(g) Grant permission for extracurricular activities;

(h) Authorize medications which need to be administered during school hours and sign for medical needs that arise during school hours; and

(i) Complete or update school emergency records.

Access to records under this section is subject to the child's consent where required by other state and federal laws.

**NEW SECTION. Sec. 5.** A new section is added to chapter 13.34 RCW to read as follows:

(1) Unless otherwise directed by the court, the responsibilities of the educational liaison for a youth subject to a proceeding under this chapter include, but are not limited to, the following:

(a) To attend educational meetings and dependency hearings;

(b) To meet with local school personnel at regular intervals regarding the youth's educational performance and academic needs;

(c) To seek to understand the youth's academic strengths, areas of concern, and future life goals;

(d) To advocate for necessary educational services;

(e) To join in decision-making processes regarding appropriate school placements, school coursework, personal future, and educational planning;

(f) To explore opportunities and barriers for youth to participate in extracurricular activities;

(g) To involve youth in educational decisions as developmentally appropriate;

(h) To keep all information regarding the youth confidential except as required pursuant to lawful order of a court; and

(i) To provide a written or verbal report to the court during each dependency hearing. The report must include information about the youth's educational progress, experience in school, and the educational liaison's and youth's recommendations regarding needed services in school or the community.

(2) The educational liaison may serve as the surrogate parent or educational representative under federal law.

(3) The educational liaison may have access to all educational records pertaining to the youth involved in the case, without the consent of a parent or guardian of the child, or if the child is under thirteen years of age.

(4) The educational liaison is a volunteer and not compensated for services.

(5) The educational liaison must complete background checks as required by the department.

**NEW SECTION. Sec. 6.** A new section is added to chapter 74.13 RCW to read as follows:

(1) The department shall provide youth residing in out-of-home care the opportunity to remain enrolled in the school he or she was attending prior to out-of-home placement, unless the safety of the youth is jeopardized, or a relative or other suitable person placement approved by the department is secured for the youth, or it is determined not to be in the youth's best interest to remain enrolled in the school he or she was attending prior to out-of-home placement. If the parties in the dependency case disagree regarding which school the youth should be enrolled in, the youth may remain enrolled in the school of origin until the disagreement is resolved in court, unless the department determines that the youth is in immediate danger by remaining enrolled in the school of origin.

(2) Unless otherwise directed by the court, the educational responsibilities of the department for school-aged youth residing in out-of-home care are the following:

(a) To collaboratively discuss and document school placement options and plan necessary school transfers during the family team decision-making meeting;

(b) To notify the receiving school and the school of origin that a youth residing in foster care is transferring schools;

(c) To request and secure missing academic records or medical records required for school enrollment within ten business days;

(d) To document the request and receipt of academic records in the individual service and safety plan;

(e) To pay any unpaid fees or fines due by the youth to the school or school district;

(f) To notify all legal parties when a school disruption occurs; and

(g) To document factors that contributed to any school disruptions.

**NEW SECTION. Sec. 7.** A new section is added to chapter 74.13 RCW to read as follows:

(1) A university-based child welfare research entity shall include in its reporting the educational experiences and progress of students in children's administration out-of-home care. This data must be disaggregated in the smallest units allowable by law that do not identify an individual student, in



order to learn which children's administration offices and school districts are experiencing the greatest success and challenges in achieving quality educational outcomes with students in children's administration out-of-home care.

(2) By January 1, 2015 and annually thereafter, the university-based child welfare research entity must submit a report to the legislature. To the extent possible, the report should include, but is not limited to, information on the following measures for a youth who is a dependent pursuant to chapter 13.34 RCW:

(a) Aggregate scores from the Washington state kindergarten readiness assessment;

(b) Aggregate scores from the third grade statewide student assessment in reading;

(c) Number of youth graduating from high school with a documented plan for postsecondary education, employment, or military service;

(d) Number of youth completing one year of postsecondary education, the equivalent of first-year student credits, or achieving a postsecondary certificate; and

(e) Number of youth who complete an associate or bachelor's degree.

(3) The report must identify strengths and weaknesses in practice and recommend to the legislature strategy and needed resources for improvement.

**Sec. 8.** RCW 28B.117.030 and 2011 1st sp.s. c 11 s 221 are each amended to read as follows:

(1) The office shall design and, to the extent funds are appropriated for this purpose, implement, a program of supplemental scholarship and student assistance for students who have emancipated from the state foster care system after having spent at least one year in care.

(2) The office shall convene and consult with an advisory committee to assist with program design and implementation. The committee shall include but not be limited to former foster care youth and their advocates; representatives from the state board for community and technical colleges, and from public and private agencies that assist current and former foster care recipients in their transition to adulthood; and student support specialists from public and private colleges and universities.

(3) To the extent that sufficient funds have been appropriated for this purpose, a student is eligible for assistance under this section if he or she:

(a) ~~((Emancipated from foster care on or after January 1, 2007, after having))~~ Spent at least one year in foster care subsequent to his or her sixteenth birthday;

(b) Meets one of the following three requirements:

(i) Emancipated from foster care on or after January 1, 2007;

(ii) Enrolls in extended foster care; or

(iii) Achieves a permanent plan after age seventeen and one-half years;

(c) Is a resident student, as defined in RCW 28B.15.012(2);

~~((e))~~ (d) Is enrolled with or will enroll on at least a half-time basis with an institution of higher education in Washington state by the age of twenty-one;

~~((d))~~ (e) Is making satisfactory academic progress toward the completion of a degree or certificate program, if receiving supplemental scholarship assistance;

~~((e))~~ (f) Has not earned a bachelor's or professional degree; and

~~((f))~~ (g) Is not pursuing a degree in theology.

(4) A passport to college scholarship under this section:

(a) Shall not exceed resident undergraduate tuition and fees at the highest-priced public institution of higher education in the state; and

(b) Shall not exceed the student's financial need, less a reasonable self-help amount defined by the ~~((board))~~ office, when combined with all other public and private grant, scholarship, and waiver assistance the student receives.

(5) An eligible student may receive a passport to college scholarship under this section for a maximum of five years after the student first enrolls with an institution of higher education or until the student turns age twenty-six, whichever occurs first. If a student turns age twenty-six during an academic year, and would otherwise be eligible for a scholarship under this section, the student shall continue to be eligible for a scholarship for the remainder of the academic year.

(6) The office, in consultation with and with assistance from the state board for community and technical colleges, shall perform an annual analysis to verify that those institutions of higher education at which students have received a scholarship under this section have awarded the student all available need-based and merit-based grant and scholarship aid for which the student qualifies.

(7) In designing and implementing the passport to college student support program under this section, the office, in consultation with and with assistance from the state board for community and technical colleges, shall ensure that a participating college or university:

(a) Has a viable plan for identifying students eligible for assistance under this section, for tracking and enhancing their academic progress, for addressing their unique needs for assistance during school vacations and academic interims, and for linking them to appropriate sources of assistance in their transition to adulthood;

(b) Receives financial and other incentives for achieving measurable progress in the recruitment, retention, and graduation of eligible students.

**NEW SECTION. Sec. 9.** A new section is added to chapter 28A.225 RCW to read as follows:

A school district representative or school employee shall review unexpected or excessive absences with a youth who is dependent pursuant to chapter 13.34 RCW and adults involved with that youth, to include the youth's caseworker, educational liaison, attorney if one is appointed, parent or guardians, and foster parents or the person providing placement for the youth. The purpose of the review is to determine the cause of the absences, taking into account: Unplanned school transitions, periods of running from care, in-patient treatment, incarceration, school adjustment, educational gaps, psycho-social issues, and unavoidable appointments during the school day. A school district representative or a school employee must proactively support the youth's school work so the student does not fall behind and to avoid suspension or expulsion based on truancy.

**Sec. 10.** RCW 28A.225.330 and 2009 c 380 s 2 are each amended to read as follows:

(1) When enrolling a student who has attended school in another school district, the school enrolling the student may request the parent and the student to briefly indicate in writing whether or not the student has:

- (a) Any history of placement in special educational programs;
- (b) Any past, current, or pending disciplinary action;
- (c) Any history of violent behavior, or behavior listed in RCW 13.04.155;
- (d) Any unpaid fines or fees imposed by other schools; and
- (e) Any health conditions affecting the student's educational needs.

(2) The school enrolling the student shall request the school the student previously attended to send the student's permanent record including records of disciplinary action, history of violent behavior or behavior listed in RCW 13.04.155, attendance, immunization records, and academic performance. If the student has not paid a fine or fee under RCW 28A.635.060, or tuition, fees, or fines at approved private schools the school may withhold the student's official transcript, but shall transmit information about the student's academic performance, special placement, immunization records, records of disciplinary action, and history of violent behavior or behavior listed in RCW 13.04.155. If the official transcript is not sent due to unpaid tuition, fees, or fines, the enrolling school shall notify both the student and parent or guardian that the official transcript will not be sent until the obligation is met, and failure to have an official transcript may result in exclusion from extracurricular activities or failure to graduate.

(3) Upon request, school districts shall furnish a set of unofficial educational records to a parent or guardian of a student who is transferring out of state and who meets the definition of a child of a military family in transition under Article II of RCW 28A.705.010. School districts may charge the parent or guardian the actual cost of providing the copies of the records.

(4) If information is requested under subsection (2) of this section, the information shall be transmitted within two school days after receiving the request and the records shall be sent as soon as possible. The records of a student who meets the definition of a child of a military family in transition under Article II of RCW 28A.705.010 shall be sent within ten days after receiving the request. Any school district or district employee who releases the information in compliance with this section is immune from civil liability for damages unless it is shown that the school district employee acted with gross negligence or in bad faith. The professional educator standards board shall provide by rule for the discipline under chapter 28A.410 RCW of a school principal or other chief administrator of a public school building who fails to make a good faith effort to assure compliance with this subsection.

(5) Any school district or district employee who releases the information in compliance with federal and state law is immune from civil liability for damages unless it is shown that the school district or district employee acted with gross negligence or in bad faith.

(6) When a school receives information under this section or RCW 13.40.215 that a student has a history of disciplinary actions, criminal or violent behavior, or other behavior that indicates the student could be a threat to the safety of educational staff or other students, the school shall provide this information to the student's teachers and security personnel.

(7) A school may not prevent a student who is dependent pursuant to chapter 13.34 RCW from enrolling if there is incomplete information as enumerated in subsection (1) of this section during the ten business days that the department of social and health services has to obtain that information under section 6 of this act. In addition, upon enrollment of a student who is dependent pursuant to chapter 13.34 RCW, the school district must make reasonable efforts to obtain and assess that child's educational history in order to meet the child's unique needs within two business days.

NEW SECTION. Sec. 11. Section 8 of this act expires June 30, 2022.

Passed by the House April 22, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 183

[Substitute House Bill 1612]

### FELONY FIREARM OFFENDERS

AN ACT Relating to felony firearm offenders; amending RCW 42.56.240; reenacting and amending RCW 9.41.010; adding new sections to chapter 9.41 RCW; adding a new section to chapter 43.43 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 42.56.240 and 2012 c 88 s 1 are each amended to read as follows:

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies;

(5) Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator;

(6) The statewide gang database referenced in RCW 43.43.762;

(7) Data from the electronic sales tracking system established in RCW 69.43.165;

(8) Information submitted to the statewide unified sex offender notification and registration program under RCW 36.28A.040(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and e-mail address; and

(9) Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs. Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business; and

(10) The felony firearm offense conviction database of felony firearm offenders established in section 6 of this act.

**Sec. 2.** RCW 9.41.010 and 2009 c 216 s 1 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Antique firearm" means a firearm or replica of a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including any matchlock, flintlock, percussion cap, or similar type of ignition system and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(2) "Barrel length" means the distance from the bolt face of a closed action down the length of the axis of the bore to the crown of the muzzle, or in the case of a barrel with attachments to the end of any legal device permanently attached to the end of the muzzle.

(3) "Crime of violence" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, burglary in the second degree, residential burglary, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to June 6, 1996, which is comparable to a felony classified as a crime of violence in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under (a) or (b) of this subsection.

(4) "Dealer" means a person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A person who does not have, and is not required to have, a federal firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

(5) "Family or household member" means "family" or "household member" as used in RCW 10.99.020.

(6) "Felony" means any felony offense under the laws of this state or any federal or out-of-state offense comparable to a felony offense under the laws of this state.

(7) "Felony firearm offender" means a person who has previously been convicted or found not guilty by reason of insanity in this state of any felony firearm offense. A person is not a felony firearm offender under this chapter if any and all qualifying offenses have been the subject of an expungement, pardon, annulment, certificate, or rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or a pardon, annulment, or other equivalent procedure based on a finding of innocence.

(8) "Felony firearm offense" means:

(a) Any felony offense that is a violation of chapter 9A.41 RCW;

(b) A violation of RCW 9A.36.045;

(c) A violation of RCW 9A.56.300;

(d) A violation of RCW 9A.56.310;

(e) Any felony offense if the offender was armed with a firearm in the commission of the offense.

(9) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder.

~~((8))~~ (10) "Law enforcement officer" includes a general authority Washington peace officer as defined in RCW 10.93.020, or a specially commissioned Washington peace officer as defined in RCW 10.93.020. "Law enforcement officer" also includes a limited authority Washington peace officer as defined in RCW 10.93.020 if such officer is duly authorized by his or her employer to carry a concealed pistol.

~~((9))~~ (11) "Lawful permanent resident" has the same meaning afforded a person "lawfully admitted for permanent residence" in 8 U.S.C. Sec. 1101(a)(20).

~~((10))~~ (12) "Loaded" means:

(a) There is a cartridge in the chamber of the firearm;

(b) Cartridges are in a clip that is locked in place in the firearm;

(c) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver;

(d) There is a cartridge in the tube or magazine that is inserted in the action; or

(e) There is a ball in the barrel and the firearm is capped or primed if the firearm is a muzzle loader.

~~((11))~~ (13) "Machine gun" means any firearm known as a machine gun, mechanical rifle, submachine gun, or any other mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip,

disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the firearm, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

~~((12))~~ (14) "Nonimmigrant alien" means a person defined as such in 8 U.S.C. Sec. 1101(a)(15).

~~((13))~~ (15) "Pistol" means any firearm with a barrel less than sixteen inches in length, or is designed to be held and fired by the use of a single hand.

~~((14))~~ (16) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

~~((15))~~ (17) "Sell" refers to the actual approval of the delivery of a firearm in consideration of payment or promise of payment of a certain price in money.

~~((16))~~ (18) "Serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(a) Any crime of violence;

(b) Any felony violation of the uniform controlled substances act, chapter 69.50 RCW, that is classified as a class B felony or that has a maximum term of imprisonment of at least ten years;

(c) Child molestation in the second degree;

(d) Incest when committed against a child under age fourteen;

(e) Indecent liberties;

(f) Leading organized crime;

(g) Promoting prostitution in the first degree;

(h) Rape in the third degree;

(i) Drive-by shooting;

(j) Sexual exploitation;

(k) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(l) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(m) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under RCW 9.94A.030;

(n) Any other felony with a deadly weapon verdict under RCW ~~((9.94A.602))~~ 9.94A.825; or

(o) Any felony offense in effect at any time prior to June 6, 1996, that is comparable to a serious offense, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious offense.

~~((17))~~ (19) "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

~~((48))~~ (20) "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

~~((49))~~ (21) "Shotgun" means a weapon with one or more barrels, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

**NEW SECTION. Sec. 3.** A new section is added to chapter 9.41 RCW to read as follows:

(1) On or after the effective date of this section, whenever a defendant in this state is convicted of a felony firearm offense or found not guilty by reason of insanity of any felony firearm offense, the court must consider whether to impose a requirement that the person comply with the registration requirements of section 4 of this act and may, in its discretion, impose such a requirement.

(2) In determining whether to require the person to register, the court shall consider all relevant factors including, but not limited to:

- (a) The person's criminal history;
- (b) Whether the person has previously been found not guilty by reason of insanity of any offense in this state or elsewhere; and
- (c) Evidence of the person's propensity for violence that would likely endanger persons.

**NEW SECTION. Sec. 4.** A new section is added to chapter 9.41 RCW to read as follows:

(1) Any adult or juvenile residing, whether or not the person has a fixed residence, in this state who has been required by a court to comply with the registration requirements of this section shall personally register with the county sheriff for the county of the person's residence.

(2) A person required to register under this section must provide the following information when registering:

- (a) Name and any aliases used;
- (b) Complete and accurate residence address or, if the person lacks a fixed residence, where he or she plans to stay;
- (c) Identifying information of the gun offender, including a physical description;
- (d) The offense for which the person was convicted;
- (e) Date and place of conviction; and
- (f) The names of any other county where the offender has registered pursuant to this section.

(3) The county sheriff may require the offender to provide documentation that verifies the contents of his or her registration.

(4) The county sheriff may take the offender's photograph or fingerprints for the inclusion of such record in the registration.

(5) Felony firearm offenders shall register with the county sheriff not later than forty-eight hours after:

- (a) The date of release from custody, as a result of the felony firearm offense, of the state department of corrections, the state department of social and



health services, a local division of youth services, or a local jail or juvenile detention facility; or

(b) The date the court imposes the felony firearm offender's sentence, if the offender receives a sentence that does not include confinement.

(6)(a) Except as described in (b) of this subsection, the felony firearm offender shall register with the county sheriff not later than twenty days after each twelve-month anniversary of the date the offender is first required to register, as described in subsection (5) of this section.

(b) If the felony firearm offender is confined to any correctional institution, state institution or facility, or health care facility throughout the twenty-day period described in (a) of this subsection, the offender shall personally appear before the county sheriff not later than forty-eight hours after release to verify and update, as appropriate, his or her registration.

(7) If the felony firearm offender changes his or her residence address and his or her new residence address is within this state, the offender shall personally register with the county sheriff for the county of the person's residence not later than forty-eight hours after the change of address. If the offender's residence address is within the same county as the offender's immediately preceding address, the offender shall update the contents of his or her current registration.

(8) The duty to register shall continue for a period of four years from the date the offender is first required to register, as described in subsection (5) of this section.

**NEW SECTION. Sec. 5.** A new section is added to chapter 9.41 RCW to read as follows:

(1) A person commits the crime of failure to register as a felony firearm offender if the person has a duty to register under section 4 of this act and knowingly fails to comply with any of the requirements of section 4 of this act.

(2) Failure to register as a felony firearm offender is a gross misdemeanor.

**NEW SECTION. Sec. 6.** A new section is added to chapter 43.43 RCW to read as follows:

(1) The county sheriff shall forward registration information, photographs, and fingerprints obtained pursuant to section 4 of this act to the Washington state patrol within five working days.

(2) Upon implementation of this act, the Washington state patrol shall maintain a felony firearm offense conviction database of felony firearm offenders required to register under section 4 of this act and shall adopt rules as are necessary to carry out the purposes of this act.

(3) Upon expiration of the person's duty to register, as described in section 4(8) of this act, the Washington state patrol shall automatically remove the person's name and information from the database.

(4) The felony firearm offense conviction database of felony firearm offenders shall be used only for law enforcement purposes and is not subject to public disclosure under chapter 42.56 RCW.

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

Passed by the House April 23, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 8, 2013.  
Filed in Office of Secretary of State May 8, 2013.

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## CHAPTER 184

[Second Substitute House Bill 1642]

### K-12 EDUCATION—HIGH SCHOOL—ACADEMIC ACCELERATION

AN ACT Relating to establishing policies to support academic acceleration for high school students; adding new sections to chapter 28A.320 RCW; adding a new section to chapter 28A.300 RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that progress is being made in making dual high school and college credit courses available for students:

(a) Overall dual credit program enrollments increased by almost four percent between 2009 and 2012;

(b) The number of dual credit programs offered by Washington high schools increased by almost fifteen percent between the 2009-10 school year and the 2011-12 school year; and

(c) Dual credit program participation rates for low-income students increased more than fourteen percent between the 2009-10 school year and the 2011-12 school year.

(2) However, the legislature further finds that more can be done to promote academic acceleration for all students and eliminate barriers, real or perceived, that may prevent students from enrolling in rigorous advanced courses, including dual credit courses.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.320 RCW to read as follows:

(1) Each school district board of directors is encouraged to adopt an academic acceleration policy for high school students as provided under this section.

(2) Under an academic acceleration policy:

(a) The district automatically enrolls any student who meets the state standard on the high school statewide student assessment in the next most rigorous level of advanced courses offered by the high school. Students who successfully complete such an advanced course are then enrolled in the next most rigorous level of advanced course, with the objective that students will eventually be automatically enrolled in courses that offer the opportunity to earn dual credit for high school and college.

(b) The subject matter of the advanced courses in which the student is automatically enrolled depends on the content area or areas of the statewide student assessment where the student has met the state standard. Students who meet the state standard on both end-of-course mathematics assessments are considered to have met the state standard for high school mathematics. Students who meet the state standard in both reading and writing are eligible for enrollment in advanced courses in English, social studies, humanities, and other related subjects.

(c) The district must notify students and parents or guardians regarding the academic acceleration policy and the advanced courses available to students.

(d) The district must provide a parent or guardian with an opportunity to opt out of the academic acceleration policy and enroll a student in an alternative course.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28A.320 RCW to read as follows:

(1) Subject to funds appropriated specifically for this purpose, the academic acceleration incentive program is established as provided in this section. The intent of the legislature is that the funds awarded under the program be used to support teacher training, curriculum, technology, examination fees, and other costs associated with offering dual credit courses to high school students.

(2) The office of the superintendent of public instruction shall allocate half of the funds appropriated for the purposes of this section on a competitive basis to provide one-time grants for high schools to expand the availability of dual credit courses. To be eligible for a grant, a school district must have adopted an academic acceleration policy as provided under section 2 of this act. In making grant awards, the office of the superintendent of public instruction must give priority to grants for high schools with a high proportion of low-income students and high schools seeking to develop new capacity for dual credit courses rather than proposing marginal expansion of current capacity.

(3) The office of the superintendent of public instruction shall allocate half of the funds appropriated for the purposes of this section to school districts as an incentive award for each student who earned dual high school and college credit, as described under subsection (4) of this section, for courses offered by the district's high schools during the previous school year. School districts must distribute the award to the high schools that generated the funds. The award amount for low-income students eligible to participate in the federal free and reduced-price meals program who earn dual credits must be set at one hundred twenty-five percent of the base award for other students. A student who earns more than one dual credit in the same school year counts only once for the purposes of the incentive award.

(4) For the purposes of this section, the following students are considered to have earned dual high school and college credit in a course offered by a high school:

- (a) Students who achieve a score of three or higher on an AP examination;
- (b) Students who achieve a score of four or higher on an examination of the international baccalaureate diploma programme;
- (c) Students who successfully complete a Cambridge advanced international certificate of education examination;
- (d) Students who successfully complete a course through the college in the high school program under RCW 28A.600.290 and are awarded credit by the partnering institution of higher education; and
- (e) Students who satisfy the dual enrollment and class performance requirements to earn college credit through a tech prep course.

(5) If a high school provides access to online courses for students to earn dual high school and college credit at no cost to the student, such a course is considered to be offered by the high school. Students enrolled in the running start program under RCW 28A.600.300 do not generate an incentive award under this section.

(6) The office of the superintendent of public instruction shall report to the education policy committees and the fiscal committees of the legislature, by January 1st of each year, information about the demographics of the students earning dual credits in the schools receiving grants under this section for the prior school year. Demographic data shall be disaggregated pursuant to RCW 28A.300.042.

**NEW SECTION. Sec. 4.** A new section is added to chapter 28A.300 RCW to read as follows:

In addition to data on student enrollment in dual credit courses, the office of the superintendent of public instruction shall collect and post on the Washington state report card web site the rates at which students earn college credit through a dual credit course, using the following criteria:

- (1) Students who achieve a score of three or higher on an AP examination;
- (2) Students who achieve a score of four or higher on an examination of the international baccalaureate diploma programme;
- (3) Students who successfully complete a Cambridge advanced international certificate of education examination;
- (4) Students who successfully complete a course through the college in the high school program under RCW 28A.600.290 and are awarded credit by the partnering institution of higher education; and
- (5) Students who satisfy the dual enrollment and class performance requirements to earn college credit through a tech prep course; and
- (6) Students who successfully complete a course through the running start program under RCW 28A.600.300 and are awarded credit by the institution of higher education.

**NEW SECTION. Sec. 5.** If specific funding for purposes of section 3 of this act, referencing section 3 of this act by bill or chapter and section number, is not provided by June 30, 2013, in the omnibus operating appropriations act, section 3 of this act is null and void.

Passed by the House April 22, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 185

[Engrossed House Bill 1677]

### ADULT FAMILY HOMES—MULTIPLE FACILITY OPERATORS

AN ACT Relating to operators of multiple adult family homes; and amending RCW 70.128.065.

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

**Sec. 1.** RCW 70.128.065 and 2011 1st sp.s. c 3 s 203 are each amended to read as follows:

(1) 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.

(2) The department shall only accept and process an application for licensure of an additional home when:

(a) A period of no less than twenty-four months has passed since the issuance of the initial adult family home license; and

(b) The department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twenty-four months prior to application.

(3)(a) Except as provided in (b) of this subsection, the department shall only accept and process an additional application for licensure of other adult family homes when twelve months has passed since the previous adult family home license, and the department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twelve months prior to application.

(b) The department shall accept and process applications for licensure of additional adult family homes when less than twelve months have passed since the previous adult family home license, if the applications are due to the change in ownership of existing adult family homes that are currently licensed and the department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twelve months prior to application.

(4) In the event of serious noncompliance leading to the imposition of one or more actions listed in RCW 70.128.160(2) for violation of federal, state, or local laws, or regulations relating to provision of care or services to vulnerable adults or children, the department is authorized to take one or more actions listed in RCW 70.128.160(2) against any home or homes operated by the provider if there is a violation in the home or homes.

(5) In the event of serious noncompliance in a home operated by a provider with multiple adult family homes, leading to the imposition of one or more actions listed in RCW 70.128.160(2), the department shall inspect the other homes operated by the provider to determine whether the same or related deficiencies are present in those homes. The cost of these additional inspections may be imposed on the provider as a civil penalty up to a maximum of three hundred dollars per additional inspection.

(6) A provider is ultimately responsible for the day-to-day operations of each licensed home.

Passed by the House March 6, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

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## CHAPTER 186

[House Bill 1768]

DEPARTMENT OF TRANSPORTATION—JOB ORDER CONTRACTING PROCEDURE

AN ACT Relating to use of the job order contracting procedure by the department of transportation; and amending RCW 39.10.420 and 43.131.408.

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

**Sec. 1.** RCW 39.10.420 and 2012 c 102 s 1 are each amended to read as follows:

(1) The following public bodies are authorized to use the job order contracting procedure:

(a) The department of enterprise services;

(b) The state universities, regional universities, and The Evergreen State College;

(c) Sound transit (central Puget Sound regional transit authority);

(d) Every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755;

(e) Every county with a population greater than four hundred fifty thousand;

(f) Every port district with total revenues greater than fifteen million dollars per year;

(g) Every public utility district with revenues from energy sales greater than twenty-three million dollars per year;

(h) Every school district; ~~(and)~~

(i) The state ferry system; and

(j) The Washington state department of transportation, for the administration of building improvement, replacement, and renovation projects only.

(2)(a) The department of enterprise services may issue job order contract work orders for Washington state parks department projects.

(b) The department of enterprise services, the University of Washington, and Washington State University may issue job order contract work orders for the state regional universities and The Evergreen State College.

(3) Public bodies may use a job order contract for public works projects when a determination is made that the use of job order contracts will benefit the public by providing an effective means of reducing the total lead-time and cost for the construction of public works projects for repair and renovation required at public facilities through the use of unit price books and work orders by eliminating time-consuming, costly aspects of the traditional public works process, which require separate contracting actions for each small project.

**Sec. 2.** RCW 43.131.408 and 2012 c 102 s 4 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2014:

(1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, & 1994 c 132 s 1;

(2) RCW 39.10.210 and 2010 1st sp.s. c 36 s 6014, 2007 c 494 s 101, & 2005 c 469 s 3;

(3) RCW 39.10.220 and 2007 c 494 s 102 & 2005 c 377 s 1;

(4) RCW 39.10.230 and 2010 1st sp.s. c 21 s 3, 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

(5) RCW 39.10.240 and 2007 c 494 s 104;

(6) RCW 39.10.250 and 2009 c 75 s 2 & 2007 c 494 s 105;

(7) RCW 39.10.260 and 2007 c 494 s 106;

(8) RCW 39.10.270 and 2009 c 75 s 3 & 2007 c 494 s 107;

(9) RCW 39.10.280 and 2007 c 494 s 108;

- (10) RCW 39.10.290 and 2007 c 494 s 109;
- (11) RCW 39.10.300 and 2009 c 75 s 4 & 2007 c 494 s 201;
- (12) RCW 39.10.320 and 2007 c 494 s 203 & 1994 c 132 s 7;
- (13) RCW 39.10.330 and 2009 c 75 s 5 & 2007 c 494 s 204;
- (14) RCW 39.10.340 and 2007 c 494 s 301;
- (15) RCW 39.10.350 and 2007 c 494 s 302;
- (16) RCW 39.10.360 and 2009 c 75 s 6 & 2007 c 494 s 303;
- (17) RCW 39.10.370 and 2007 c 494 s 304;
- (18) RCW 39.10.380 and 2007 c 494 s 305;
- (19) RCW 39.10.385 and 2010 c 163 s 1;
- (20) RCW 39.10.390 and 2007 c 494 s 306;
- (21) RCW 39.10.400 and 2007 c 494 s 307;
- (22) RCW 39.10.410 and 2007 c 494 s 308;
- (23) RCW 39.10.420 and 2013 c . . . s 1 (section 1 of this act), 2012 c 102 s 1, 2009 c 75 s 7, 2007 c 494 s 401, & 2003 c 301 s 1;
- (24) RCW 39.10.430 and 2007 c 494 s 402;
- (25) RCW 39.10.440 and 2007 c 494 s 403;
- (26) RCW 39.10.450 and 2012 c 102 s 2 & 2007 c 494 s 404;
- (27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;
- (28) RCW 39.10.470 and 2005 c 274 s 275 & 1994 c 132 s 10;
- (29) RCW 39.10.480 and 1994 c 132 s 9;
- (30) RCW 39.10.490 and 2007 c 494 s 501 & 2001 c 328 s 5;
- (31) RCW 39.10.500 and 2007 c 494 s 502;
- (32) RCW 39.10.510 and 2007 c 494 s 503;
- (33) RCW 39.10.900 and 1994 c 132 s 13;
- (34) RCW 39.10.901 and 1994 c 132 s 14;
- (35) RCW 39.10.903 and 2007 c 494 s 510;
- (36) RCW 39.10.904 and 2007 c 494 s 512; and
- (37) RCW 39.10.905 and 2007 c 494 s 513.

Passed by the House March 8, 2013.

Passed by the Senate April 24, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 187

[Substitute House Bill 1779]

### ESTHETICS

AN ACT Relating to esthetics; and amending RCW 18.16.020, 18.16.030, 18.16.050, 18.16.060, 18.16.130, 18.16.170, 18.16.175, 18.16.180, 18.16.190, 18.16.200, 18.16.260, and 18.16.290.

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

**Sec. 1.** RCW 18.16.020 and 2008 c 20 s 1 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) "Apprenticeship program" means a state-approved apprenticeship program pursuant to chapter 49.04 RCW and approved under RCW 18.16.280

for the training of cosmetology, barbering, esthetics, master esthetics, and manicuring.

(2) "Apprentice" means a person who is engaged in a state-approved apprenticeship program and who must receive a wage or compensation while engaged in the program.

(3) "Apprenticeship training committee" means a committee approved by the Washington apprenticeship and training council established in chapter 49.04 RCW.

(4) "Department" means the department of licensing.

(5) "Board" means the cosmetology, barbering, esthetics, and manicuring advisory board.

(6) "Director" means the director of the department of licensing or the director's designee.

(7) "The practice of cosmetology" means arranging, dressing, cutting, trimming, styling, shampooing, permanent waving, chemical relaxing, straightening, curling, bleaching, lightening, coloring, waxing, tweezing, shaving, and mustache and beard design of the hair of the face, neck, and scalp; temporary removal of superfluous hair by use of depilatories, waxing, or tweezing; manicuring and pedicuring, limited to cleaning, shaping, polishing, decorating, and caring for and treatment of the cuticles and nails of the hands and feet, excluding the application and removal of sculptured or otherwise artificial nails; esthetics limited to toning the skin of the scalp, stimulating the skin of the body by the use of preparations, tonics, lotions, or creams; and tinting eyelashes and eyebrows.

(8) "Cosmetologist" means a person licensed under this chapter to engage in the practice of cosmetology.

(9) "The practice of barbering" means the cutting, trimming, arranging, dressing, curling, shampooing, shaving, and mustache and beard design of the hair of the face, neck, and scalp.

(10) "Barber" means a person licensed under this chapter to engage in the practice of barbering.

(11) "Practice of manicuring" means the cleaning, shaping, polishing, decorating, and caring for and treatment of the cuticles and the nails of the hands or feet, and the application and removal of sculptured or otherwise artificial nails by hand or with mechanical or electrical apparatus or appliances.

(12) "Manicurist" means a person licensed under this chapter to engage in the practice of manicuring.

(13) "Practice of esthetics" means the care of the skin for compensation by application (~~and~~), use of preparations, antiseptics, tonics, essential oils, (~~or~~) exfoliants, superficial and light peels, or by any device, except laser, or equipment, electrical or otherwise, or by wraps, compresses, cleansing, conditioning, stimulation, superficial skin stimulation, pore extraction, or product application and removal; (~~the~~) temporary removal of superfluous hair by means of lotions, creams, (~~mechanical or electrical apparatus,~~) appliance, waxing, threading, tweezing, or depilatories, including chemical means; (~~tinting of~~) and application of product to the eyelashes and eyebrows(±), including extensions, design and treatment, tinting and lightening of the hair, (except) excluding the scalp(± on another person). Under no circumstances does the practice of esthetics include the administration of injections.



(14) "Esthetician" means a person licensed under this chapter to engage in the practice of esthetics.

(15) "Practice of master esthetics" means the care of the skin for compensation including all of the methods allowed in the definition of the practice of esthetics. It also includes the performance of medium depth peels and the use of medical devices for care of the skin and permanent hair reduction. The medical devices include, but are not limited to, lasers, light, radio frequency, plasma, intense pulsed light, and ultrasound. The use of a medical device must comply with state law and rules, including any laws or rules that require delegation or supervision by a licensed health professional acting within the scope of practice of that health profession.

(16) "Master esthetician" means a person licensed under this chapter to engage in the practice of master esthetics.

(17) "Instructor-trainee" means a person who is currently licensed in this state as a cosmetologist, barber, manicurist, ~~((ø))~~ esthetician, or master esthetician, and is enrolled in an instructor-trainee curriculum in a school licensed under this chapter.

~~((+6))~~ (18) "School" means any establishment that offers curriculum of instruction in the practice of cosmetology, barbering, esthetics, master esthetics, manicuring, or instructor-trainee to students and is licensed under this chapter.

~~((+7))~~ (19) "Student" means a person sixteen years of age or older who is enrolled in a school licensed under this chapter and receives instruction in any of the curricula of cosmetology, barbering, esthetics, master esthetics, manicuring, or instructor-training with or without tuition, fee, or cost, and who does not receive any wage or commission.

~~((+8))~~ (20) "Instructor" means a person who gives instruction in a school, or who provides classroom theory training to apprentices in locations other than in a school, in a curriculum in which he or she holds a license under this chapter, has completed at least five hundred hours of instruction in teaching techniques and lesson planning in a school, and has passed a licensing examination approved or administered by the director. An applicant who holds a degree in education from an accredited postsecondary institution shall upon application be licensed as an instructor to give instruction in a school, or to provide classroom theory training to apprentices in locations other than in a school, in a curriculum in which he or she holds a license under this chapter. An applicant who holds an instructional credential from an accredited community or technical college and who has passed a licensing examination approved or administered by the director shall upon application be licensed as an instructor to give instruction in a school, or to provide classroom theory training to apprentices in locations other than in a school, in a curriculum in which he or she holds a license under this chapter. To be approved as an "instructor" in an approved apprenticeship program, the instructor must be a competent instructor as defined in rules adopted under chapter 49.04 RCW.

~~((+9))~~ (21) "Apprentice trainer" means a person who gives training to an apprentice in an approved apprenticeship program and who is approved under RCW 18.16.280.

~~((20))~~ (22) "Person" means any individual, partnership, professional service corporation, joint stock association, joint venture, or any other entity authorized to do business in this state.

~~((24))~~ (23) "Salon/shop" means any building, structure, or any part thereof, other than a school, where the commercial practice of cosmetology, barbering, esthetics, master esthetics, or manicuring is conducted; provided that any person, except employees of a salon/shop, who operates from a salon/shop is required to meet all salon/shop licensing requirements and may participate in the apprenticeship program when certified as established by the Washington state apprenticeship and training council established in chapter 49.04 RCW.

~~((22))~~ (24) "Approved apprenticeship shop" means a salon/shop that has been approved under RCW 18.16.280 and chapter 49.04 RCW to participate in an apprenticeship program.

~~((23))~~ (25) "Crossover training" means training approved by the director as training hours that may be credited to current licensees for similar training received in another profession licensed under this chapter.

~~((24))~~ (26) "Approved security" means surety bond.

~~((25))~~ (27) "Personal services" means a location licensed under this chapter where the practice of cosmetology, barbering, manicuring, ~~((€))~~ esthetics, or master esthetics is performed for clients in the client's home, office, or other location that is convenient for the client.

~~((26))~~ (28) "Individual license" means a cosmetology, barber, manicurist, esthetician, master esthetician, or instructor license issued under this chapter.

~~((27))~~ (29) "Location license" means a license issued under this chapter for a salon/shop, school, personal services, or mobile unit.

~~((28))~~ (30) "Mobile unit" is a location license under this chapter where the practice of cosmetology, barbering, esthetics, master esthetics, or manicuring is conducted in a mobile structure. Mobile units must conform to the health and safety standards set by rule under this chapter.

~~((29))~~ (31) "Curriculum" means the courses of study taught at a school, or in an approved apprenticeship program established by the Washington state apprenticeship and training council and conducted in an approved salon/shop, set by rule under this chapter, and approved by the department. After consulting with the board, the director may set by rule a percentage of hours in a curriculum, up to a maximum of ten percent, that could include hours a student receives while training in a salon/shop under a contract approved by the department. Each curriculum must include at least the following required hours:

(a) School curriculum:

(i) Cosmetologist, one thousand six hundred hours;

(ii) Barber, one thousand hours;

(iii) Manicurist, six hundred hours;

(iv) Esthetician, ~~((six))~~ seven hundred fifty hours;

(v) Master esthetician either:

(A) One thousand two hundred hours; or

(B) Esthetician licensure plus four hundred fifty hours of training;

(vi) Instructor-trainee, five hundred hours.

(b) Apprentice training curriculum:

(i) Cosmetologist, two thousand hours;

(ii) Barber, one thousand two hundred hours;

(iii) Manicurist, eight hundred hours;

(iv) Esthetician, eight hundred hours;

(v) Master esthetician, one thousand four hundred hours.

~~((30))~~ (32) "Student monthly report" means the student record of daily activities and the number of hours completed in each course of a curriculum that is prepared monthly by the school and provided to the student, audited annually by the department, and kept on file by the school for three years.

~~((31))~~ (33) "Apprentice monthly report" means the apprentice record of daily activities and the number of hours completed in each course of a curriculum that is prepared monthly by the approved apprenticeship program and provided to the apprentice, audited annually by the department, and kept on file by the approved apprenticeship program for three years.

**Sec. 2.** RCW 18.16.030 and 2008 c 20 s 2 are each amended to read as follows:

In addition to any other duties imposed by law, including RCW 18.235.030 and 18.235.040, the director shall have the following powers and duties:

(1) To set all license, examination, and renewal fees in accordance with RCW 43.24.086;

(2) To adopt rules necessary to implement this chapter;

(3) To prepare and administer or approve the preparation and administration of licensing examinations;

(4) To establish minimum safety and sanitation standards for schools, instructors, cosmetologists, barbers, manicurists, estheticians, master estheticians, salons/shops, personal services, and mobile units;

(5) To establish curricula for the training of students and apprentices under this chapter;

(6) To maintain the official department record of applicants and licensees;

(7) To establish by rule the procedures for an appeal of an examination failure;

(8) To set license expiration dates and renewal periods for all licenses consistent with this chapter;

(9) To ensure that all informational notices produced and mailed by the department regarding statutory and regulatory changes affecting any particular class of licensees are mailed to each licensee in good standing or on inactive status in the affected class whose mailing address on record with the department has not resulted in mail being returned as undeliverable for any reason; and

(10) To make information available to the department of revenue to assist in collecting taxes from persons required to be licensed under this chapter.

**Sec. 3.** RCW 18.16.050 and 2008 c 20 s 3 are each amended to read as follows:

(1) There is created a state cosmetology, barbering, esthetics, and manicuring advisory board consisting of a maximum of ten members appointed by the director. These members of the board shall include: A representative of private schools licensed under this chapter; a representative from an approved apprenticeship program conducted in an approved salon/shop; a representative of public vocational technical schools licensed under this chapter; a consumer who is unaffiliated with the cosmetology, barbering, esthetics, master esthetics, or manicuring industry; and six members who are currently practicing licensees who have been engaged in the practice of manicuring, esthetics, master esthetics, barbering, or cosmetology for at least three years. Members shall serve a term of three years. Any board member may be removed for just cause. The director

may appoint a new member to fill any vacancy on the board for the remainder of the unexpired term.

(2) Board members shall be entitled to compensation pursuant to RCW 43.03.240 for each day spent conducting official business and to reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060.

(3) The board may seek the advice and input of officials from the following state agencies: (a) The workforce training and education coordinating board; (b) the ~~((department of))~~ employment security department; (c) the department of labor and industries; (d) the department of health; (e) the department of licensing; and (f) the department of revenue.

**Sec. 4.** RCW 18.16.060 and 2008 c 20 s 4 are each amended to read as follows:

(1) It is unlawful for any person to engage in a practice listed in subsection (2) of this section unless the person has a license in good standing as required by this chapter. A license issued under this chapter shall be considered to be "in good standing" except when:

(a) The license has expired or has been canceled and has not been renewed in accordance with RCW 18.16.110;

(b) The license has been denied, revoked, or suspended under RCW 18.16.210, 18.16.230, or 18.16.240, and has not been reinstated;

(c) The license is held by a person who has not fully complied with an order of the director issued under RCW 18.16.210 requiring the licensee to pay restitution or a fine, or to acquire additional training; or

(d) The license has been placed on inactive status at the request of the licensee, and has not been reinstated in accordance with RCW 18.16.110(3).

(2) The director may take action under RCW 18.235.150 and 18.235.160 against any person who does any of the following without first obtaining, and maintaining in good standing, the license required by this chapter:

(a) Except as provided in subsections (3) and (4) of this section, engages in the commercial practice of cosmetology, barbering, esthetics, master esthetics, or manicuring;

(b) Instructs in a school;

(c) Operates a school; or

(d) Operates a salon/shop, personal services, or mobile unit.

(3) A person who receives a license as an instructor may engage in the commercial practice for which he or she held a license when applying for the instructor license without also renewing the previously held license. However, a person licensed as an instructor whose license to engage in a commercial practice is not or at any time was not renewed may not engage in the commercial practice previously permitted under that license unless that person renews the previously held license.

(4) An apprentice actively enrolled in an apprenticeship program for cosmetology, barbering, esthetics, master esthetics, or manicuring may engage in the commercial practice as required for the apprenticeship program.

**Sec. 5.** RCW 18.16.130 and 1991 c 324 s 10 are each amended to read as follows:

(1) Any person who is properly licensed in any state, territory, or possession of the United States, or foreign country shall be eligible for examination if the

applicant submits the approved application and fee and provides proof to the director that he or she is currently licensed in good standing as a cosmetologist, barber, manicurist, esthetician, instructor, or the equivalent in that jurisdiction. Upon passage of the required examinations the appropriate license will be issued.

(2)(a) The director shall, upon passage of the required examinations, issue a license as master esthetician to an applicant who submits the approved application and fee and provides proof to the director that the applicant is currently licensed in good standing in esthetics in any state, territory, or possession of the United States, or foreign country and holds a diplomate of the comite international d'esthetique et de cosmetologie diploma, or an international therapy examination council diploma, or a certified credential awarded by the national coalition of estheticians, manufacturers/distributors & associations.

(b) The director may upon passage of the required examinations, issue a master esthetician license to an applicant that is currently licensed in esthetics in any other state, territory, or possession of the United States, or foreign country and submits an approved application and fee and provides proof to the director that he or she is licensed in good standing and:

(i) The licensing state, territory, or possession of the United States, or foreign country has licensure requirements that the director determines are substantially equivalent to a master esthetician license in this state; or

(ii) The applicant has certification or a diploma or other credentials that the director determines has licensure requirements that are substantially equivalent to the degree listed in (a) of this subsection.

**Sec. 6.** RCW 18.16.170 and 2002 c 111 s 10 are each amended to read as follows:

(1) Subject to subsection (2) of this section, licenses issued under this chapter expire as follows:

(a) A salon/shop, personal services, or mobile unit license expires one year from issuance or when the insurance required by RCW 18.16.175(1)(g) expires, whichever occurs first;

(b) A school license expires one year from issuance; and

(c) Cosmetologist, barber, manicurist, esthetician, master esthetician, and instructor licenses expire two years from issuance.

(2) The director may provide for expiration dates other than those set forth in subsection (1) of this section for the purpose of establishing staggered renewal periods.

**Sec. 7.** RCW 18.16.175 and 2008 c 20 s 6 are each amended to read as follows:

(1) A salon/shop or mobile unit shall meet the following minimum requirements:

(a) Maintain an outside entrance separate from any rooms used for sleeping or residential purposes;

(b) Provide and maintain for the use of its customers adequate toilet facilities located within or adjacent to the salon/shop or mobile unit;

(c) Any room used wholly or in part as a salon/shop or mobile unit shall not be used for residential purposes, except that toilet facilities may be used for both residential and business purposes;

(d) Meet the zoning requirements of the county, city, or town, as appropriate;

(e) Provide for safe storage and labeling of chemicals used in the practices under this chapter;

(f) Meet all applicable local and state fire codes; and

(g) Certify that the salon/shop or mobile unit is covered by a public liability insurance policy in an amount not less than one hundred thousand dollars for combined bodily injury and property damage liability.

(2) The director may by rule determine other requirements that are necessary for safety and sanitation of salons/shops, personal services, or mobile units. The director may consult with the state board of health and the department of labor and industries in establishing minimum salon/shop, personal services, and mobile unit safety requirements.

(3) Personal services license holders shall certify coverage of a public liability insurance policy in an amount not less than one hundred thousand dollars for combined bodily injury and property damage liability.

(4) Upon receipt of a written complaint that a salon/shop or mobile unit has violated any provisions of this chapter, chapter 18.235 RCW, or the rules adopted under either chapter, or at least once every two years for an existing salon/shop or mobile unit, the director or the director's designee shall inspect each salon/shop or mobile unit. If the director determines that any salon/shop or mobile unit is not in compliance with this chapter, the director shall send written notice to the salon/shop or mobile unit. A salon/shop or mobile unit which fails to correct the conditions to the satisfaction of the director within a reasonable time shall, upon due notice, be subject to the penalties imposed by the director under RCW 18.235.110. The director may enter any salon/shop or mobile unit during business hours for the purpose of inspection. The director may contract with health authorities of local governments to conduct the inspections under this subsection.

(5) A salon/shop, personal services, or mobile unit shall obtain a certificate of registration from the department of revenue.

(6) This section does not prohibit the use of motor homes as mobile units if the motor home meets the health and safety standards of this section.

(7) Salon/shop or mobile unit licenses issued by the department must be posted in the salon/shop or mobile unit's reception area.

(8) Cosmetology, barbering, esthetics, master esthetics, and manicuring licenses issued by the department must be posted at the licensed person's work station.

**Sec. 8.** RCW 18.16.180 and 2008 c 20 s 7 are each amended to read as follows:

(1) The director shall prepare and provide to all licensed salons/shops a notice to consumers. At a minimum, the notice shall state that cosmetology, barber, esthetics, master esthetics, and manicure salons/shops are required to be licensed, that salons/shops are required to maintain minimum safety and sanitation standards, that customer complaints regarding salons/shops may be reported to the department, and a telephone number and address where complaints may be made.

(2) An approved apprenticeship shop must post a notice to consumers in the reception area of the salon/shop stating that services may be provided by an

apprentice. At a minimum, the notice must state: "This shop is a participant in a state-approved apprenticeship program. Apprentices in this program are in training and have not yet received a license."

**Sec. 9.** RCW 18.16.190 and 1991 c 324 s 20 are each amended to read as follows:

It is a violation of this chapter for any person to engage in the commercial practice of cosmetology, barbering, esthetics, master esthetics, or manicuring, except in a licensed salon/shop or the home, office, or other location selected by the client for obtaining the services of a personal service operator, or with the appropriate individual license when delivering services to placebound clients. Placebound clients are defined as persons who are ill, disabled, or otherwise unable to travel to a salon/shop.

**Sec. 10.** RCW 18.16.200 and 2004 c 51 s 4 are each amended to read as follows:

In addition to the unprofessional conduct described in RCW 18.235.130, the director may take disciplinary action against any applicant or licensee under this chapter if the licensee or applicant:

- (1) Has been found to have violated any provisions of chapter 19.86 RCW;
- (2) Has engaged in a practice prohibited under RCW 18.16.060 without first obtaining, and maintaining in good standing, the license required by this chapter;
- (3) Has engaged in the commercial practice of cosmetology, barbering, manicuring, esthetics, or master esthetics in a school;
- (4) Has not provided a safe, sanitary, and good moral environment for students in a school or the public;
- (5) Has failed to display licenses required in this chapter; or
- (6) Has violated any provision of this chapter or any rule adopted under it.

**Sec. 11.** RCW 18.16.260 and 2004 c 51 s 5 are each amended to read as follows:

(1)(a) Prior to July 1, 2005, (i) a cosmetology licensee who held a license in good standing between June 30, 1999, and June 30, 2003, may request a renewal of the license or an additional license in barbering, manicuring, and/or esthetics; and (ii) a licensee who held a barber, manicurist, or esthetics license between June 30, 1999, and June 30, 2003, may request a renewal of such licenses held during that period.

(b) A license renewal fee, including, if applicable, a renewal fee, at the current rate, for each year the licensee did not hold a license in good standing between July 1, 2001, and the date of the renewal request, must be paid prior to issuance of each type of license requested. After June 30, 2005, any cosmetology licensee wishing to renew an expired license or obtain additional licenses must meet the applicable renewal, training, and examination requirements of this chapter.

(2)(a) Any person holding an active license in good standing as an esthetician prior to January 1, 2015, may be licensed as an esthetician licensee after paying the appropriate license fee.

(b) Prior to January 1, 2015, an applicant for a master esthetician license must have an active license in good standing as an esthetician, pay the appropriate license fee, and provide the department with proof of having satisfied one or more of the following requirements:

(i)(A)(I) A minimum of thirty-five hours employment as a provider of medium depth peels under the delegation or supervision of a licensed physician, advanced registered nurse practitioner, or physician assistant, or other licensed professional whose licensure permits such delegation or supervision; or

(II) Seven hours of training in theory and application of medium depth peels; and

(B)(I) A minimum of one hundred fifty hours employment as a laser operator under the delegation or supervision of a licensed physician, advanced registered nurse practitioner, or physician assistant, or other licensed professional whose licensure permits such delegation or supervision; or

(II) Seventy-five hours of laser training;

(ii) A national or international diploma or certification in esthetics that is recognized by the department by rule;

(iii) An instructor in esthetics who has been licensed as an instructor in esthetics by the department for a minimum of three years; or

(iv) Completion of one thousand two hundred hours of an esthetic curriculum approved by the department.

(3) The director may, as provided in RCW 43.24.140, modify the duration of any additional license granted under this section to make all licenses issued to a person expire on the same date.

**Sec. 12.** RCW 18.16.290 and 2004 c 51 s 2 are each amended to read as follows:

(1) If the holder of an individual license in good standing submits a written and notarized request that the licensee's cosmetology, barber, manicurist, esthetician and master esthetician, or instructor license be placed on inactive status, together with a fee equivalent to that established by rule for a duplicate license, the department shall place the license on inactive status until the expiration date of the license. If the date of the request is no more than six months before the expiration date of the license, a request for a two-year extension of the inactive status, as provided under subsection (2) of this section, may be submitted at the same time as the request under this subsection.

(2) If the holder of a license placed on inactive status under this section submits, by the expiration date of the license, a written and notarized request to extend that status for an additional two years, the department shall, without additional fee, extend the expiration date of: (a) The licensee's individual license; and (b) the inactive status for two years from the expiration date of the license.

(3) A license placed on inactive status under this section may not be extended more frequently than once in any twenty-four month period or for more than six consecutive years.

(4) If, by the expiration date of a license placed on inactive status under this section, a licensee is unable, or fails, to request that the status be extended and the license is not renewed, the license shall be canceled.

Passed by the House April 23, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.



## CHAPTER 188

[Senate Bill 5136]

CLAIMS AGAINST STATE—TORTIOUS CONDUCT—  
ELECTRONIC PRESENTMENT OF CLAIMS

AN ACT Relating to electronic presentment of claims against the state arising out of tortious conduct; and amending RCW 4.92.100.

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

**Sec. 1.** RCW 4.92.100 and 2012 c 250 s 1 are each amended to read as follows:

(1) All claims against the state, or against the state's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct, must be presented to the office of risk management (~~((division))~~). A claim is deemed presented when the claim form is delivered in person or by regular mail, registered mail, or certified mail, with return receipt requested, or as an attachment to electronic mail or by fax, to the office of risk management (~~((division))~~). For claims for damages presented after July 26, 2009, all claims for damages must be presented on the standard tort claim form that is maintained by the office of risk management (~~((division))~~). The standard tort claim form must be posted on the (~~(office of financial management's)~~) department of enterprise services' web site.

(a) The standard tort claim form must, at a minimum, require the following information:

- (i) The claimant's name, date of birth, and contact information;
- (ii) A description of the conduct and the circumstances that brought about the injury or damage;
- (iii) A description of the injury or damage;
- (iv) A statement of the time and place that the injury or damage occurred;
- (v) A listing of the names of all persons involved and contact information, if known;
- (vi) A statement of the amount of damages claimed; and
- (vii) A statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

(b)(i) The standard tort claim form must be signed either:  
~~((+))~~ (A) By the claimant, verifying the claim;  
~~((+))~~ (B) Pursuant to a written power of attorney, by the attorney in fact for the claimant;  
~~((+))~~ (C) By an attorney admitted to practice in Washington state on the claimant's behalf; or  
~~((+))~~ (D) By a court-approved guardian or guardian ad litem on behalf of the claimant.

(ii) For the purpose of this subsection (1)(b), when the claim form is presented electronically it must bear an electronic signature in lieu of a written original signature. An electronic signature means a facsimile of an original signature that is affixed to the claim form and executed or adopted by the person with the intent to sign the document.

(iii) When an electronic signature is used and the claim is submitted as an attachment to electronic mail, the conveyance of that claim must include the date, time the claim was presented, and the internet provider's address from

which it was sent. The attached claim form must be a format approved by the office of risk management.

(iv) When an electronic signature is used and the claim is submitted via a facsimile machine, the conveyance must include the date, time the claim was submitted, and the fax number from which it was sent.

(v) In the event of a question on an electronic signature, the claimant shall have an opportunity to cure and the cured notice shall relate back to the date of the original filing.

(c) The amount of damages stated on the claim form is not admissible at trial.

(2) The state shall make available the standard tort claim form described in this section with instructions on how the form is to be presented and the name, address, and business hours of the office of risk management ((division)). The standard tort claim form must not list the claimant's social security number and must not require information not specified under this section. The claim form and the instructions for completing the claim form must provide the United States mail, physical, and electronic addresses and numbers where the claim can be presented.

(3) With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory.

Passed by the Senate April 23, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 189

[Senate Bill 5355]

### UNEMPLOYMENT INSURANCE—CONFORMITY WITH FEDERAL LAW

AN ACT Relating to implementing the unemployment insurance integrity provisions of the federal trade adjustment assistance extension act of 2011; amending RCW 50.16.010, 50.20.070, 50.29.021, and 50.20.190; creating a new section; and providing an effective date.

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

**Sec. 1.** RCW 50.16.010 and 2012 c 198 s 11 are each amended to read as follows:

(1) There shall be maintained as special funds, separate and apart from all public moneys or funds of this state an unemployment compensation fund and an administrative contingency fund, which shall be administered by the commissioner exclusively for the purposes of this title, and to which RCW 43.01.050 shall not be applicable.

(2)(a) The unemployment compensation fund shall consist of:

(i) All contributions collected under RCW 50.24.010 and payments in lieu of contributions collected pursuant to the provisions of this title;

(ii) Any property or securities acquired through the use of moneys belonging to the fund;

(iii) All earnings of such property or securities;

(iv) Any moneys received from the federal unemployment account in the unemployment trust fund in accordance with Title XII of the social security act, as amended;

(v) All money recovered on official bonds for losses sustained by the fund;

(vi) All money credited to this state's account in the unemployment trust fund pursuant to section 903 of the social security act, as amended;

(vii) All money received from the federal government as reimbursement pursuant to section 204 of the federal-state extended compensation act of 1970 (84 Stat. 708-712; 26 U.S.C. Sec. 3304); ~~(and)~~

(viii) The portion of the additional penalties as provided in RCW 50.20.070(2) that is fifteen percent of the amount of benefits overpaid or deemed overpaid; and

(ix) All moneys received for the fund from any other source.

(b) All moneys in the unemployment compensation fund shall be commingled and undivided.

(3)(a) Except as provided in (b) of this subsection, the administrative contingency fund shall consist of:

(i) All interest on delinquent contributions collected pursuant to this title;

(ii) All fines and penalties collected pursuant to the provisions of this title, except the portion of the additional penalties as provided in RCW 50.20.070(2) that is fifteen percent of the amount of benefits overpaid or deemed overpaid;

(iii) All sums recovered on official bonds for losses sustained by the fund; and

(iv) Revenue received under RCW 50.24.014.

(b) All fees, fines, forfeitures, and penalties collected or assessed by a district court because of the violation of this title or rules adopted under this title shall be remitted as provided in chapter 3.62 RCW.

(c) Except as provided in (d) of this subsection, moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014, shall be expended upon the direction of the commissioner, with the approval of the governor, whenever it appears to him or her that such expenditure is necessary solely for:

(i) The proper administration of this title and that insufficient federal funds are available for the specific purpose to which such expenditure is to be made, provided, the moneys are not substituted for appropriations from federal funds which, in the absence of such moneys, would be made available.

(ii) The proper administration of this title for which purpose appropriations from federal funds have been requested but not yet received, provided, the administrative contingency fund will be reimbursed upon receipt of the requested federal appropriation.

(iii) The proper administration of this title for which compliance and audit issues have been identified that establish federal claims requiring the expenditure of state resources in resolution. Claims must be resolved in the following priority: First priority is to provide services to eligible participants within the state; second priority is to provide substitute services or program support; and last priority is the direct payment of funds to the federal government.

(d)(i) During the 2007-2009 fiscal biennium, moneys available in the administrative contingency fund, other than money in the special account

created under RCW 50.24.014(1)(a), shall be expended as appropriated by the legislature for: (A) The cost of the job skills or worker retraining programs at the community and technical colleges and administrative costs at the state board for community and technical colleges; and (B) reemployment services such as business and project development assistance, local economic development capacity building, and local economic development financial assistance at the department of commerce. The remaining appropriation may be expended as specified in (c) of this subsection.

(ii) During the 2009-2011 fiscal biennium, moneys available in the administrative contingency fund, other than money in the special account created under RCW 50.24.014(1)(a), shall be expended by the department of social and health services as appropriated by the legislature for employment and training services and programs in the WorkFirst program, and for the administrative costs of state agencies participating in the WorkFirst program. The remaining appropriation may be expended as specified in (c) of this subsection.

(4) Money in the special account created under RCW 50.24.014(1)(a) may only be expended, after appropriation, for the purposes specified in this section and RCW 50.62.010, 50.62.020, 50.62.030, 50.24.014, 50.44.053, and 50.22.010.

**Sec. 2.** RCW 50.20.070 and 2007 c 146 s 7 are each amended to read as follows:

(1) With respect to determinations delivered or mailed before January 1, 2008, an individual is disqualified for benefits for any week he or she has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under the provisions of this title, and for an additional twenty-six weeks beginning with the first week for which he or she completes an otherwise compensable claim for waiting period credit or benefits following the date of the delivery or mailing of the determination of disqualification under this section. However, such disqualification shall not be applied after two years have elapsed from the date of the delivery or mailing of the determination of disqualification under this section.

(2) With respect to determinations delivered or mailed on or after January 1, 2008:

(a) An individual is disqualified for benefits for any week he or she has knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and, as a result, has obtained or attempted to obtain any benefits under the provisions of this title;

(b) An individual disqualified for benefits under this subsection for the first time is also:

(i) Disqualified for an additional twenty-six weeks beginning with the Sunday of the week in which the determination is mailed or delivered; and

(ii) With respect to determinations delivered or mailed on or after October 20, 2013, subject to an additional penalty of fifteen percent of the amount of benefits overpaid or deemed overpaid;

(c) An individual disqualified for benefits under this subsection for the second time is also disqualified for an additional fifty-two weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is

subject to an additional penalty of twenty-five percent of the amount of benefits overpaid or deemed overpaid;

(d) An individual disqualified for benefits under this subsection a third time and any time thereafter is also disqualified for an additional one hundred four weeks beginning with the Sunday of the week in which the determination is mailed or delivered, and is subject to an additional penalty of fifty percent of the amount of benefits overpaid or deemed overpaid.

(3) All penalties collected under this section must be expended for the proper administration of this title as authorized under RCW 50.16.010 and for no other purposes.

(4) All overpayments and penalties established by such determination of disqualification must be collected as otherwise provided by this title.

**Sec. 3.** RCW 50.29.021 and 2011 c 4 s 14 are each amended to read as follows:

(1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer ~~(. However, when a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or~~

~~remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports)), except as provided in subsection (5) of this section.~~

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Benefits paid to an individual who qualifies for benefits under RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer. This subsection (3)(f) does not apply to the calculation of contribution rates under RCW 50.29.025 for rate year 2010 and thereafter.

(g) The forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1202 shall not be charged to the experience rating account of any contribution paying employer.

(h) With respect to claims where the minimum amount payable weekly is increased to one hundred fifty-five dollars pursuant to RCW 50.20.1201(3), benefits paid that exceed the benefits that would have been paid if the minimum amount payable weekly had been calculated pursuant to RCW 50.20.120 shall not be charged to the experience rating account of any contribution paying employer.

(i) Upon approval of an individual's training benefits plan submitted in accordance with RCW 50.22.155(2), an individual is considered enrolled in training, and regular benefits beginning with the week of approval shall not be charged to the experience rating account of any contribution paying employer.

(j) Training benefits paid to an individual under RCW 50.22.155 shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, except employers as provided in subsection (6) of this section, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster;

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter ~~((50.06 [50.60]))~~ 50.60 RCW; or

(v) Was hired to replace an employee who is a member of the military reserves or National Guard and was called to federal active military service by the president of the United States and is subsequently laid off when that employee is reemployed by their employer upon release from active duty within the time provided for reemployment in RCW 73.16.035.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

(5) When a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports.

(6) An employer's experience rating account may not be relieved of charges for a benefit payment and an employer who reimburses the trust fund for benefit payments may not be credited for a benefit payment if a benefit payment was made because the employer or employer's agent failed to respond timely or adequately to a written request of the department for information relating to the claim or claims without establishing good cause for the failure and the employer or employer's agent has a pattern of such failures. The commissioner has the authority to determine whether the employer has good cause under this subsection.

(a) For the purposes of this subsection, "adequately" means providing accurate information of sufficient quantity and quality that would allow a reasonable person to determine eligibility for benefits.

(b)(i) For the purposes of this subsection, "pattern" means a benefit payment was made because the employer or employer's agent failed to respond timely or

adequately to a written request of the department for information relating to a claim or claims without establishing good cause for the failure, if the greater of the following calculations for an employer is met:

(A) At least three times in the previous two years; or

(B) Twenty percent of the total current claims against the employer.

(ii) If an employer's agent is utilized, a pattern is established based on each individual client employer that the employer's agent represents.

**Sec. 4.** RCW 50.20.190 and 2011 c 301 s 17 are each amended to read as follows:

(1) An individual who is paid any amount as benefits under this title to which he or she is not entitled shall, unless otherwise relieved pursuant to this section, be liable for repayment of the amount overpaid. The department shall issue an overpayment assessment setting forth the reasons for and the amount of the overpayment. The amount assessed, to the extent not collected, may be deducted from any future benefits payable to the individual: PROVIDED, That in the absence of a back pay award, a settlement affecting the allowance of benefits, fraud, misrepresentation, or willful nondisclosure, every determination of liability shall be mailed or personally served not later than two years after the close of or final payment made on the individual's applicable benefit year for which the purported overpayment was made, whichever is later, unless the merits of the claim are subjected to administrative or judicial review in which event the period for serving the determination of liability shall be extended to allow service of the determination of liability during the six-month period following the final decision affecting the claim.

(2) The commissioner may waive an overpayment if the commissioner finds that the overpayment was not the result of fraud, misrepresentation, willful nondisclosure, or fault attributable to the individual and that the recovery thereof would be against equity and good conscience(~~(- PROVIDED, HOWEVER, That the)~~). When determining whether the recovery would be against equity and good conscience, the department must consider whether the employer or employer's agent failed to respond timely and adequately to a written request of the department for information relating to the claim or claims without establishing good cause for the failure pursuant to RCW 50.29.021(6). An overpayment ((sø)) waived under this subsection shall be charged against the individual's applicable entitlement for the eligibility period containing the weeks to which the overpayment was attributed as though such benefits had been properly paid.

(3) Any assessment herein provided shall constitute a determination of liability from which an appeal may be had in the same manner and to the same extent as provided for appeals relating to determinations in respect to claims for benefits: PROVIDED, That an appeal from any determination covering overpayment only shall be deemed to be an appeal from the determination which was the basis for establishing the overpayment unless the merits involved in the issue set forth in such determination have already been heard and passed upon by the appeal tribunal. If no such appeal is taken to the appeal tribunal by the individual within thirty days of the delivery of the notice of determination of liability, or within thirty days of the mailing of the notice of determination, whichever is the earlier, the determination of liability shall be deemed conclusive and final. Whenever any such notice of determination of liability



becomes conclusive and final, the commissioner, upon giving at least twenty days' notice, using a method by which the mailing can be tracked or the delivery can be confirmed, 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 under RCW 36.18.012(10). 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(s) 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(s) against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law for a civil judgment. A copy of the warrant shall be mailed within five days of its filing with the clerk to the person(s) mentioned in the warrant using a method by which the mailing can be tracked or the delivery can be confirmed.

(4) On request of any agency which administers an employment security law of another state, the United States, or a foreign government and which has found in accordance with the provisions of such law that a claimant is liable to repay benefits received under such law, the commissioner may collect the amount of such benefits from the claimant to be refunded to the agency. In any case in which under this section a claimant is liable to repay any amount to the agency of another state, the United States, or a foreign government, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency if the other state, the United States, or the foreign government extends such collection rights to the employment security department of the state of Washington, and provided that the court costs be paid by the governmental agency benefiting from such collection.

(5) Any employer who is a party to a back pay award or settlement due to loss of wages shall, within thirty days of the award or settlement, report to the department the amount of the award or settlement, the name and social security number of the recipient of the award or settlement, and the period for which it is awarded. When an individual has been awarded or receives back pay, for benefit purposes the amount of the back pay shall constitute wages paid in the period for which it was awarded. For contribution purposes, the back pay award or settlement shall constitute wages paid in the period in which it was actually paid. The following requirements shall also apply:

(a) The employer shall reduce the amount of the back pay award or settlement by an amount determined by the department based upon the amount of unemployment benefits received by the recipient of the award or settlement during the period for which the back pay award or settlement was awarded;

(b) The employer shall pay to the unemployment compensation fund, in a manner specified by the commissioner, an amount equal to the amount of such reduction;

(c) The employer shall also pay to the department any taxes due for unemployment insurance purposes on the entire amount of the back pay award

or settlement notwithstanding any reduction made pursuant to (a) of this subsection;

(d) If the employer fails to reduce the amount of the back pay award or settlement as required in (a) of this subsection, the department shall issue an overpayment assessment against the recipient of the award or settlement in the amount that the back pay award or settlement should have been reduced; and

(e) If the employer fails to pay to the department an amount equal to the reduction as required in (b) of this subsection, the department shall issue an assessment of liability against the employer which shall be collected pursuant to the procedures for collection of assessments provided herein and in RCW 50.24.110.

(6) When an individual fails to repay an overpayment assessment that is due and fails to arrange for satisfactory repayment terms, the commissioner shall impose an interest penalty of one percent per month of the outstanding balance. Interest shall accrue immediately on overpayments assessed pursuant to RCW 50.20.070 and shall be imposed when the assessment becomes final. For any other overpayment, interest shall accrue when the individual has missed two or more of the individual's monthly payments either partially or in full.

(7) The department shall: (a) Conduct social security number cross-match audits or engage in other more effective activities that ensure that individuals are entitled to all amounts of benefits that they are paid; and (b) engage in other detection and recovery of overpayment and collection activities.

**NEW SECTION. Sec. 5.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

**NEW SECTION. Sec. 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 takes effect October 20, 2013.

Passed by the Senate April 19, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 190

[Engrossed Substitute Senate Bill 5577]

### STATE EMPLOYEES—PUBLIC OFFICIALS—ETHICS

AN ACT Relating to protecting public employees who act ethically and legally; amending RCW 42.52.410, 42.52.360, 42.52.420, 42.52.460, and 42.56.240; adding a new section to chapter 42.52 RCW; creating a new section; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** The legislature finds that ensuring public trust in government is a priority. The public expects its elected officials and state employees to adhere to the highest ethical standards during their service, and this includes a commitment to full and independent investigations, with proper penalties, in cases where the ethics in public service act is violated.

**Sec. 2.** RCW 42.52.410 and 1994 c 154 s 211 are each amended to read as follows:

(1) A person may, personally or by his or her attorney, make, sign, and file with the appropriate ethics board a complaint on a form provided by the appropriate ethics board. The complaint shall state the name of the person alleged to have violated this chapter or rules adopted under it and the particulars thereof, and contain such other information as may be required by the appropriate ethics board.

(2) If it has reason to believe that any person has been engaged or is engaging in a violation of this chapter or rules adopted under it, an ethics board may issue a complaint.

(3)(a) A state employee who files a complaint with the appropriate ethics board shall be afforded the protection afforded to a whistleblower under RCW 42.40.050 and 49.60.210(2), subject to the limitations of RCW 42.40.035 and 42.40.910. An agency, manager, or supervisor may not retaliate against a state employee who, after making a reasonable attempt to ascertain the correctness of the information furnished, files a complaint with the appropriate ethics board.

(b) A state employee may not be denied the protections in chapter 42.40 RCW even if the ethics board denies an investigation of the complaint.

(4) If a determination is made that a reprisal or retaliatory action has been taken against the state employee, the retaliator may be subject to a civil penalty of up to five thousand dollars.

**Sec. 3.** RCW 42.52.360 and 2005 c 106 s 5 are each amended to read as follows:

(1) The executive ethics board shall enforce this chapter and rules adopted under it with respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

(2) The executive ethics board shall enforce this chapter with regard to the activities of university research employees as provided in this subsection.

(a) With respect to compliance with RCW 42.52.030, 42.52.110, 42.52.130, 42.52.140, and 42.52.150, the administrative process shall be consistent with and adhere to no less than the current standards in regulations of the United States public health service and the office of the secretary of the department of health and human services in Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity in research.

(b) With respect to compliance with RCW 42.52.040, 42.52.080, and 42.52.120, the administrative process shall include a comprehensive system for the disclosure, review, and approval of outside work activities by university research employees while assuring that such employees are fulfilling their employment obligations to the university.

(c) With respect to compliance with RCW 42.52.160, the administrative process shall include a reasonable determination by the university of acceptable

private uses having de minimis costs to the university and a method for establishing fair and reasonable reimbursement charges for private uses the costs of which are in excess of de minimis.

(3) The executive ethics board shall:

- (a) Develop educational materials and training;
- (b) Adopt rules and policies governing the conduct of business by the board, and adopt rules defining working hours for purposes of RCW 42.52.180 and where otherwise authorized under chapter 154, Laws of 1994;
- (c) Issue advisory opinions;
- (d) Investigate, hear, and determine complaints by any person or on its own motion;
- (e) Impose sanctions including reprimands and monetary penalties;
- (f) Recommend to the appropriate authorities suspension, removal from position, prosecution, or other appropriate remedy; and
- (g) Establish criteria regarding the levels of civil penalties appropriate for violations of this chapter and rules adopted under it.

(4) The board may:

- (a) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under examination by the board or involved in any hearing;
- (b) Administer oaths and affirmations;
- (c) Examine witnesses; and
- (d) Receive evidence.

(5) The board shall not delegate to the board's executive director its authority to issue advisories, advisory letters, or opinions.

(6) Except as provided in RCW 42.52.220, the executive ethics board may review and approve agency policies as provided for in this chapter.

~~((6))~~ (7) This section does not apply to state officers and state employees of the judicial branch.

**Sec. 4.** RCW 42.52.420 and 2000 c 211 s 1 are each amended to read as follows:

(1) After the filing of any complaint, except as provided in RCW 42.52.450, the staff of the appropriate ethics board shall investigate the complaint.

~~((The investigation shall be limited to the allegations contained in the complaint.))~~ The ethics board may request the assistance of the office of the attorney general or a contract investigator in conducting its investigation.

(2) The results of the investigation shall be reduced to writing and the staff shall either make a determination that the complaint should be dismissed pursuant to RCW 42.52.425, or recommend to the board that there is or that there is not reasonable cause to believe that a violation of this chapter or rules adopted under it has been or is being committed.

(3) The board's determination on reasonable cause shall be provided to the complainant and to the person named in such complaint.

(4) The identity of a person filing a complaint under RCW 42.52.410(1) is exempt from public disclosure, as provided in RCW 42.56.240.

**Sec. 5.** RCW 42.52.460 and 1994 c 154 s 216 are each amended to read as follows:

Any person who has notified the appropriate ethics board and the attorney general in writing that there is reason to believe that RCW 42.52.180 is being or has been violated may, in the name of the state, bring a citizen action for any of the actions authorized under this chapter. A citizen action may be brought only if the appropriate ethics board or the attorney general have failed to commence an action under this chapter within forty-five days after notice from the person, the person has thereafter notified the appropriate ethics board and the attorney general that the person will commence a citizen's action within ten days upon their failure to commence an action, and the appropriate ethics board and the attorney general have in fact failed to bring an action within ten days of receipt of the second notice. An action is deemed to have been commenced when the appropriate ethics board or the board's executive director accepts a complaint for filing and initiates a preliminary investigation.

If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but the person shall be entitled to be reimbursed by the state of Washington for costs and attorneys' fees incurred. If a citizen's action that the court finds was brought without reasonable cause is dismissed, the court may order the person commencing the action to pay all costs of trial and reasonable attorneys' fees incurred by the defendant.

Upon commencement of a citizen action under this section, at the request of a state officer or state employee who is a defendant, the office of the attorney general shall represent the defendant if the attorney general finds that the defendant's conduct complied with this chapter and was within the scope of employment.

**NEW SECTION. Sec. 6.** A new section is added to chapter 42.52 RCW to read as follows:

(1) Each executive branch agency shall designate an ethics advisor or advisors to assist the agency's employees in understanding their obligations under the ethics in public service act. Agencies shall inform the executive ethics board of their designated advisors. As funding permits and as determined by the executive ethics board and the agency head, the advisors shall receive regular ethics training.

(2) Executive branch officers and employees are encouraged to attend ethics training offered by the executive ethics board at least once every thirty-six months.

**Sec. 7.** RCW 42.56.240 and 2012 c 88 s 1 are each amended to read as follows:

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the

complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies;

(5) Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator;

(6) The statewide gang database referenced in RCW 43.43.762;

(7) Data from the electronic sales tracking system established in RCW 69.43.165;

(8) Information submitted to the statewide unified sex offender notification and registration program under RCW 36.28A.040(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and e-mail address; ~~(and)~~

(9) Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs. Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business; and

(10) The identity of a state employee or officer who has in good faith filed a complaint with an ethics board, as provided in RCW 42.52.410, or who has in good faith reported improper governmental action, as defined in RCW 42.40.020, to the auditor or other public official, as defined in RCW 42.40.020.

Passed by the Senate April 24, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 8, 2013.

Filed in Office of Secretary of State May 8, 2013.

## CHAPTER 191

[Substitute House Bill 1068]

### TELEVISION RECEPTION IMPROVEMENT DISTRICTS—EXCISE TAX

AN ACT Relating to the television reception improvement district excise tax; and amending RCW 36.95.100, 36.95.130, 36.95.160, and 36.95.180.

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

**Sec. 1.** RCW 36.95.100 and 2009 c 549 s 4158 are each amended to read as follows:

(1) The tax provided for in RCW 36.95.090 and this section ((shall)) may not exceed sixty dollars per year per television set((, and)) within the district. No person ((shall)) may be taxed for more than one television set, except that a motel or hotel or any person owning ((in excess of)) more than five television sets ((shall)) must pay at a rate of one-fifth of the annual tax rate imposed for each of the first five television sets and one-tenth of ((such)) the annual tax rate imposed for each additional television set ((thereafter)).

(2) An owner of a television set within the district ((shall be)) is exempt from paying ((any tax on such set under this chapter: (1) If either (a) his or her)) the excise tax on the television set if:

(a) The owner's television set does not receive at least a class grade B contour signal retransmitted by the television translator station or other similar device operated by the district, as such class is defined under regulations of the Federal Communications Commission as of August 9, 1971((, or (b) he or she));

(b) The owner is currently subscribing to and receiving the services of a community antenna system (CATV) to which ((his or her)) the owner's television set is connected; ((and (2) if he or she filed a statement with the board claiming his or her grounds for exemption. Space for such statement shall be provided for in the tax notice which the treasurer shall send to taxpayers in behalf of the district)) or

(c) The owner is currently subscribing to and receiving the services of a satellite carrier, as that term is defined in 17 U.S.C. Sec. 119, as of January 1, 2013.

(3) To qualify for an exemption specified in subsection (2) of this section, an owner of a television set must file a statement with the board claiming the owner's grounds for an exemption. Space for the statement must be provided in tax notices sent to taxpayers pursuant to RCW 36.95.160.

**Sec. 2.** RCW 36.95.130 and 1985 c 76 s 2 are each amended to read as follows:

In addition to other powers provided for under this chapter, the board ((shall have)) has the following powers:

(1) To perform all acts necessary to assure that the purposes of this chapter will be carried out fairly and efficiently;

(2) To acquire, build, construct, repair, own, maintain, and operate any necessary stations retransmitting visual and aural signals intended to be received by the general public, relay stations, pick-up stations, or any other electrical or electronic system necessary((: PROVIDED, That)). However, the board ((shall have)) has no power to originate programs;

(3) To make contracts to compensate any owner of land or other property for the use of such property for the purposes of this chapter;

(4) To make contracts with the United States, or any state, municipality, or any department or agency of those entities for carrying out the general purposes for which the district is formed;

(5) To acquire by gift, devise, bequest, lease, or purchase real and personal property, tangible or intangible, including lands, rights-of-way, and easements, necessary or convenient for its purposes;

(6) To make contracts of any lawful nature (including labor contracts or those for employees' benefits), employ engineers, laboratory personnel,

attorneys, other technical or professional assistants, and any other assistants or employees necessary to carry out the provisions of this chapter;

(7) To contract indebtedness or borrow money and to issue warrants or bonds to be paid from district revenues(~~(: PROVIDED, That)~~). The bonds, warrants, or other obligations may be in any form, including bearer or registered as provided in RCW 39.46.030(~~(: PROVIDED FURTHER, That)~~). Moreover, such warrants and bonds may be issued and sold in accordance with chapter 39.46 RCW;

(8) To prescribe excise tax rates for ~~((the))~~ providing ~~((of))~~ services throughout the area in accordance with the provisions of this chapter; ~~((and))~~

(9) To assist the county treasurer in sending tax notices to taxpayers pursuant to RCW 36.95.160; and

(10) To apply for, accept, and be the holder of any permit or license issued by or required under federal or state law.

**Sec. 3.** RCW 36.95.160 and 2009 c 549 s 4161 are each amended to read as follows:

(1) ~~The treasurer of the county in which a district is located ((shall be ex officio))~~ is the treasurer of the district.

(2) ~~The county treasurer ((shall))~~ must collect the excise tax provided for under this chapter and ~~((shall))~~ send notice of payment due to persons owing the tax(~~(: PROVIDED, That)~~). To reduce costs of services performed by the county treasurer, district board members and employees may assist the treasurer in sending tax notices to taxpayers.

(3) ~~Districts with fewer than twelve hundred persons subject to the excise tax and levying an excise tax of forty dollars or more per television set per year ((shall have the option of having the district (1) send the tax notices bimonthly, and (2) collect the excise taxes which shall then))~~ may:

(a) Send tax notices bimonthly; and

(b) Collect excise tax revenue, which must be forwarded to the county treasurer for deposit in the district account. ~~((There shall be deposited with him or her all funds of the district.))~~

(4) All district funds must be deposited with the county treasurer. All district payments ~~((shall be made by him or her from such))~~ must be made by the county treasurer from district funds upon warrants issued by the county auditor, except the sums to be paid out of any bond fund for principal and interest payments on bonds. All warrants ~~((shall))~~ must be paid in the order of issuance.

(5) The treasurer ~~((shall))~~ must report monthly to the board, in writing, the amount in the district fund or funds.

**Sec. 4.** RCW 36.95.180 and 1971 ex.s. c 155 s 18 are each amended to read as follows:

(1) The board ~~((shall))~~ must reimburse the county auditor, assessor, and treasurer for the actual costs of services performed by them in behalf of the district.

(2) A district may reduce costs of services performed by the county treasurer by assisting the treasurer in sending tax notices to taxpayers pursuant to RCW 36.95.160.

Passed by the House April 22, 2013.

Passed by the Senate April 15, 2013.



Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

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## CHAPTER 192

[Substitute House Bill 1076]

### K-12 EDUCATION—INNOVATION ACADEMY COOPERATIVES

AN ACT Relating to expanding participation in innovation academy cooperatives; and amending RCW 28A.340.080 and 28A.225.225.

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

**Sec. 1.** RCW 28A.340.080 and 2010 c 99 s 2 are each amended to read as follows:

(1) Two or more nonhigh school districts may form an interdistrict cooperative(;) to offer an innovation academy cooperative, as defined in RCW 28A.340.085 and subject to the approval of the office of the superintendent of public instruction under RCW 28A.340.090, for high school students residing in the participating nonhigh school districts or for high school students residing in other school districts who enroll in the cooperative's reporting district under RCW 28A.225.220 through 28A.225.230. However, a high school student residing in a school district that is not a participating member of the cooperative may not enroll exclusively in alternative learning experience courses or programs as defined by RCW 28A.150.325. Nothing in this section is intended to affect or otherwise modify the superintendent of public instruction's duty to approve and monitor online providers pursuant to RCW 28A.250.020.

(2) Enrollment in an innovation academy cooperative is optional for students. For students residing in a participating nonhigh school district who enroll in a high school district rather than the innovation academy cooperative, the provisions of RCW 28A.540.110 and chapter 28A.545 RCW apply to the nonhigh school district.

(3) Each innovation academy cooperative shall designate one of the participating nonhigh school districts to report enrolled students for funding purposes. The reporting district shall claim the monthly full-time equivalent students enrolled in the innovation academy cooperative and receive state funding allocations, including basic education allocations that are based on the small high school allocation under the appropriations act to the extent the number of students enrolled in the innovation academy cooperative meets the criteria for a small high school.

**Sec. 2.** RCW 28A.225.225 and 2009 c 380 s 7 are each amended to read as follows:

(1) Except for students who reside out-of-state and students under RCW 28A.225.217, a district shall accept applications from nonresident students who are the children of full-time certificated and classified school employees, and those children shall be permitted to enroll:

(a) At the school to which the employee is assigned;

(b) At a school forming the district's K through 12 continuum which includes the school to which the employee is assigned; or

(c) At a school in the district that provides early intervention services pursuant to RCW 28A.155.065 or preschool services pursuant to RCW 28A.155.070, if the student is eligible for such services.

(2) A district may reject applications under this section if:

(a) The student's disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or gang membership;

(b) The student has been expelled or suspended from a public school for more than ten consecutive days. Any policy allowing for readmission of expelled or suspended students under this subsection (2)(b) must apply uniformly to both resident and nonresident applicants; or

(c) Enrollment of a child under this section would displace a child who is a resident of the district, except that if a child is admitted under subsection (1) of this section, that child shall be permitted to remain enrolled at that school, or in that district's kindergarten through twelfth grade continuum, until he or she has completed his or her schooling.

(3) A nonhigh district that is participating in an innovation academy cooperative may not accept an application from a high school student that conflicts with RCW 28A.340.080.

(4) Except as provided in subsection (1) of this section, all districts accepting applications from nonresident students or from students receiving home-based instruction for admission to the district's schools shall consider equally all applications received. Each school district shall adopt a policy establishing rational, fair, and equitable standards for acceptance and rejection of applications by June 30, 1990. The policy may include rejection of a nonresident student if:

(a) Acceptance of a nonresident student would result in the district experiencing a financial hardship;

(b) The student's disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or gang membership; ~~((e))~~

(c) Accepting of the nonresident student would conflict with RCW 28A.340.080; or

(d) The student has been expelled or suspended from a public school for more than ten consecutive days. Any policy allowing for readmission of expelled or suspended students under this subsection ~~((3)(e))~~ (4)(d) must apply uniformly to both resident and nonresident applicants.

For purposes of subsections (2)(a) and ~~((3))~~ (4)(b) of this section, "gang" means a group which: (i) Consists of three or more persons; (ii) has identifiable leadership; and (iii) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

~~((4))~~ (5) The district shall provide to applicants written notification of the approval or denial of the application in a timely manner. If the application is rejected, the notification shall include the reason or reasons for denial and the right to appeal under RCW 28A.225.230(3).

Passed by the House April 22, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 193

[House Bill 1178]

## K-12 EDUCATION—TEACHER CERTIFICATION—ALTERNATIVE ASSESSMENTS

AN ACT Relating to authorizing alternative assessments of basic skills for teacher certification; amending RCW 28A.410.220; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that the use of a basic skills test as an entrance requirement to teacher certification programs has unintentionally created a barrier to the effective recruitment of candidates from underrepresented populations who are otherwise qualified for the program. Therefore, the legislature intends to expand the pool of potential teacher candidates by expanding the types of testing instruments and assessments that may be used to measure basic skills. The legislature intends to review any alternative assessments to ensure that candidates must continue to meet the established standards for admission to a teacher certification program.

**Sec. 2.** RCW 28A.410.220 and 2008 c 176 s 2 are each amended to read as follows:

(1)(a) Beginning not later than September 1, 2001, the Washington professional educator standards board shall make available and pilot a means of assessing an applicant's knowledge in the basic skills. For the purposes of this section, "basic skills" means the subjects of at least reading, writing, and mathematics. Beginning September 1, 2002, except as provided in (c) and (d) of this subsection and subsection (4) of this section, passing this assessment shall be required for admission to approved teacher preparation programs and for persons from out-of-state applying for a Washington state residency teaching certificate.

(b) On an individual student basis, approved teacher preparation programs may admit into their programs a candidate who has not achieved the minimum basic skills assessment score established by the Washington professional educator standards board. Individuals so admitted may not receive residency certification without passing the basic skills assessment under this section.

(c) The Washington professional educator standards board may establish criteria to ensure that persons from out-of-state who are applying for residency certification and persons applying to master's degree level teacher preparation programs can demonstrate to the board's satisfaction that they have the requisite basic skills based upon having completed another basic skills assessment acceptable to the Washington professional educator standards board or by some other alternative approved by the Washington professional educator standards board.

(d) The Washington professional educator standards board may identify and accept other tests and test scores as long as the tests are comparable in rigor to the basic skills assessment and candidates meet or exceed the basic skills requirements established by the board. The board must set the acceptable score for admission to teacher certification programs at no lower than the average national scores for the SAT or ACT.

(2) The Washington professional educator standards board shall set performance standards and develop, pilot, and implement a uniform and externally administered professional-level certification assessment based on

demonstrated teaching skill. In the development of this assessment, consideration shall be given to changes in professional certification program components such as the culminating seminar.

(3) Beginning not later than September 1, 2002, the Washington professional educator standards board shall provide for the initial piloting and implementation of a means of assessing an applicant's knowledge in the subjects for which the applicant has applied for an endorsement to his or her residency or professional teaching certificate. The assessment of subject knowledge shall not include instructional methodology. Beginning September 1, 2005, passing this assessment shall be required to receive an endorsement for certification purposes.

(4) The Washington professional educator standards board may permit exceptions from the assessment requirements under subsections (1), (2), and (3) of this section on a case-by-case basis.

(5) The Washington professional educator standards board shall provide for reasonable accommodations for individuals who are required to take the assessments in subsection (1), (2), or (3) of this section if the individuals have learning or other disabilities.

(6) With the exception of applicants exempt from the requirements of subsections (1), (2), and (3) of this section, an applicant must achieve a minimum assessment score or scores established by the Washington professional educator standards board on each of the assessments under subsections (1), (2), and (3) of this section.

(7) The Washington professional educator standards board and superintendent of public instruction, as determined by the Washington professional educator standards board, may contract with one or more third parties for:

(a) The development, purchase, administration, scoring, and reporting of scores of the assessments established by the Washington professional educator standards board under subsections (1), (2), and (3) of this section;

(b) Related clerical and administrative activities; or

(c) Any combination of the purposes in this subsection.

(8) Applicants for admission to a Washington teacher preparation program and applicants for residency and professional certificates who are required to successfully complete one or more of the assessments under subsections (1), (2), and (3) of this section, and who are charged a fee for the assessment by a third party contracted with under subsection (7) of this section, shall pay the fee charged by the contractor directly to the contractor. Such fees shall be reasonably related to the actual costs of the contractor in providing the assessment.

(9) The superintendent of public instruction is responsible for supervision and providing support services to administer this section.

(10) The Washington professional educator standards board shall collaboratively select or develop and implement the assessments and minimum assessment scores required under this section with the superintendent of public instruction and shall provide opportunities for representatives of other interested educational organizations to participate in the selection or development and implementation of such assessments in a manner deemed appropriate by the Washington professional educator standards board.

(11) The Washington professional educator standards board shall adopt rules under chapter 34.05 RCW that are reasonably necessary for the effective and efficient implementation of this section.

Passed by the House April 22, 2013.

Passed by the Senate April 12, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

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## CHAPTER 194

[House Bill 1194]

### HABITAT PROJECTS—LIABILITY

AN ACT Relating to limiting liability for habitat projects; and reenacting and amending RCW 77.85.050.

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

**Sec. 1.** RCW 77.85.050 and 2009 c 345 s 3 and 2009 c 333 s 25 are each reenacted and amended to read as follows:

(1)(a) Counties, cities, and tribal governments must jointly designate, by resolution or by letters of support, the area for which a habitat project list is to be developed and the lead entity that is to be responsible for submitting the habitat project list. No project included on a habitat project list shall be considered mandatory in nature and no private landowner may be forced or coerced into participation in any respect. The lead entity may be a county, city, conservation district, special district, tribal government, regional recovery organization, or other entity.

(b) The lead entity shall establish a committee that consists of representative interests of counties, cities, conservation districts, tribes, environmental groups, business interests, landowners, citizens, volunteer groups, regional fish enhancement groups, and other habitat interests. The purpose of the committee is to provide a citizen-based evaluation of the projects proposed to promote salmon habitat.

(c) The committee shall compile a list of habitat projects, establish priorities for individual projects, define the sequence for project implementation, and submit these activities as the habitat project list. The committee shall also identify potential federal, state, local, and private funding sources.

(2) The area covered by the habitat project list must be based, at a minimum, on a WRIA, combination of WRIsAs, or any other area as agreed to by the counties, cities, and tribes in resolutions or in letters of support meeting the requirements of this subsection. Preference will be given to projects in an area that contain a salmon species that is listed or proposed for listing under the federal endangered species act.

(3) The lead entity shall submit the habitat project list to the salmon recovery funding board in accordance with procedures adopted by the board.

(4) The recreation and conservation office shall administer funding to support the functions of lead entities.

(5) A landowner whose land is used for a habitat project that is included on a habitat project list, and who has received notice from the project sponsor that the conditions of this section have been met, may not be held civilly liable for

any property damages resulting from the habitat project regardless of whether or not the project was funded by the salmon recovery funding board. This subsection is subject to the following conditions:

(a) The project was designed by a licensed professional engineer (PE) or a licensed geologist (LG, LEG, or LHG) with experience in riverine restoration;

(b) The project is designed to withstand one hundred year floods;

(c) The project is not located within one-quarter mile of an established downstream boat launch;

(d) The project is designed to allow adequate response time for in-river boaters to safely evade in-stream structures; and

(e) If the project includes large wood placement, each individual root wad and each log larger than ten feet long and one foot in diameter must be visibly tagged with a unique numerical identifier that will withstand typical river conditions for at least three years.

Passed by the House April 22, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 195

[Second Substitute House Bill 1195]

### ELECTIONS—PRIMARY BALLOT—CANDIDATE NAMES

AN ACT Relating to candidate names on the primary ballot; amending RCW 29A.52.220; repealing RCW 29A.52.010 and 29A.52.011; and declaring an emergency.

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

**Sec. 1.** RCW 29A.52.220 and 2005 c 153 s 10 are each amended to read as follows:

(1) No primary may be held for any single position in any ~~((city, town, district, or district court, as required by RCW 29A.52.210,))~~ nonpartisan office if, after the last day allowed for candidates to withdraw, there are no more than two candidates filed for the position. The county auditor shall ~~(;)~~ as soon as possible ~~(;)~~ notify all the candidates so affected that the office for which they filed will not appear on the primary ballot.

~~(2) ((No primary may be held for nonpartisan offices in any first-class city if the city:~~

~~(a) Is a qualifying city that has been certified to participate in the pilot project authorized by RCW 29A.53.020; and~~

~~(b) Is conducting an election using the instant runoff voting method for the pilot project authorized by RCW 29A.53.020.~~

~~(c) This subsection (2) expires July 1, 2013.~~

~~(3))~~ No primary may be held for the office of commissioner of a park and recreation district or for the office of cemetery district commissioner.

~~((4))~~ (3) Names of candidates for offices that do not appear on the primary ballot shall be printed upon the general election ballot in the manner specified by RCW 29A.36.131.

NEW SECTION. **Sec. 2.** The following acts or parts of acts are each repealed:

(1) RCW 29A.52.010 (Elections to fill unexpired term—No primary, when) and 2005 c 2 s 13 & 2003 c 111 s 1301; and

(2) RCW 29A.52.011 (Elections to fill unexpired term—No primary, when) and 2006 c 344 s 14 & 2004 c 271 s 172.

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

Passed by the House April 28, 2013.

Passed by the Senate April 28, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 196

[Engrossed Substitute House Bill 1253]

### LODGING TAX

AN ACT Relating to the lodging tax; amending RCW 67.28.1816; reenacting and amending RCW 67.28.080; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 67.28.1816 and 2008 c 28 s 1 are each amended to read as follows:

(1) Lodging tax revenues under this chapter may be used, directly by ~~((local jurisdictions))~~ any municipality or indirectly through a convention and visitors bureau or destination marketing organization~~((s))~~ for:

(a) Tourism marketing;

(b) The marketing and operations of special events and festivals designed to attract tourists ((and to support));

(c) Supporting the operations and capital expenditures of tourism-related facilities owned or operated by a municipality or a public facilities district created under chapters 35.57 and 36.100 RCW; or

(d) Supporting the operations of tourism-related facilities owned or operated by nonprofit organizations described under ((section)) 26 U.S.C. Sec. 501(c)(3) and ((section)) 26 U.S.C. Sec. 501(c)(6) of the internal revenue code of 1986, as amended.

(2) ~~((Local jurisdictions that use the lodging tax revenues under this section must submit an annual economic impact report to the department of community, trade, and economic development for expenditures made beginning January 1, 2008. These reports must include the expenditures by the local jurisdiction for tourism promotion purposes and what is used by a nonprofit organization exempt from taxation under 26 U.S.C. Sec. 501(e)(3) or 501(e)(6). This economic impact report, at a minimum, must include: (a) The total revenue received under this chapter for each year; (b) the list of festivals, special events, or nonprofit 501(e)(3) or 501(e)(6) organizations that received funds under this chapter; (c) the list of festivals, special events, or tourism facilities sponsored or owned by the local jurisdiction that received funds under this chapter; (d) the amount of revenue expended on each festival, special event, or tourism-related facility owned or sponsored by a nonprofit 501(e)(3) or 501(e)(6) organization or local jurisdiction; (e) the estimated number of tourists, persons traveling over~~

~~fifty miles to the destination, persons remaining at the destination overnight, and lodging stays generated per festival, special event, or tourism-related facility owned or sponsored by a nonprofit 501(c)(3) or 501(c)(6) organization or local jurisdiction; and (f) any other measurements the local government finds that demonstrate the impact of the increased tourism attributable to the festival, special event, or tourism-related facility owned or sponsored by a nonprofit 501(c)(3) or 501(c)(6) organization or local jurisdiction.~~

~~(3) The joint legislative audit and review committee must report to the legislature and the governor on the use and economic impact of lodging tax revenues by local jurisdictions since January 1, 2008, to support festivals, special events, and tourism-related facilities owned or sponsored by a nonprofit organization under section 501(c)(3) or 501(c)(6) of the internal revenue code of 1986, as amended, or a local jurisdiction, and the economic impact generated by these festivals, events, and facilities. This report shall be due September 1, 2012.~~

~~(4) Reporting under this section must begin with calendar year 2008.~~

~~(5) This section expires June 30, 2013-)) (a) Except as provided in (b) of this subsection, applicants applying for use of revenues in this chapter must provide the municipality to which they are applying estimates of how any moneys received will result in increases in the number of people traveling for business or pleasure on a trip:~~

~~(i) Away from their place of residence or business and staying overnight in paid accommodations;~~

~~(ii) To a place fifty miles or more one way from their place of residence or business for the day or staying overnight; or~~

~~(iii) From another country or state outside of their place of residence or their business.~~

~~(b)(i) In a municipality with a population of five thousand or more, applicants applying for use of revenues in this chapter must submit their applications and estimates described under (a) of this subsection to the local lodging tax advisory committee.~~

~~(ii) The local lodging tax advisory committee must select the candidates from amongst the applicants applying for use of revenues in this chapter and provide a list of such candidates and recommended amounts of funding to the municipality for final determination. The municipality may choose only recipients from the list of candidates and recommended amounts provided by the local lodging tax advisory committee.~~

~~(c)(i) All recipients must submit a report to the municipality describing the actual number of people traveling for business or pleasure on a trip:~~

~~(A) Away from their place of residence or business and staying overnight in paid accommodations;~~

~~(B) To a place fifty miles or more one way from their place of residence or business for the day or staying overnight; or~~

~~(C) From another country or state outside of their place of residence or their business. A municipality receiving a report must: Make such report available to the local legislative body and the public; and furnish copies of the report to the joint legislative audit and review committee and members of the local lodging tax advisory committee.~~



(ii) The joint legislative audit and review committee must on a biennial basis report to the economic development committees of the legislature on the use of lodging tax revenues by municipalities. Reporting under this subsection must begin in calendar year 2015.

(d) This section does not apply to the revenues of any lodging tax authorized under this chapter imposed by a county with a population of one million five hundred thousand or more.

**Sec. 2.** RCW 67.28.080 and 2007 c 497 s 1 are each reenacted and amended to read as follows:

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

(1) "Acquisition" includes, but is not limited to, siting, acquisition, design, construction, refurbishing, expansion, repair, and improvement, including paying or securing the payment of all or any portion of general obligation bonds, leases, revenue bonds, or other obligations issued or incurred for such purpose or purposes under this chapter.

(2) "Municipality" means any county, city or town of the state of Washington.

(3) "Operation" includes, but is not limited to, operation, management, and marketing.

(4) "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.

(5) "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.

(6) "Tourism promotion" means activities, operations, and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding the marketing of or the operation of special events and festivals designed to attract tourists.

(7) "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor that is: (a)(i) Owned by a public entity; (ii) owned by a nonprofit organization described under section 501(c)(3) of the federal internal revenue code of 1986, as amended; or (iii) owned by a nonprofit organization described under section 501(c)(6) of the federal internal revenue code of 1986, as amended, a business organization, destination marketing organization, main street organization, lodging association, or chamber of commerce and (b) used to support tourism, performing arts, or to accommodate tourist activities.

~~((8) "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture.~~

~~(9) Amendments made in section 1, chapter 497, Laws of 2007 expire June 30, 2013.)~~

**NEW SECTION. Sec. 3.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013.

Passed by the House April 24, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 197

[Engrossed Substitute House Bill 1336]

### K-12 SCHOOLS—TROUBLED YOUTH

AN ACT Relating to increasing the capacity of school districts to recognize and respond to troubled youth; amending RCW 28A.410.035; adding a new section to chapter 28A.410 RCW; adding new sections to chapter 28A.320 RCW; adding a new section to chapter 28A.310 RCW; adding a new section to chapter 71.24 RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that:

(a) According to the state department of health, suicide is the second leading cause of death for Washington youth between the ages of ten and twenty-four. Suicide rates among Washington youth remain higher than that national average;

(b) An increasing body of research shows an association between adverse childhood experiences such as trauma, violence, or abuse, and school performance. Children and teens spend a significant amount of time in school. Teachers and other school staff who interact with students daily are in a prime position to recognize the signs of emotional or behavioral distress and make appropriate referrals. School personnel need effective training to help build the skills and confidence to assist youth in seeking help;

(c) Educators are not necessarily trained to address significant social, emotional, or behavioral issues exhibited by youth. Rather, best practices guidelines suggest that school districts should form partnerships with qualified health, mental health, and social services agencies to provide support; and

(d) Current safe school plans prepared by school districts tend to focus more on natural disasters and external threats and less on how to recognize and respond to potential crises among the students inside the school.

(2) Therefore, the legislature intends to increase the capacity for school districts to recognize and respond to youth in need through additional training, more comprehensive planning, and emphasis on partnerships between schools and communities.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.410 RCW to read as follows:

(1) As provided under subsections (2) and (3) of this section, individuals certified by the professional educator standards board as a school nurse, school social worker, school psychologist, or school counselor must complete a training program on youth suicide screening and referral as a condition of certification. The training program must be at least three hours in length. The professional educator standards board must adopt standards for the minimum content of the training in consultation with the office of the superintendent of public instruction

and the department of health. In developing the standards, the board must consider training programs listed on the best practices registry of the American foundation for suicide prevention and the suicide prevention resource center.

(2) This section applies to the following certificates if the certificate is first issued or is renewed on or after July 1, 2015:

- (a) Continuing certificates for school nurses;
- (b) Continuing certificates for school social workers;
- (c) Continuing and professional certificates for school psychologists; and
- (d) Continuing and professional certificates for school counselors.

(3) A school counselor who holds or submits a school counseling certificate from the national board for professional teaching standards or a school psychologist who holds or submits a school psychologist certificate from the national association of school psychologists in lieu of a professional certificate must complete the training program under subsection (1) of this section by July 1, 2015, or within the five-year period before the certificate is first submitted to the professional educator standards board, whichever is later, and at least once every five years thereafter in order to be considered certified by the professional educator standards board.

(4) The professional educator standards board shall consider the training program under subsection (1) of this section as approved continuing education under RCW 28A.415.020 and shall count the training program toward meeting continuing education requirements for certification as a school nurse, school social worker, school psychologist, or school counselor.

**Sec. 3.** RCW 28A.410.035 and 1990 c 90 s 1 are each amended to read as follows:

(1) To receive initial certification as a teacher in this state after August 31, 1991, an applicant shall have successfully completed a course on issues of abuse. The content of the course shall discuss the identification of physical, emotional, sexual, and substance abuse, information on the impact of abuse on the behavior and learning abilities of students, discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are the victims of abuse, and methods for teaching students about abuse of all types and their prevention.

(2) The professional educator standards board shall incorporate into the content required for the course under this section, knowledge and skill standards pertaining to recognition, initial screening, and response to emotional or behavioral distress in students, including but not limited to indicators of possible substance abuse, violence, and youth suicide. To receive initial certification after August 31, 2014, an applicant must have successfully completed a course that includes the content of this subsection. The board shall consult with the office of the superintendent of public instruction and the department of health in developing the standards.

**NEW SECTION. Sec. 4.** A new section is added to chapter 28A.320 RCW to read as follows:

(1) Beginning in the 2014-15 school year, each school district must adopt a plan for recognition, initial screening, and response to emotional or behavioral distress in students, including but not limited to indicators of possible substance

abuse, violence, and youth suicide. The school district must annually provide the plan to all district staff.

(2) At a minimum the plan must address:

(a) Identification of training opportunities in recognition, screening, and referral that may be available for staff;

(b) How to use the expertise of district staff who have been trained in recognition, screening, and referral;

(c) How staff should respond to suspicions, concerns, or warning signs of emotional or behavioral distress in students;

(d) Identification and development of partnerships with community organizations and agencies for referral of students to health, mental health, substance abuse, and social support services, including development of at least one memorandum of understanding between the district and such an entity in the community or region;

(e) Protocols and procedures for communication with parents;

(f) How staff should respond to a crisis situation where a student is in imminent danger to himself or herself or others; and

(g) How the district will provide support to students and staff after an incident of violence or youth suicide.

(3) The plan under this section may be a separate plan or a component of another district plan or policy, such as the harassment, intimidation, and bullying prevention policy under RCW 28A.300.2851 or the comprehensive safe school plan required under RCW 28A.320.125.

**NEW SECTION. Sec. 5.** A new section is added to chapter 28A.320 RCW to read as follows:

The office of the superintendent of public instruction and the school safety advisory committee shall develop a model school district plan for recognition, initial screening, and response to emotional or behavioral distress in students, including but not limited to indicators of possible substance abuse, violence, and youth suicide. The model plan must incorporate research-based best practices, including practices and protocols used in schools and school districts in other states. The model plan must be posted by February 1, 2014, on the school safety center web site, along with relevant resources and information to support school districts in developing and implementing the plan required under section 4 of this act.

**NEW SECTION. Sec. 6.** A new section is added to chapter 28A.310 RCW to read as follows:

Each educational service district shall develop and maintain the capacity to offer training for educators and other school district staff on youth suicide screening and referral, and on recognition, initial screening, and response to emotional or behavioral distress in students, including but not limited to indicators of possible substance abuse, violence, and youth suicide. An educational service district may demonstrate capacity by employing staff with sufficient expertise to offer the training or by contracting with individuals or organizations to offer the training. Training may be offered on a fee-for-service basis, or at no cost to school districts or educators if funds are appropriated specifically for this purpose or made available through grants or other sources.

**NEW SECTION. Sec. 7.** The office of the superintendent of public instruction shall convene a temporary task force to identify best practices, model programs, and successful strategies for school districts to form partnerships with qualified health, mental health, and social services agencies in the community to coordinate and improve support for youth in need. The task force shall identify and develop resource documents to be posted on the school safety center web site, and submit a report with recommendations to the education committees of the legislature by December 1, 2013. The task force shall also explore the potential use of advance online youth emotional health and crisis response systems that have been developed for use in other countries. The task force must include the results of the review in its December 1st report.

**NEW SECTION. Sec. 8.** (1) The legislature finds that a lack of information about mental health problems among the general public leads to stigmatizing attitudes and prevents people from seeking help early and seeking the best sort of help. It also prevents people from providing support to family members, friends, and colleagues because they might not know what to do. This lack of knowledge about mental health problems limits the initial accessibility of evidence-based treatments and leads to a lack of support for people with a mental disorder from family, friends, and other members of the community.

(2) The focus on training for teachers and educational staff is intended to provide opportunities for early intervention when the first signs of developing mental illness may be recognized in children, teens, and young adults, so that appropriate referrals may be made to evidence-based behavioral health services.

**NEW SECTION. Sec. 9.** A new section is added to chapter 71.24 RCW to read as follows:

Subject to appropriation for this specific purpose, the department shall provide funds for mental health first-aid training targeted at teachers and educational staff. The training will follow the model developed by the department of psychology in Melbourne, Australia. Instruction provided will describe common mental disorders that arise in youth, their possible causes and risk factors, the availability of evidence-based medical, psychological, and alternative treatments, processes for making referrals for behavioral health services, and methods to effectively render assistance in both initial intervention and crisis situations. The department shall collaborate with the office of the superintendent of public instruction to identify sites and methods of instruction that leverage local resources to the extent possible for the purpose of making the mental health first-aid training broadly available.

**NEW SECTION. Sec. 10.** This act does not create any civil liability on the part of the state or any state agency, officer, employee, agent, political subdivision, or school district.

Passed by the House April 22, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 198

[Engrossed House Bill 1493]

## MOBILE HOMES—PROPERTY TAXATION

AN ACT Relating to the property taxation of mobile homes and park model trailers; amending RCW 46.44.170; and adding a new section to chapter 84.56 RCW.

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

**NEW SECTION, Sec. 1.** A new section is added to chapter 84.56 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, if the landlord of a manufactured/mobile home park takes ownership of a manufactured/mobile home or park model trailer with the intent to resell or rent the same after (a) the manufactured/mobile home or park model trailer has been abandoned; or (b) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the manufactured/mobile home or park model trailer and title has been lawfully transferred to the landlord, the outstanding taxes become the responsibility of the landlord. After the outstanding taxes, interest, and penalties are removed from the tax rolls under subsection (2) of this section, all future taxes are the responsibility of the owner of the manufactured/mobile home or park model trailer.

(2) Upon notification by the assessor, the county treasurer must remove from the tax rolls any outstanding taxes, as well as interest and penalties, on a manufactured/mobile home or park model trailer if the landlord of a manufactured/mobile home park:

(a) Submits a signed affidavit to the assessor indicating that the landlord has taken ownership of the manufactured/mobile home or park model trailer with the intent to resell or rent after: (i) The manufactured/mobile home or park model trailer has been abandoned; or (ii) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the manufactured/mobile home or park model trailer and title has been lawfully transferred to the landlord; and

(b) The most current assessed value of the manufactured/mobile home or park model trailer is less than eight thousand dollars.

(3) For the purposes of this section, "abandoned," "manufactured/mobile home," and "park model" have the same meanings as provided in RCW 59.20.030.

**Sec. 2.** RCW 46.44.170 and 2010 c 161 s 1118 are each amended to read as follows:

(1) Any person moving a mobile home as defined in RCW 46.04.302 or a park model trailer as defined in RCW 46.04.622 upon public highways of the state must obtain:

(a) A special permit from the department of transportation and local authorities pursuant to RCW 46.44.090 and 46.44.093 and (~~shall~~) must pay the proper fee as prescribed by RCW 46.44.0941 and 46.44.096; and

(b) For mobile homes constructed before June 15, 1976, and already situated in the state: (i) A certification from the department of labor and industries that the mobile home was inspected for fire safety; or (ii) an affidavit in the form prescribed by the department of commerce signed by the owner at the county treasurer's office at the time of the application for the movement

permit stating that the mobile home is being moved by the owner for his or her continued occupation or use; or (iii) a copy of the certificate of title together with an affidavit signed under penalty of perjury by the certified owner stating that the mobile home is being transferred to a wrecking yard or similar facility for disposal. In addition, the destroyed mobile home must be removed from the assessment rolls of the county and any outstanding taxes on the destroyed mobile home must be removed by the county treasurer.

(2) A special permit issued as provided in subsection (1) of this section for the movement of any mobile home or a park model trailer that is assessed for purposes of property taxes (~~(shall)~~ is not (~~(be)~~) valid until the county treasurer of the county in which the mobile home or park model trailer is located (~~(shall)~~) must endorse or attach his or her certificate that all property taxes which are a lien or which are delinquent, or both, upon the mobile home or park model trailer being moved have been satisfied. Further, any mobile home or park model trailer required to have a special movement permit under this section (~~(shall)~~) must display an easily recognizable decal. However, endorsement or certification by the county treasurer and the display of the decal is not required:

(a) When a mobile home or park model trailer is to enter the state or is being moved from a manufacturer or distributor to a retail sales outlet or directly to the purchaser's designated location or between retail and sales outlets;

(b) When a signed affidavit of destruction is filed with the county assessor and the mobile home or park model trailer is being moved to a disposal site by a landlord as defined in RCW 59.20.030 after (i) the mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (ii) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the mobile home or park model trailer and title has been lawfully transferred to the landlord. The mobile home or park model trailer will be removed from the tax rolls and, upon notification by the assessor, any outstanding taxes on the destroyed mobile home or park model trailer will be removed by the county treasurer; or

(c) When a signed affidavit of destruction is filed with the county assessor by any mobile home or park model trailer owner or any property owner with an abandoned mobile home or park model trailer, the same (~~(shall)~~) must be removed from the tax rolls and upon notification by the assessor, any outstanding taxes on the destroyed mobile home or park model trailer (~~(shall)~~) must be removed by the county treasurer.

(3) Except as provided in section 1(1) of this act, if the landlord of a manufactured/mobile home park takes ownership of a manufactured/mobile home or park model trailer with the intent to resell or rent the same under RCW 59.20.030 after (a) the manufactured/mobile home or park model trailer has been abandoned as defined in RCW 59.20.030; or (b) a final judgment for restitution of the premises under RCW 59.18.410 has been executed in favor of the landlord with regard to the manufactured/mobile home or park model trailer and title has been lawfully transferred to the landlord, the outstanding taxes become the responsibility of the landlord.

(4) It is the responsibility of the owner of the mobile home or park model trailer subject to property taxes or the agent to obtain the endorsement and decal from the county treasurer before a mobile home or park model trailer is moved.

(5) This section does not prohibit the issuance of vehicle license plates for a mobile home or park model trailer subject to property taxes, but plates ~~((shall))~~ may not be issued unless the mobile home or park model trailer subject to property taxes for which plates are sought has been listed for property tax purposes in the county in which it is principally located and the appropriate fee for the license has been paid.

(6) The department of transportation, the department of labor and industries, and local authorities are authorized to adopt reasonable rules for implementing the provisions of this section. The department of transportation ~~((shall))~~ must adopt rules specifying the design, reflective characteristics, annual coloration, and for the uniform implementation of the decal required by this section. The department of labor and industries ~~((shall))~~ must adopt procedures for notifying destination local jurisdictions concerning the arrival of mobile homes that failed safety inspections.

Passed by the House April 22, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 199

[House Bill 1644]

### TRANSPORTATION PLANNING—OBJECTIVES AND PERFORMANCE MEASURES

AN ACT Relating to transportation planning objectives and performance measures for local and regional agencies; and amending RCW 47.04.280.

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

**Sec. 1.** RCW 47.04.280 and 2010 c 74 s 1 are each amended to read as follows:

(1) It is the intent of the legislature to establish policy goals for the planning, operation, performance of, and investment in, the state's transportation system. The policy goals established under this section are deemed consistent with the benchmark categories adopted by the state's blue ribbon commission on transportation on November 30, 2000. Public investments in transportation should support achievement of these policy goals:

(a) Economic vitality: To promote and develop transportation systems that stimulate, support, and enhance the movement of people and goods to ensure a prosperous economy;

(b) Preservation: To maintain, preserve, and extend the life and utility of prior investments in transportation systems and services;

(c) Safety: To provide for and improve the safety and security of transportation customers and the transportation system;

(d) Mobility: To improve the predictable movement of goods and people throughout Washington state;

(e) Environment: To enhance Washington's quality of life through transportation investments that promote energy conservation, enhance healthy communities, and protect the environment; and



(f) Stewardship: To continuously improve the quality, effectiveness, and efficiency of the transportation system.

(2) The powers, duties, and functions of state transportation agencies must be performed in a manner consistent with the policy goals set forth in subsection (1) of this section.

(3) These policy goals are intended to be the basis for establishing detailed and measurable objectives and related performance measures.

(4) It is the intent of the legislature that the office of financial management establish objectives and performance measures for the department of transportation and other state agencies with transportation-related responsibilities to ensure transportation system performance at local, regional, and state government levels progresses toward the attainment of the policy goals set forth in subsection (1) of this section. The office of financial management shall submit initial objectives and performance measures to the legislature for its review and shall provide copies of the same to the commission during the 2008 legislative session. The office of financial management shall submit objectives and performance measures to the legislature for its review and shall provide copies of the same to the commission during each regular session of the legislature during an even-numbered year thereafter.

(5) A local or regional agency engaging in transportation planning may voluntarily establish objectives and performance measures to demonstrate progress toward the attainment of the policy goals set forth in subsection (1) of this section or any other transportation policy goals established by the local or regional agency. A local or regional agency engaging in transportation planning is encouraged to provide local and regional objectives and performance measures to be included with the objectives and performance measures submitted to the legislature pursuant to subsection (4) of this section.

(6) This section does not create a private right of action.

Passed by the House March 9, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

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## CHAPTER 200

[Engrossed Substitute House Bill 1679]

### HEALTH CARE INFORMATION—DISCLOSURE

AN ACT Relating to disclosure of health care information; amending RCW 70.02.010, 70.02.020, 70.02.050, 70.02.900, 71.05.660, 71.05.680, 71.05.620, 71.24.035, 43.185C.030, 70.05.070, 70.24.450, 74.13.280, 74.13.289, 71.05.425, 71.05.445, 72.09.585, and 9.94A.500; adding new sections to chapter 70.02 RCW; repealing RCW 70.24.105, 71.05.390, 71.05.640, 71.05.385, 71.05.420, 71.05.440, 71.05.427, 71.05.630, 71.05.690, 71.34.340, 71.34.345, and 71.34.350; prescribing penalties; providing an effective date; and declaring an emergency.

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

**Sec. 1.** RCW 70.02.010 and 2006 c 235 s 2 are each amended to read as follows:

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

(1) "Admission" has the same meaning as in RCW 71.05.020.

(2) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider to determine compliance with:

- (a) Statutory, regulatory, fiscal, medical, or scientific standards;
- (b) A private or public program of payments to a health care provider; or
- (c) Requirements for licensing, accreditation, or certification.

~~((2))~~ (3) "Commitment" has the same meaning as in RCW 71.05.020.

(4) "Custody" has the same meaning as in RCW 71.05.020.

(5) "Deidentified" means health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual.

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

(7) "Designated mental health professional" has the same meaning as in RCW 71.05.020 or 71.34.020, as applicable.

(8) "Detention" or "detain" has the same meaning as in RCW 71.05.020.

(9) "Directory information" means information disclosing the presence, and for the purpose of identification, the name, location within a health care facility, and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

~~((3))~~ (10) "Discharge" has the same meaning as in RCW 71.05.020.

(11) "Evaluation and treatment facility" has the same meaning as in RCW 71.05.020 or 71.34.020, as applicable.

(12) "Federal, state, or local law enforcement authorities" means an officer of any agency or authority in the United States, a state, a tribe, a territory, or a political subdivision of a state, a tribe, or a territory who is empowered by law to: (a) Investigate or conduct an official inquiry into a potential criminal violation of law; or (b) prosecute or otherwise conduct a criminal proceeding arising from an alleged violation of law.

~~((4))~~ (13) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

~~((5))~~ (14) "Health care" means any care, service, or procedure provided by a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or any function of the human body.

~~((6))~~ (15) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

~~((7))~~ (16) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any required accounting of disclosures of health care information.

~~((8))~~ (17) "Health care operations" means any of the following activities of a health care provider, health care facility, or third-party payor to the extent that

the activities are related to functions that make an entity a health care provider, a health care facility, or a third-party payor:

(a) Conducting: Quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, if the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment;

(b) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance and third-party payor performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of nonhealth care professionals, accreditation, certification, licensing, or credentialing activities;

(c) Underwriting, premium rating, and other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care, including stop-loss insurance and excess of loss insurance, if any applicable legal requirements are met;

(d) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs;

(e) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the health care facility or third-party payor, including formulary development and administration, development, or improvement of methods of payment or coverage policies; and

(f) Business management and general administrative activities of the health care facility, health care provider, or third-party payor including, but not limited to:

(i) Management activities relating to implementation of and compliance with the requirements of this chapter;

(ii) Customer service, including the provision of data analyses for policy holders, plan sponsors, or other customers, provided that health care information is not disclosed to such policy holder, plan sponsor, or customer;

(iii) Resolution of internal grievances;

(iv) The sale, transfer, merger, or consolidation of all or part of a health care provider, health care facility, or third-party payor with another health care provider, health care facility, or third-party payor or an entity that following such activity will become a health care provider, health care facility, or third-party payor, and due diligence related to such activity; and

(v) Consistent with applicable legal requirements, creating deidentified health care information or a limited dataset (~~(and fund-raising)~~) for the benefit of the health care provider, health care facility, or third-party payor.

~~((9))~~ (18) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

~~((10))~~ (19) "Human immunodeficiency virus" or "HIV" has the same meaning as in RCW 70.24.017.

(20) "Imminent" has the same meaning as in RCW 71.05.020.

(21) "Information and records related to mental health services" means a type of health care information that relates to all information and records, including mental health treatment records, compiled, obtained, or maintained in the course of providing services by a mental health service agency, as defined in this section. This may include documents of legal proceedings under chapter 71.05, 71.34, or 10.77 RCW, or somatic health care information. For health care information maintained by a hospital as defined in RCW 70.41.020 or a health care facility or health care provider that participates with a hospital in an organized health care arrangement defined under federal law, "information and records related to mental health services" is limited to information and records of services provided by a mental health professional or information and records of services created by a hospital-operated community mental health program as defined in RCW 71.24.025(6).

(22) "Information and records related to sexually transmitted diseases" means a type of health care information that relates to the identity of any person upon whom an HIV antibody test or other sexually transmitted infection test is performed, the results of such tests, and any information relating to diagnosis of or treatment for any confirmed sexually transmitted infections.

(23) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

~~((44))~~ (24) "Legal counsel" has the same meaning as in RCW 71.05.020.

(25) "Local public health officer" has the same meaning as in RCW 70.24.017.

(26) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

~~((42))~~ (27) "Mental health professional" has the same meaning as in RCW 71.05.020.

(28) "Mental health service agency" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.05.020 or 71.34.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.34.020, community mental health service delivery systems, or community mental health programs, as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(29) "Mental health treatment records" include registration records, as defined in RCW 71.05.020, and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staff, and by treatment facilities. "Mental health treatment records" include mental health information contained in a medical bill including, but not limited to, mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. "Mental health treatment records" do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(30) "Minor" has the same meaning as in RCW 71.34.020.

(31) "Parent" has the same meaning as in RCW 71.34.020.

(32) "Patient" means an individual who receives or has received health care.  
The term includes a deceased individual who has received health care.

~~((13))~~ (33) "Payment" means:

(a) The activities undertaken by:

(i) A third-party payor to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits by the third-party payor; or

(ii) A health care provider, health care facility, or third-party payor, to obtain or provide reimbursement for the provision of health care; and

(b) The activities in (a) of this subsection that relate to the patient to whom health care is provided and that include, but are not limited to:

(i) Determinations of eligibility or coverage, including coordination of benefits or the determination of cost-sharing amounts, and adjudication or subrogation of health benefit claims;

(ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics;

(iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance, including stop-loss insurance and excess of loss insurance, and related health care data processing;

(iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges;

(v) Utilization review activities, including precertification and preauthorization of services, and concurrent and retrospective review of services; and

(vi) Disclosure to consumer reporting agencies of any of the following health care information relating to collection of premiums or reimbursement:

(A) Name and address;

(B) Date of birth;

(C) Social security number;

(D) Payment history;

(E) Account number; and

(F) Name and address of the health care provider, health care facility, and/or third-party payor.

~~((14))~~ (34) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

~~((15))~~ (35) "Professional person" has the same meaning as in RCW 71.05.020.

(36) "Psychiatric advanced registered nurse practitioner" has the same meaning as in RCW 71.05.020.

(37) "Reasonable fee" means the charges for duplicating or searching the record, but shall not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars. These amounts shall be adjusted biennially in accordance with changes in the consumer price index, all consumers, for Seattle-Tacoma metropolitan statistical area as determined by the secretary of health. However, where editing of records by a health care

provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit.

~~((46))~~ (38) "Release" has the same meaning as in RCW 71.05.020.

(39) "Resource management services" has the same meaning as in RCW 71.05.020.

(40) "Serious violent offense" has the same meaning as in RCW 71.05.020.

(41) "Sexually transmitted infection" or "sexually transmitted disease" has the same meaning as "sexually transmitted disease" in RCW 70.24.017.

(42) "Test for a sexually transmitted disease" has the same meaning as in RCW 70.24.017.

(43) "Third-party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction, including a health care service contractor, and health maintenance organization; or an employee welfare benefit plan, excluding fitness or wellness plans; or a state or federal health benefit program.

~~((47))~~ (44) "Treatment" means the provision, coordination, or management of health care and related services by one or more health care providers or health care facilities, including the coordination or management of health care by a health care provider or health care facility with a third party; consultation between health care providers or health care facilities relating to a patient; or the referral of a patient for health care from one health care provider or health care facility to another.

**Sec. 2.** RCW 70.02.020 and 2005 c 468 s 2 are each amended to read as follows:

**DISCLOSURE BY HEALTH CARE PROVIDER—PATIENT WRITTEN AUTHORIZATION REQUIRED.** (1) Except as authorized (~~in RCW 70.02.050~~) elsewhere in this chapter, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A patient has a right to receive an accounting of all disclosures of mental health treatment records except disclosures made under RCW 71.05.425.

(3) A patient has a right to receive an accounting of disclosures of health care information, except for mental health treatment records which are addressed in subsection (2) of this section, made by a health care provider or a health care facility in the six years before the date on which the accounting is requested, except for disclosures:

- (a) To carry out treatment, payment, and health care operations;
- (b) To the patient of health care information about him or her;
- (c) Incident to a use or disclosure that is otherwise permitted or required;
- (d) Pursuant to an authorization where the patient authorized the disclosure of health care information about himself or herself;
- (e) Of directory information;
- (f) To persons involved in the patient's care;
- (g) For national security or intelligence purposes if an accounting of disclosures is not permitted by law;

(h) To correctional institutions or law enforcement officials if an accounting of disclosures is not permitted by law; and

(i) Of a limited data set that excludes direct identifiers of the patient or of relatives, employers, or household members of the patient.

**Sec. 3.** RCW 70.02.050 and 2007 c 156 s 12 are each amended to read as follows:

**DISCLOSURE WITHOUT PATIENT'S AUTHORIZATION—NEED-TO-KNOW BASIS.** (1) A health care provider or health care facility may disclose health care information, except for information and records related to sexually transmitted diseases which are addressed in section 6 of this act, about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider or facility reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, actuarial services to, or other health care operations for or on behalf of the health care provider or health care facility; or for assisting the health care provider or health care facility in the delivery of health care and the health care provider or health care facility reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

~~(c) ((To any other health care provider or health care facility reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;~~

~~(d))~~ To any person if the health care provider or health care facility reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this chapter on the part of the provider or facility to so disclose. The fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies is not subject to disclosure unless disclosure is permitted in section 7 of this act;

~~((e) To immediate family members of the patient, including a patient's state registered domestic partner, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;~~

~~(f) To a health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;~~

~~(g) For use in a research project that an institutional review board has determined;~~

~~(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;~~

~~(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;~~

~~(iii) Contains reasonable safeguards to protect the information from redisclosure;~~

~~(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and~~

~~(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;~~

~~(h) To a person who obtains information for purposes of an audit, if that person agrees in writing to:~~

~~(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and~~

~~(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;~~

~~(i)) (d) To an official of a penal or other custodial institution in which the patient is detained;~~

~~((j) To provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;~~

~~(k) To fire, police, sheriff, or another public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted;~~

~~(l) To federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor;~~

~~(m) To another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in RCW 70.02.010(8) (a) and (b);)) or~~

~~((n)) (e) For payment, including information necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.~~

(2) A health care provider shall disclose health care information, except for information and records related to sexually transmitted diseases, unless



otherwise authorized in section 6 of this act, about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws, or to investigate unprofessional conduct or ability to practice with reasonable skill and safety under chapter 18.130 RCW. Any health care information obtained under this subsection is exempt from public inspection and copying pursuant to chapter 42.56 RCW; or

~~(b) When needed to protect the public health((;~~

~~(b) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;~~

~~(c) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:~~

~~(i) The name of the patient;~~

~~(ii) The patient's residence;~~

~~(iii) The patient's sex;~~

~~(iv) The patient's age;~~

~~(v) The patient's condition;~~

~~(vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;~~

~~(vii) Whether the patient was conscious when admitted;~~

~~(viii) The name of the health care provider making the determination in (e)(v), (vi), and (vii) of this subsection;~~

~~(ix) Whether the patient has been transferred to another facility; and~~

~~(x) The patient's discharge time and date;~~

~~(d) To county coroners and medical examiners for the investigations of deaths;~~

~~(e) Pursuant to compulsory process in accordance with RCW 70.02.060.~~

~~(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter)).~~

**NEW SECTION. Sec. 4.** A new section is added to chapter 70.02 RCW to read as follows:

**DISCLOSURE WITHOUT PATIENT'S AUTHORIZATION—PERMITTED AND MANDATORY DISCLOSURES.** (1) In addition to the disclosures authorized by RCW 70.02.050 and section 5 of this act, a health care provider or health care facility may disclose health care information, except for information and records related to sexually transmitted diseases and information related to mental health services which are addressed by sections 6 through 10 of this act, about a patient without the patient's authorization, to:

(a) Any other health care provider or health care facility reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(b) Immediate family members of the patient, including a patient's state registered domestic partner, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider or health care facility in writing not to make the disclosure;

(c) A health care provider or health care facility who is the successor in interest to the health care provider or health care facility maintaining the health care information;

(d) A person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(e) Provide directory information, unless the patient has instructed the health care provider or health care facility not to make the disclosure;

(f) Fire, police, sheriff, or other public authority, that brought, or caused to be brought, the patient to the health care facility or health care provider if the disclosure is limited to the patient's name, residence, sex, age, occupation, condition, diagnosis, estimated or actual discharge date, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted;

(g) Federal, state, or local law enforcement authorities and the health care provider, health care facility, or third-party payor believes in good faith that the health care information disclosed constitutes evidence of criminal conduct that occurred on the premises of the health care provider, health care facility, or third-party payor; and

(h) Another health care provider, health care facility, or third-party payor for the health care operations of the health care provider, health care facility, or third-party payor that receives the information, if each entity has or had a relationship with the patient who is the subject of the health care information being requested, the health care information pertains to such relationship, and the disclosure is for the purposes described in RCW 70.02.010(17) (a) and (b).

(2) In addition to the disclosures required by RCW 70.02.050 and section 5 of this act, a health care provider shall disclose health care information, except for information related to sexually transmitted diseases and information related to mental health services which are addressed by sections 6 through 10 of this act, about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(b) To federal, state, or local law enforcement authorities, upon receipt of a written or oral request made to a nursing supervisor, administrator, or designated privacy official, in a case in which the patient is being treated or has been treated

for a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm, or an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person, or a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act, the following information, if known:

- (i) The name of the patient;
  - (ii) The patient's residence;
  - (iii) The patient's sex;
  - (iv) The patient's age;
  - (v) The patient's condition;
  - (vi) The patient's diagnosis, or extent and location of injuries as determined by a health care provider;
  - (vii) Whether the patient was conscious when admitted;
  - (viii) The name of the health care provider making the determination in (b)(v), (vi), and (vii) of this subsection;
  - (ix) Whether the patient has been transferred to another facility; and
  - (x) The patient's discharge time and date;
- (c) Pursuant to compulsory process in accordance with RCW 70.02.060.

**NEW SECTION. Sec. 5.** A new section is added to chapter 70.02 RCW to read as follows:

**DISCLOSURE WITHOUT PATIENT'S AUTHORIZATION—RESEARCH.** (1) A health care provider or health care facility may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is for use in a research project that an institutional review board has determined:

- (a) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;
- (b) Is impracticable without the use or disclosure of the health care information in individually identifiable form;
- (c) Contains reasonable safeguards to protect the information from redisclosure;
- (d) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and
- (e) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project.

(2) In addition to the disclosures required by RCW 70.02.050 and section 4 of this act, a health care provider or health care facility shall disclose health care information about a patient without the patient's authorization if:

- (a) The disclosure is to county coroners and medical examiners for the investigations of deaths;
- (b) The disclosure is to a procurement organization or person to whom a body part passes for the purpose of examination necessary to assure the medical suitability of the body part; or
- (c) The disclosure is to a person subject to the jurisdiction of the federal food and drug administration in regards to a food and drug administration-

regulated product or activity for which that person has responsibility for quality, safety, or effectiveness of activities.

**NEW SECTION, Sec. 6.** A new section is added to chapter 70.02 RCW to read as follows:

**SEXUALLY TRANSMITTED DISEASES—PERMITTED AND MANDATORY DISCLOSURES.** (1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this section, section 5 of this act, or chapter 70.24 RCW.

(2) No person may disclose or be compelled to disclose information and records related to sexually transmitted diseases, except as authorized by this section, section 5 of this act, or chapter 70.24 RCW. A person may disclose information related to sexually transmitted diseases about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is to:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor fourteen years of age or over and otherwise competent;

(b) The state public health officer as defined in RCW 70.24.017, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(c) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that was provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(d) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, so long as the record was obtained by means of court-ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(e) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure must: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services;

(f) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(g) A law enforcement officer, firefighter, health care provider, health care facility staff person, department of correction's staff person, jail staff person, or other persons as defined by the board of health in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test;

(h) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsection must be confidential and may not be released or available to persons who are not involved in handling or determining medical claims payment; and

(i) A department of social and health services worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of social and health services or a licensed child placing agency. This information may also be received by a person responsible for providing residential care for such a child when the department of social and health services or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender or detained person, except as provided in subsection (2)(d) of this section, is governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 must be made available by department of corrections health care providers and local public health officers to the department of corrections health care administrator or infection control coordinator of the facility in which the offender is housed. The information made available to the health care administrator or the infection control coordinator under this subsection (4)(a) may be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of corrections' jurisdiction according to the provisions of (d) and (e) of this subsection.

(b) The sexually transmitted disease status of a person detained in a jail who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 must be made available by the local public health officer to a jail health care administrator or infection control coordinator. The information made available to a health care administrator under this subsection (4)(b) may be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, detainees, and the public. The information may

be submitted to transporting officers and receiving facilities according to the provisions of (d) and (e) of this subsection.

(c) Information regarding the sexually transmitted disease status of an offender or detained person is confidential and may be disclosed by a correctional health care administrator or infection control coordinator or local jail health care administrator or infection control coordinator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080 or any other penalties as may be prescribed by law.

(d) Notwithstanding the limitations on disclosure contained in (a), (b), and (c) of this subsection, whenever any member of a jail staff or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370, must be immediately disclosed to the staff person in accordance with the Washington Administrative Code rules governing employees' occupational exposure to bloodborne pathogens. Disclosure must be accompanied by appropriate counseling for the staff member, including information regarding follow-up testing and treatment. Disclosure must also include notice that subsequent disclosure of the information in violation of this chapter or use of the information to harass or discriminate against the offender or detainee may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080, and imposition of other penalties prescribed by law.

(e) The staff member must also be informed whether the offender or detained person had any other communicable disease, as defined in RCW 72.09.251(3), when the staff person was substantially exposed to the offender's or detainee's bodily fluids.

(f) The test results of voluntary and anonymous HIV testing or HIV-related condition, as defined in RCW 70.24.017, may not be disclosed to a staff person except as provided in this section and RCW 70.02.050(1)(e) and 70.24.340(4). A health care administrator or infection control coordinator may provide the staff member with information about how to obtain the offender's or detainee's test results under this section and RCW 70.02.050(1)(e) and 70.24.340(4).

(5) The requirements of this section do not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor do they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(6) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW must be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. The disclosure must be accompanied by appropriate counseling, including information regarding follow-up testing.

(7) A person, including a health care facility or health care provider, shall disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease and information and records related to sexually transmitted diseases to federal, state, or local

public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal certification or registration rules or laws; or when needed to protect the public health. Any health care information obtained under this subsection is exempt from public inspection and copying pursuant to chapter 42.56 RCW.

**NEW SECTION. Sec. 7.** A new section is added to chapter 70.02 RCW to read as follows:

**MENTAL HEALTH SERVICES, CONFIDENTIALITY OF RECORDS—PERMITTED DISCLOSURES.** (1) Except as provided in this section, RCW 70.02.050, 71.05.445, 70.96A.150, 74.09.295, sections 5, 8, 9, and 10 of this act, or pursuant to a valid authorization under RCW 70.02.030, the fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies must be confidential.

(2) Information and records related to mental health services, other than those obtained through treatment under chapter 71.34 RCW, may be disclosed only:

(a) In communications between qualified professional persons to meet the requirements of chapter 71.05 RCW, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

(i) Employed by the facility;

(ii) Who has medical responsibility for the patient's care;

(iii) Who is a designated mental health professional;

(iv) Who is providing services under chapter 71.24 RCW;

(v) Who is employed by a state or local correctional facility where the person is confined or supervised; or

(vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW;

(b) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside;

(c)(i) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such a designation;

(ii) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(A) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(B) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator;

(d)(i) To the courts as necessary to the administration of chapter 71.05 RCW or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

(ii) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(iii) Disclosure under this subsection is mandatory for the purpose of the federal health insurance portability and accountability act;

(e)(i) When a mental health professional is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. The written report must be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(f) To the attorney of the detained person;

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information must be disclosed only after giving notice to the committed person and the person's counsel;

(h)(i) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(i)(i) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not so long as the decision was reached in good faith and without gross negligence.



(ii) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act;

(j) To the persons designated in RCW 71.05.425 for the purposes described in those sections;

(k) Upon the death of a person. The person's next of kin, personal representative, guardian, or conservator, if any, must be notified. Next of kin who are of legal age and competent must be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient are governed by RCW 70.02.140;

(l) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient;

(m) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(ii) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(iii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(n) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

(o) Pursuant to lawful order of a court;

(p) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility;

(q) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;

(r) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department;

(s) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information contained in the mental health treatment records could be injurious to the patient's health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

(t) Consistent with the requirements of the federal health information portability and accountability act, to a licensed mental health professional or a health care professional licensed under chapter 18.71, 18.71A, 18.57, 18.57A, 18.79, or 18.36A RCW who is providing care to a person, or to whom a person has been referred for evaluation or treatment, to assure coordinated care and treatment of that person. Psychotherapy notes, as defined in 45 C.F.R. Sec. 164.501, may not be released without authorization of the person who is the subject of the request for release of information;

(u) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in (t) of this subsection;

(v) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one treatment facility to another. The release of records under this subsection is limited to the mental health treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record;

(w) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW;

(x) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information must notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

(y) To all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department may release without

written authorization of the patient, information acquired for billing and collection purposes as described in RCW 70.02.050(1)(e). The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department may not release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

(z)(i) To the secretary of social and health services for either program evaluation or research, or both so long as the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ . . . . ."

(ii) Nothing in this chapter may be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations.

(4) Civil liability and immunity for the release of information about a particular person who is committed to the department of social and health services under RCW 71.05.280(3) and 71.05.320(3)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter 71.05 RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in section 10 of this act, in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(3)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to chapter 71.05 RCW must be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if

the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

(6)(a) Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this section, for the greater of the following amounts:

(i) One thousand dollars; or

(ii) Three times the amount of actual damages sustained, if any.

(b) It is not a prerequisite to recovery under this subsection that the plaintiff suffered or was threatened with special, as contrasted with general, damages.

(c) Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this section, and may in the same action seek damages as provided in this subsection.

(d) The court may award to the plaintiff, should he or she prevail in any action authorized by this subsection, reasonable attorney fees in addition to those otherwise provided by law.

(e) If an action is brought under this subsection, no action may be brought under RCW 70.02.170.

**NEW SECTION. Sec. 8.** A new section is added to chapter 70.02 RCW to read as follows:

**MENTAL HEALTH SERVICES—MINORS—PERMITTED DISCLOSURES.** The fact of admission and all information and records related to mental health services obtained through treatment under chapter 71.34 RCW is confidential, except as authorized in RCW 70.02.050 and sections 5, 7, 9, and 10 of this act. Such confidential information may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of chapter 71.34 RCW, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To the minor, the minor's parent, and the minor's attorney, subject to RCW 13.50.100;

(4) To the courts as necessary to administer chapter 71.34 RCW;

(5) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address must be disclosed upon request;

(6) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(7) To the secretary of social and health services for assistance in data collection and program evaluation or research so long as the secretary adopts rules for the conduct of such evaluation and research. The rules must include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/ . . . . .";

(8) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

(9) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

(10) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(11) Upon the death of a minor, to the minor's next of kin;

(12) To a facility in which the minor resides or will reside;

(13) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(14) This section may not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth

by the secretary of the department of social and health services. The fact of admission and all information obtained pursuant to chapter 71.34 RCW are not admissible as evidence in any legal proceeding outside chapter 71.34 RCW, except guardianship or dependency, without the written consent of the minor or the minor's parent;

(15) For the purpose of a correctional facility participating in the postinstitutional medical assistance system supporting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555 and 74.09.295;

(16) Pursuant to a lawful order of a court.

NEW SECTION. Sec. 9. A new section is added to chapter 70.02 RCW to read as follows:

**MENTAL HEALTH SERVICES—DEPARTMENT OF CORRECTIONS.**

(1) Information and records related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW must be released, upon request, by a mental health service agency to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request must be in writing and may not require the consent of the subject of the records.

(2) The information to be released to the department of corrections must include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (1) of this section.

(3) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service agencies that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments.

(4) The department and the department of corrections, in consultation with regional support networks, mental health service agencies as defined in RCW 70.02.010, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules must:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(5) The information received by the department of corrections under this section must remain confidential and subject to the limitations on disclosure outlined in chapter 71.34 RCW, except as provided in RCW 72.09.585.

(6) No mental health service agency or individual employed by a mental health service agency may be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under this chapter.

**NEW SECTION. Sec. 10.** A new section is added to chapter 70.02 RCW to read as follows:

**MENTAL HEALTH SERVICES—REQUESTS FOR INFORMATION AND RECORDS.** (1)(a) A mental health service agency shall release to the persons authorized under subsection (2) of this section, upon request:

(i) The fact, place, and date of an involuntary commitment, the fact and date of discharge or release, and the last known address of a person who has been committed under chapter 71.05 RCW.

(ii) Information and records related to mental health services, in the format determined under subsection (9) of this section, concerning a person who:

(A) Is currently committed to the custody or supervision of the department of corrections or the indeterminate sentence review board under chapter 9.94A or 9.95 RCW;

(B) Has been convicted or found not guilty by reason of insanity of a serious violent offense; or

(C) Was charged with a serious violent offense and the charges were dismissed under RCW 10.77.086.

(b) Legal counsel may release such information to the persons authorized under subsection (2) of this section on behalf of the mental health service agency, so long as nothing in this subsection requires the disclosure of attorney work product or attorney-client privileged information.

(2) The information subject to release under subsection (1) of this section must be released to law enforcement officers, personnel of a county or city jail, designated mental health professionals, public health officers, therapeutic court personnel as defined in RCW 71.05.020, or personnel of the department of corrections, including the indeterminate sentence review board and personnel assigned to perform board-related duties, when such information is requested during the course of business and for the purpose of carrying out the responsibilities of the requesting person's office. No mental health service agency or person employed by a mental health service agency, or its legal counsel, may be liable for information released to or used under the provisions of this section or rules adopted under this section except under RCW 71.05.680.

(3) A person who requests information under subsection (1)(a)(ii) of this section must comply with the following restrictions:

(a) Information must be requested only for the purposes permitted by this subsection and for the purpose of carrying out the responsibilities of the requesting person's office. Appropriate purposes for requesting information under this section include:

(i) Completing presentence investigations or risk assessment reports;

- (ii) Assessing a person's risk to the community;
- (iii) Assessing a person's risk of harm to self or others when confined in a city or county jail;
- (iv) Planning for and provision of supervision of an offender, including decisions related to sanctions for violations of conditions of community supervision; and
- (v) Responding to an offender's failure to report for department of corrections supervision;

(b) Information may not be requested under this section unless the requesting person has reasonable suspicion that the individual who is the subject of the information:

(i) Has engaged in activity indicating that a crime or a violation of community custody or parole has been committed or, based upon his or her current or recent past behavior, is likely to be committed in the near future; or

(ii) Is exhibiting signs of a deterioration in mental functioning which may make the individual appropriate for civil commitment under chapter 71.05 RCW; and

(c) Any information received under this section must be held confidential and subject to the limitations on disclosure outlined in this chapter, except:

(i) The information may be shared with other persons who have the right to request similar information under subsection (2) of this section, solely for the purpose of coordinating activities related to the individual who is the subject of the information in a manner consistent with the official responsibilities of the persons involved;

(ii) The information may be shared with a prosecuting attorney acting in an advisory capacity for a person who receives information under this section. A prosecuting attorney under this subsection is subject to the same restrictions and confidentiality limitations as the person who requested the information; and

(iii) As provided in RCW 72.09.585.

(4) A request for information and records related to mental health services under this section does not require the consent of the subject of the records. The request must be provided in writing, except to the extent authorized in subsection (5) of this section. A written request may include requests made by e-mail or facsimile so long as the requesting person is clearly identified. The request must specify the information being requested.

(5) In the event of an emergency situation that poses a significant risk to the public or the offender, a mental health service agency, or its legal counsel, shall release information related to mental health services delivered to the offender and, if known, information regarding where the offender is likely to be found to the department of corrections or law enforcement upon request. The initial request may be written or oral. All oral requests must be subsequently confirmed in writing. Information released in response to an oral request is limited to a statement as to whether the offender is or is not being treated by the mental health service agency and the address or information about the location or whereabouts of the offender.

(6) Disclosure under this section to state or local law enforcement authorities is mandatory for the purposes of the federal health insurance portability and accountability act.



(7) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(8) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under this chapter.

(9) In collaboration with interested organizations, the department shall develop a standard form for requests for information related to mental health services made under this section and a standard format for information provided in response to the requests. Consistent with the goals of the health information privacy provisions of the federal health insurance portability and accountability act, in developing the standard form for responsive information, the department shall design the form in such a way that the information disclosed is limited to the minimum necessary to serve the purpose for which the information is requested.

**NEW SECTION. Sec. 11.** A new section is added to chapter 70.02 RCW to read as follows:

**HEALTH CARE INFORMATION—USE OR DISCLOSURE PROHIBITED.** (1) No person who receives health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services, or other health care operations for or on behalf of a health care provider or health care facility, may use or disclose any health care information received from the health care provider or health care facility in any manner that is inconsistent with the duties of the health care provider or health care facility under this chapter.

(2) A health care provider or health care facility that has a contractual relationship with a person to provide services described under subsection (1) of this section must terminate the contractual relationship with the person if the health care provider or health care facility learns that the person has engaged in a pattern of activity that violates the person's duties under subsection (1) of this section, unless the person took reasonable steps to correct the breach of confidentiality or has discontinued the violating activity.

**NEW SECTION. Sec. 12.** A new section is added to chapter 70.02 RCW to read as follows:

**HEALTH CARE PROVIDERS AND FACILITIES—PROHIBITED ACTIONS.** A health care provider, health care facility, and their assistants, employees, agents, and contractors may not:

(1) Use or disclose health care information for marketing or fund-raising purposes, unless permitted by federal law;

(2) Sell health care information to a third party, except in a form that is deidentified and aggregated; or

(3) Sell health care information to a third party, except for the following purposes:

(a) Treatment or payment;

(b) Sale, transfer, merger, or consolidation of a business;

(c) Remuneration to a third party for services;

(d) Disclosures required by law;

(e) Providing access to or accounting of disclosures to an individual;

- (f) Public health purposes;
- (g) Research;
- (h) With an individual's authorization;
- (i) Where a reasonable cost-based fee is paid to prepare and transmit health information, where authority to disclose the information is provided in this chapter.

**NEW SECTION, Sec. 13.** A new section is added to chapter 70.02 RCW to read as follows:

**AGENCY RULE-MAKING REQUIREMENTS.** All state or local agencies obtaining patient health care information pursuant to RCW 70.02.050 and sections 4 through 8 of this act that are not health care facilities or providers shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter.

**NEW SECTION, Sec. 14.** A new section is added to chapter 70.02 RCW to read as follows:

**SEXUALLY TRANSMITTED DISEASES—REQUIRED STATEMENT UPON DISCLOSURE.** Whenever disclosure is made of information and records related to sexually transmitted diseases pursuant to this chapter, except for RCW 70.02.050(1)(a) and section 6 (2) (a) and (b) and (7) of this act, it must be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written authorization of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure must be accompanied or followed by such a notice within ten days.

**NEW SECTION, Sec. 15.** A new section is added to chapter 70.02 RCW to read as follows:

**MENTAL HEALTH SERVICES—RECORDS.** (1) Resource management services shall establish procedures to provide reasonable and timely access to individual mental health treatment records. However, access may not be denied at any time to records of all medications and somatic treatments received by the person.

(2) Following discharge, a person who has received mental health services has a right to a complete record of all medications and somatic treatments prescribed during evaluation, admission, or commitment and to a copy of the discharge summary prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(3) Mental health treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information on the condition that his or her identity remain confidential. Entire documents may not be withheld to protect such confidentiality.

(4) At the time of discharge resource management services shall inform all persons who have received mental health services of their rights as provided in this chapter and RCW 71.05.620.

**NEW SECTION. Sec. 16.** A new section is added to chapter 70.02 RCW to read as follows:

**MENTAL HEALTH SERVICES—MINORS—NOTE IN RECORD UPON DISCLOSURE.** When disclosure of information and records related to mental health services pertaining to a minor, as defined in RCW 71.34.020, is made, the date and circumstances under which the disclosure was made, the name or names of the persons or agencies to whom such disclosure was made and their relationship if any, to the minor, and the information disclosed must be entered promptly in the minor's clinical record.

**NEW SECTION. Sec. 17.** A new section is added to chapter 70.02 RCW to read as follows:

**OBTAINING CONFIDENTIAL RECORDS UNDER FALSE PRETENSES—PENALTY.** Any person who requests or obtains confidential information and records related to mental health services pursuant to this chapter under false pretenses is guilty of a gross misdemeanor.

**NEW SECTION. Sec. 18.** A new section is added to chapter 70.02 RCW to read as follows:

**MENTAL HEALTH TREATMENT RECORDS—AGENCY RULE-MAKING AUTHORITY.** The department of social and health services shall adopt rules related to the disclosure of mental health treatment records in this chapter.

**NEW SECTION. Sec. 19.** A new section is added to chapter 70.02 RCW to read as follows:

**DEPARTMENT OF SOCIAL AND HEALTH SERVICES—RELEASE OF INFORMATION TO PROTECT THE PUBLIC.** In addition to any other information required to be released under this chapter, the department of social and health services is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex offense as defined in RCW 9.94A.030.

**Sec. 20.** RCW 70.02.900 and 2011 c 305 s 10 are each amended to read as follows:

**CONFLICTING LAWS.** (1) This chapter does not restrict a health care provider, a third-party payor, or an insurer regulated under Title 48 RCW from complying with obligations imposed by federal or state health care payment programs or federal or state law.

(2) This chapter does not modify the terms and conditions of disclosure under Title 51 RCW and chapters 13.50, 26.09, 70.24, 70.96A, (~~71.05, 71.34,~~) and 74.09 RCW and rules adopted under these provisions.

**Sec. 21.** RCW 71.05.660 and 2009 c 217 s 9 are each amended to read as follows:

**TREATMENT RECORDS—PRIVILEGED COMMUNICATIONS UNAFFECTED.** Nothing in this chapter or chapter 70.02, 70.96A, (~~71.05,~~) 71.34, or 70.96B RCW shall be construed to interfere with communications between physicians, psychiatric advanced registered nurse practitioners, or psychologists and patients and attorneys and clients.

**Sec. 22.** RCW 71.05.680 and 2005 c 504 s 713 are each amended to read as follows:

**TREATMENT RECORDS—ACCESS UNDER FALSE PRETENSES, PENALTY.** Any person who requests or obtains confidential information pursuant to RCW 71.05.620 (~~through 71.05.690~~) under false pretenses shall be guilty of a gross misdemeanor.

**Sec. 23.** RCW 71.05.620 and 2005 c 504 s 111 are each amended to read as follows:

**COURT FILES AND RECORDS.** (1) The files and records of court proceedings under this chapter and chapters 70.96A, 71.34, and 70.96B RCW shall be closed but shall be accessible to any person who is the subject of a petition and to the person's attorney, guardian ad litem, resource management services, or service providers authorized to receive such information by resource management services.

(2) The department shall adopt rules to implement this section.

**Sec. 24.** RCW 71.24.035 and 2011 c 148 s 4 are each amended to read as follows:

**STATE MENTAL HEALTH AUTHORITY, PROGRAM.** (1) The department is designated as the state mental health authority.

(2) The secretary shall provide for public, client, and licensed service provider participation in developing the state mental health program, developing contracts with regional support networks, and any waiver request to the federal government under medicaid.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the regional support network if the regional support network fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045, until such time as a new regional support network is designated under RCW 71.24.320.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates regional biennial needs assessments and regional mental health service plans and state services for adults and children with mental illness. The secretary shall also develop a six-year state mental health plan;

(b) Assure that any regional or county community mental health program provides access to treatment for the region's residents, including parents who are respondents in dependency cases, in the following order of priority: (i) Persons with acute mental illness; (ii) adults with chronic mental illness and children who are severely emotionally disturbed; and (iii) persons who are seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for persons with mental illness which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a

child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in persons with mental illness becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;

(F) Consultation and education services; and

(G) Community support services;

(c) Develop and adopt rules establishing state minimum standards for the delivery of mental health services pursuant to RCW 71.24.037 including, but not limited to:

(i) Licensed service providers. These rules shall permit a county-operated mental health program to be licensed as a service provider subject to compliance with applicable statutes and rules. The secretary shall provide for deeming of compliance with state minimum standards for those entities accredited by recognized behavioral health accrediting bodies recognized and having a current agreement with the department;

(ii) Regional support networks; and

(iii) Inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of persons who are minorities, elderly, disabled, children, low-income, and parents who are respondents in dependency cases are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards, RCW 71.24.320 and 71.24.330, which shall be used in contracting with regional support networks. The standard contract shall include a maximum fund balance, which shall be consistent with that required by federal regulations or waiver stipulations;

(f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of regional support networks and licensed service providers. The audit procedure shall focus on the outcomes of service and not the processes for accomplishing them;

(g) Develop and maintain an information system to be used by the state and regional support networks that includes a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and ~~((in RCW 71.05.390, 71.05.420, and 71.05.440))~~ chapter 70.02 RCW;

(h) License service providers who meet state minimum standards;

(i) Certify regional support networks that meet state minimum standards;

(j) Periodically monitor the compliance of certified regional support networks and their network of licensed service providers for compliance with the

contract between the department, the regional support network, and federal and state rules at reasonable times and in a reasonable manner;

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit regional support networks and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Adopt such rules as are necessary to implement the department's responsibilities under this chapter;

(n) Assure the availability of an appropriate amount, as determined by the legislature in the operating budget by amounts appropriated for this specific purpose, of community-based, geographically distributed residential services;

(o) Certify crisis stabilization units that meet state minimum standards;

(p) Certify clubhouses that meet state minimum standards; and

(q) Certify triage facilities that meet state minimum standards.

(6) The secretary shall use available resources only for regional support networks, except to the extent authorized, and in accordance with any priorities or conditions specified, in the biennial appropriations act.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to: (a) The law; (b) applicable rules and regulations; (c) applicable standards; or (d) state minimum standards.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) Notwithstanding the existence or pursuit of any other remedy, the secretary may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(12) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and

chapters 71.05 and 71.34 RCW, and shall otherwise assure the effectuation of the purposes of these chapters.

(13) The standards for certification of crisis stabilization units shall include standards that:

(a) Permit location of the units at a jail facility if the unit is physically separate from the general population of the jail;

(b) Require administration of the unit by mental health professionals who direct the stabilization and rehabilitation efforts; and

(c) Provide an environment affording security appropriate with the alleged criminal behavior and necessary to protect the public safety.

(14) The standards for certification of a clubhouse shall at a minimum include:

(a) The facilities may be peer-operated and must be recovery-focused;

(b) Members and employees must work together;

(c) Members must have the opportunity to participate in all the work of the clubhouse, including administration, research, intake and orientation, outreach, hiring, training and evaluation of staff, public relations, advocacy, and evaluation of clubhouse effectiveness;

(d) Members and staff and ultimately the clubhouse director must be responsible for the operation of the clubhouse, central to this responsibility is the engagement of members and staff in all aspects of clubhouse operations;

(e) Clubhouse programs must be comprised of structured activities including but not limited to social skills training, vocational rehabilitation, employment training and job placement, and community resource development;

(f) Clubhouse programs must provide in-house educational programs that significantly utilize the teaching and tutoring skills of members and assist members by helping them to take advantage of adult education opportunities in the community;

(g) Clubhouse programs must focus on strengths, talents, and abilities of its members;

(h) The work-ordered day may not include medication clinics, day treatment, or other therapy programs within the clubhouse.

(15) The department shall distribute appropriated state and federal funds in accordance with any priorities, terms, or conditions specified in the appropriations act.

(16) The secretary shall assume all duties assigned to the nonparticipating regional support networks under chapters 71.05(~~§~~) and 71.34(~~§~~) RCW and (~~71.24 RCW~~) this chapter. Such responsibilities shall include those which would have been assigned to the nonparticipating counties in regions where there are not participating regional support networks.

The regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05(~~§~~) and 71.34(~~§~~) RCW and (~~71.24 RCW~~) this chapter, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(17) The secretary shall:

(a) Disburse funds for the regional support networks within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(d) Deny all or part of the funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Regional support networks disputing the decision of the secretary to withhold funding allocations are limited to the remedies provided in the department's contracts with the regional support networks.

(18) The department, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by freestanding evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the appropriate committees of the senate and the house of representatives.

**Sec. 25.** RCW 43.185C.030 and 2005 c 484 s 6 are each amended to read as follows:

**WASHINGTON HOMELESS CENSUS OR COUNT.** The department shall annually conduct a Washington homeless census or count consistent with the requirements of RCW (~~(43.63A.655)~~ 43.185C.180). The census shall make every effort to count all homeless individuals living outdoors, in shelters, and in transitional housing, coordinated, when reasonably feasible, with already existing homeless census projects including those funded in part by the United States department of housing and urban development under the McKinney-Vento homeless assistance program. The department shall determine, in consultation with local governments, the data to be collected.

All personal information collected in the census is confidential, and the department and each local government shall take all necessary steps to protect the identity and confidentiality of each person counted.

The department and each local government are prohibited from disclosing any personally identifying information about any homeless individual when there is reason to believe or evidence indicating that the homeless individual is an adult or minor victim of domestic violence, dating violence, sexual assault, or stalking or is the parent or guardian of a child victim of domestic violence, dating violence, sexual assault, or stalking; or revealing other confidential information regarding HIV/AIDS status, as found in (~~(RCW 70.24.105)~~ section 6 of this act). The department and each local government shall not ask any homeless housing provider to disclose personally identifying information about any homeless individuals when the providers implementing those programs have reason to believe or evidence indicating that those clients are adult or minor victims of domestic violence, dating violence, sexual assault, or stalking or are the parents or guardians of child victims of domestic violence, dating violence,



sexual assault, or stalking. Summary data for the provider's facility or program may be substituted.

The Washington homeless census shall be conducted annually on a schedule created by the department. The department shall make summary data by county available to the public each year. This data, and its analysis, shall be included in the department's annual updated homeless housing program strategic plan.

Based on the annual census and provider information from the local government plans, the department shall, by the end of year four, implement an online information and referral system to enable local governments and providers to identify available housing for a homeless person. The department shall work with local governments and their providers to develop a capacity for continuous case management to assist homeless persons.

By the end of year four, the department shall implement an organizational quality management system.

**Sec. 26.** RCW 70.05.070 and 2007 c 343 s 10 are each amended to read as follows:

**LOCAL HEALTH OFFICER.** The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:

(1) Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70.119A.030 and 70.118.130, the confidentiality provisions in (~~RCW 70.24.105~~) section 6 of this act and rules adopted to implement those provisions, and filing of actions authorized by RCW 43.70.190;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of health or his or her authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules of the state board of health;

(8) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

(9) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department.

**Sec. 27.** RCW 70.24.450 and 1999 c 391 s 3 are each amended to read as follows:

**CONFIDENTIALITY OF REPORTED INFORMATION—UNAUTHORIZED DISCLOSURE.**(1) In order to assure compliance with the protections under this chapter and the rules of the board, and to assure public confidence in the confidentiality of reported information, the department shall:

(a) Report annually to the board any incidents of unauthorized disclosure by the department, local health departments, or their employees of information protected under (~~RCW 70.24.105~~) section 6 of this act. The report shall include recommendations for preventing future unauthorized disclosures and improving the system of confidentiality for reported information; and

(b) Assist health care providers, facilities that conduct tests, local health departments, and other persons involved in disease reporting to understand, implement, and comply with this chapter and the rules of the board related to disease reporting.

(2) This section is exempt from RCW 70.24.084, 70.05.070, and 70.05.120.

**Sec. 28.** RCW 74.13.280 and 2009 c 520 s 72 are each amended to read as follows:

**CHILDREN PLACED IN OUT-OF-HOME CARE—CLIENT INFORMATION.** (1) Except as provided in (~~RCW 70.24.105~~) section 6 of this act, whenever a child is placed in out-of-home care by the department or a supervising agency, the department or agency shall share information known to the department or agency about the child and the child's family with the care provider and shall consult with the care provider regarding the child's case plan. If the child is dependent pursuant to a proceeding under chapter 13.34 RCW, the department or supervising agency shall keep the care provider informed regarding the dates and location of dependency review and permanency planning hearings pertaining to the child.

(2) Information about the child and the child's family shall include information known to the department or agency as to whether the child is a sexually reactive child, has exhibited high-risk behaviors, or is physically assaultive or physically aggressive, as defined in this section.

(3) Information about the child shall also include information known to the department or agency that the child:

(a) Has received a medical diagnosis of fetal alcohol syndrome or fetal alcohol effect;

(b) Has been diagnosed by a qualified mental health professional as having a mental health disorder;

(c) Has witnessed a death or substantial physical violence in the past or recent past; or

(d) Was a victim of sexual or severe physical abuse in the recent past.

(4) Any person who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information except as authorized by law. Care providers shall agree in writing to keep the information that they receive confidential and shall affirm that the information will not be further disclosed or disseminated, except as authorized by law.

(5) Nothing in this section shall be construed to limit the authority of the department or supervising agencies to disclose client information or to maintain client confidentiality as provided by law.

(6) As used in this section:

(a) "Sexually reactive child" means a child who exhibits sexual behavior problems including, but not limited to, sexual behaviors that are developmentally inappropriate for their age or are harmful to the child or others.

(b) "High-risk behavior" means an observed or reported and documented history of one or more of the following:

(i) Suicide attempts or suicidal behavior or ideation;

(ii) Self-mutilation or similar self-destructive behavior;

(iii) Fire-setting or a developmentally inappropriate fascination with fire;

(iv) Animal torture;

(v) Property destruction; or

(vi) Substance or alcohol abuse.

(c) "Physically assaultive or physically aggressive" means a child who exhibits one or more of the following behaviors that are developmentally inappropriate and harmful to the child or to others:

(i) Observed assaultive behavior;

(ii) Reported and documented history of the child willfully assaulting or inflicting bodily harm; or

(iii) Attempting to assault or inflict bodily harm on other children or adults under circumstances where the child has the apparent ability or capability to carry out the attempted assaults including threats to use a weapon.

**Sec. 29.** RCW 74.13.289 and 2009 c 520 s 76 are each amended to read as follows:

**CHILDREN PLACED IN OUT-OF-HOME CARE—BLOOD-BORNE PATHOGENS, TRAINING.** (1) Upon any placement, the department or supervising agency shall inform each out-of-home care provider if the child to be placed in that provider's care is infected with a blood-borne pathogen, and shall identify the specific blood-borne pathogen for which the child was tested if known by the department or supervising agency.

(2) All out-of-home care providers licensed by the department shall receive training related to blood-borne pathogens, including prevention, transmission, infection control, treatment, testing, and confidentiality.

(3) Any disclosure of information related to HIV must be in accordance with (~~RCW 70.24.105~~) section 6 of this act.

(4) The department of health shall identify by rule the term "blood-borne pathogen" as used in this section.

**Sec. 30.** RCW 71.05.425 and 2011 c 305 s 5 are each amended to read as follows:

**PERSONS COMMITTED FOLLOWING DISMISSAL OF SEX, VIOLENT, OR FELONY HARASSMENT OFFENSE—NOTIFICATION OF CONDITIONAL RELEASE, FINAL RELEASE, LEAVE, TRANSFER, OR ESCAPE.** (1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written

notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) to the following:

- (i) The chief of police of the city, if any, in which the person will reside; and
- (ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3)(c) or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings;

(iii) Any person specified in writing by the prosecuting attorney. Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter; and

(iv) The chief of police of the city, if any, and the sheriff of the county, if any, which had jurisdiction of the person on the date of the applicable offense.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person escaped and in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to ~~((RCW 71.05.390(18)))~~ section 7(2)(n) of this act. If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, state registered domestic partner, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony.

**Sec. 31.** RCW 71.05.445 and 2009 c 320 s 4 are each amended to read as follows:

**COURT-ORDERED MENTAL HEALTH TREATMENT—NOTIFICATIONS.** (1)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health service provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the mental health service provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental health service provider is not required to notify the department of corrections that the mental health service provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by e-mail or facsimile, so long as the notifying mental health service provider is clearly identified.

(2) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties.

(3) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in RCW 71.05.020, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(4) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

(5) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section ((except under RCW 71.05.440)).

(6) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(7) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(8) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments.

**Sec. 32.** RCW 72.09.585 and 2011 1st sp.s. c 40 s 24 are each amended to read as follows:

**MENTAL HEALTH SERVICES, INFORMATION—DEPARTMENT OF CORRECTIONS—REQUIRED INQUIRIES AND DISCLOSURES.** (1) When the department is determining an offender's risk management level, the department shall inquire of the offender and shall be told whether the offender is subject to court-ordered treatment for mental health services or chemical dependency services. The department shall request and the offender shall provide an authorization to release information form that meets applicable state and federal requirements and shall provide the offender with written notice that the department will request the offender's mental health and substance abuse treatment information. An offender's failure to inform the department of court-ordered treatment is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions.

(2) When an offender discloses that he or she is subject to court-ordered mental health services or chemical dependency treatment, the department shall provide the mental health services provider or chemical dependency treatment provider with a written request for information and any necessary authorization to release information forms. The written request shall comply with rules adopted by the department of social and health services or protocols developed jointly by the department and the department of social and health services. A single request shall be valid for the duration of the offender's supervision in the community. Disclosures of information related to mental health services made pursuant to a department request shall not require consent of the offender.

(3) The information received by the department under RCW 71.05.445 or ((71.34.345)) section 9 of this act may be released to the indeterminate sentence review board as relevant to carry out its responsibility of planning and ensuring community protection with respect to persons under its jurisdiction. Further disclosure by the indeterminate sentence review board is subject to the limitations set forth in subsections (5) and (6) of this section and must be consistent with the written policy of the indeterminate sentence review board. The decision to disclose or not shall not result in civil liability for the

indeterminate sentence review board or staff assigned to perform board-related duties provided that the decision was reached in good faith and without gross negligence.

(4) The information received by the department under RCW 71.05.445 or ~~((71.34.345))~~ section 9 of this act may be used to meet the statutory duties of the department to provide evidence or report to the court. Disclosure to the public of information provided to the court by the department related to mental health services shall be limited in accordance with RCW 9.94A.500 or this section.

(5) The information received by the department under RCW 71.05.445 or ~~((71.34.345))~~ section 9 of this act may be disclosed by the department to other state and local agencies as relevant to plan for and provide offenders transition, treatment, and supervision services, or as relevant and necessary to protect the public and counteract the danger created by a particular offender, and in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. The information received by a state or local agency from the department shall remain confidential and subject to the limitations on disclosure set forth in chapters 70.02, 71.05, and 71.34 RCW and, subject to these limitations, may be released only as relevant and necessary to counteract the danger created by a particular offender.

(6) The information received by the department under RCW 71.05.445 or ~~((71.34.345))~~ section 9 of this act may be disclosed by the department to individuals only with respect to offenders who have been determined by the department to have a high risk of reoffending by a risk assessment, as defined in RCW 9.94A.030, only as relevant and necessary for those individuals to take reasonable steps for the purpose of self-protection, or as provided in RCW 72.09.370(2). The information may not be disclosed for the purpose of engaging the public in a system of supervision, monitoring, and reporting offender behavior to the department. The department must limit the disclosure of information related to mental health services to the public to descriptions of an offender's behavior, risk he or she may present to the community, and need for mental health treatment, including medications, and shall not disclose or release to the public copies of treatment documents or records, except as otherwise provided by law. All disclosure of information to the public must be done in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. Nothing in this subsection prevents any person from reporting to law enforcement or the department behavior that he or she believes creates a public safety risk.

**Sec. 33.** RCW 9.94A.500 and 2008 c 231 s 2 are each amended to read as follows:

SENTENCING HEARINGS—PREVENTION OF WRONGFUL DISCLOSURE OF MENTAL HEALTH SERVICES RECORDS AND INFORMATION. (1) Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days following conviction. Upon the motion of either party for good

cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing.

Except in cases where the defendant shall be sentenced to a term of total confinement for life without the possibility of release or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death, the court may order the department to complete a risk assessment report. If available before sentencing, the report shall be provided to the court.

Unless specifically waived by the court, the court shall order the department to complete a chemical dependency screening report before imposing a sentence upon a defendant who has been convicted of a violation of the uniform controlled substances act under chapter 69.50 RCW, a criminal solicitation to commit such a violation under chapter 9A.28 RCW, or any felony where the court finds that the offender has a chemical dependency that has contributed to his or her offense. In addition, the court shall, at the time of plea or conviction, order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

The court shall consider the risk assessment report and presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

A criminal history summary relating to the defendant from the prosecuting authority or from a state, federal, or foreign governmental agency shall be prima facie evidence of the existence and validity of the convictions listed therein. If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all risk assessment reports and presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys.

(2) To prevent wrongful disclosure of information and records related to mental health services, as ~~((defined))~~ described in RCW 71.05.445 and ~~((71.34.345))~~ section 9 of this act, a court may take only those steps necessary during a sentencing hearing or any hearing in which the department presents information related to mental health services to the court. The steps may be taken on motion of the defendant, the prosecuting attorney, or on the court's own motion. The court may seal the portion of the record relating to information



relating to mental health services, exclude the public from the hearing during presentation or discussion of information and records relating to mental health services, or grant other relief to achieve the result intended by this subsection, but nothing in this subsection shall be construed to prevent the subsequent release of information and records related to mental health services as authorized by RCW 71.05.445, (~~71.34.345~~) section 9 of this act, or 72.09.585. Any person who otherwise is permitted to attend any hearing pursuant to chapter 7.69 or 7.69A RCW shall not be excluded from the hearing solely because the department intends to disclose or discloses information related to mental health services.

**NEW SECTION. Sec. 34. REPEALERS.** The following acts or parts of acts are each repealed:

(1) RCW 70.24.105 (Disclosure of HIV antibody test or testing or treatment of sexually transmitted diseases—Exchange of medical information) and 2011 c 232 s 1;

(2) RCW 71.05.390 (Confidential information and records—Disclosure) and 2011 c 305 s 4;

(3) RCW 71.05.640 (Treatment records—Access procedures) and 2005 c 504 s 712, 2005 c 504 s 113, 2000 c 94 s 11, & 1999 c 13 s 9;

(4) RCW 71.05.385 (Information subject to disclosure to authorized persons—Restrictions) and 2011 1st sp.s. c 40 s 23 & 2009 c 320 s 2;

(5) RCW 71.05.420 (Records of disclosure) and 2009 c 217 s 7, 2005 c 504 s 110, 1990 c 3 s 113, & 1973 1st ex.s. c 142 s 47;

(6) RCW 71.05.440 (Action for unauthorized release of confidential information—Liquidated damages—Treble damages—Injunction) and 1990 c 3 s 114, 1974 ex.s. c 145 s 28, & 1973 1st ex.s. c 142 s 49;

(7) RCW 71.05.427 (Persons committed following dismissal of sex offense—Release of information authorized) and 1990 c 3 s 110;

(8) RCW 71.05.630 (Treatment records—Confidential—Release) and 2009 c 398 s 1, 2009 c 320 s 5, 2009 c 217 s 8, 2007 c 191 s 1, 2005 c 504 s 112, 2000 c 75 s 5, & 1989 c 205 s 13;

(9) RCW 71.05.690 (Treatment records—Rules) and 2005 c 504 s 714 & 1999 c 13 s 12;

(10) RCW 71.34.340 (Information concerning treatment of minors confidential—Disclosure—Admissible as evidence with written consent) and 2011 c 305 s 9, 2005 c 453 s 6, 2000 c 75 s 7, & 1985 c 354 s 18;

(11) RCW 71.34.345 (Mental health services information—Release to department of corrections—Rules) and 2004 c 166 s 8, 2002 c 39 s 1, & 2000 c 75 s 2; and

(12) RCW 71.34.350 (Disclosure of information or records—Required entries in minor's clinical record) and 1985 c 354 s 22.

**NEW SECTION. Sec. 35. EFFECTIVE DATE.** Except for section 5 of this act, this act takes effect July 1, 2014.

**NEW SECTION. Sec. 36. EMERGENCY CLAUSE—EFFECTIVE DATE.** 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 takes effect immediately.

Passed by the House April 22, 2013.  
 Passed by the Senate April 17, 2013.  
 Approved by the Governor May 10, 2013.  
 Filed in Office of Secretary of State May 10, 2013.

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## CHAPTER 201

[House Bill 1683]

### HIGHER EDUCATION—FINANCIAL AID—INSTITUTION ELIGIBILITY

AN ACT Relating to authorizing recognition of institutions of postsecondary study in order to retain federal financial aid eligibility; adding a new section to chapter 18.16 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** It is the intent of the legislature to maintain and expand access to postsecondary education and improve opportunities for students. The legislature recognizes that access to federal financial aid is a major avenue for overcoming financial barriers to higher education for many students in Washington. The legislature recognizes that recent federal changes in federal regulations require the adjustment of definitions of certain postsecondary institutions in state statutes to ensure that those schools that currently meet the requirements are eligible for student financial aid programs provided by the federal government.

**NEW SECTION. Sec. 2.** A new section is added to chapter 18.16 RCW to read as follows:

Schools shall be recognized as institutions of postsecondary study under the following conditions:

- (1) The school admits as regular students only those individuals who have earned a recognized high school diploma or the equivalent of a recognized high school diploma, or who are beyond the age of compulsory education as provided in RCW 28A.225.010; and
- (2) The school is licensed by name by the department under this chapter to offer one or more training programs beyond the secondary level.

Passed by the House March 13, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

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## CHAPTER 202

[Engrossed Substitute House Bill 1688]

### K-12 EDUCATION—STUDENT RESTRAINT AND ISOLATION—REPORTING

AN ACT Relating to reporting of incidents of student restraint and isolation in public schools; adding new sections to chapter 28A.600 RCW; adding a new section to chapter 28A.155 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 preserving a safe and beneficial learning environment for all students requires the establishment and enforcement of appropriate student discipline policies. The legislature further

finds that although physical restraint and isolation of a student should be avoided, there may be circumstances where school district boards of directors have authorized these actions to preserve the safety of other students and school staff. Nevertheless, if an incident of student restraint or isolation occurs, school personnel should be held accountable for providing a thorough explanation of the circumstances.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.600 RCW to read as follows:

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

(a) "Isolation" means excluding a student from his or her regular instructional area and restricting the student alone within a room or any other form of enclosure, from which the student may not leave.

(b) "Restraint" means physical intervention or force used to control a student, including the use of a restraint device.

(c) "Restraint device" means a device used to assist in controlling a student, including but not limited to metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, pepper spray, tasers, or batons.

(2) The provisions of this section apply only to any restraint of a student who has an individualized education program or plan developed under section 504 of the rehabilitation act of 1973 that results in a physical injury to a student or a staff member, any restraint of a student who has an individualized education program or plan developed under section 504 of the rehabilitation act of 1973, and any isolation of a student who has an individualized education program or plan developed under section 504 of the rehabilitation act of 1973. The provisions of this section apply only to incidents of restraint or isolation that occur while a student who has an individualized education program or plan developed under section 504 of the rehabilitation act of 1973 is participating in school-sponsored instruction or activities.

(3) Following the release of a student from the use of restraint or isolation, the school must implement follow-up procedures. These procedures must include reviewing the incident with the student and the parent or guardian to address the behavior that precipitated the restraint or isolation and reviewing the incident with the staff member who administered the restraint or isolation to discuss whether proper procedures were followed.

(4) Any school employee, resource officer, or school security officer who uses any chemical spray, mechanical restraint, or physical force on a student during school-sponsored instruction or activities must inform the building administrator or building administrator's designee as soon as possible, and within two business days submit a written report of the incident to the district office. The written report should include, at a minimum, the following information:

(a) The date and time of the incident;

(b) The name and job title of the individual who administered the restraint or isolation;

(c) A description of the activity that led to the restraint or isolation;

(d) The type of restraint or isolation used on the student, including the duration; and

(e) Whether the student or staff was physically injured during the restraint or isolation and any medical care provided.

(5) The principal or principal's designee must make a reasonable effort to verbally inform the student's parent or guardian within twenty-four hours of the incident, and must send written notification as soon as practical but postmarked no later than five business days after the restraint or isolation occurred. If the school or school district customarily provides the parent or guardian with school-related information in a language other than English, the written report under this section must be provided to the parent or guardian in that language.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28A.155 RCW to read as follows:

A school that is required to develop an individualized education program as required by federal law must include within the plan procedures for notification of a parent or guardian regarding the use of restraint or isolation.

**NEW SECTION. Sec. 4.** A new section is added to chapter 28A.600 RCW to read as follows:

Parents and guardians of children who have individualized education programs or plans developed under section 504 of the rehabilitation act of 1973 must be provided a copy of the district policy on the use of isolation and restraint at the time that the program or plan is created.

Passed by the House April 22, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 203

[Substitute House Bill 1737]

### PHYSICIAN ASSISTANTS—SUPERVISION

AN ACT Relating to supervision of physician assistants; amending RCW 18.57A.030, 18.57A.040, 18.57A.080, and 18.71A.030; reenacting and amending RCW 18.71A.040; adding a new section to chapter 18.57A RCW; adding a new section to chapter 18.71A RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 18.57A RCW to read as follows:

(1) No licensee may be utilized in a remote site without approval by the board or its designee. A "remote site" is defined as a setting physically separate from the sponsoring or supervising physician's primary place for meeting patients or a setting where the physician is present less than twenty-five percent of the practice time of the licensee.

(2)(a) Approval by the commission or its designee may be granted to utilize a licensee in a remote site if:

- (i) There is a demonstrated need for the utilization;
- (ii) Adequate provision for timely communication between the primary or alternate physician and the licensee exists;
- (iii) The responsible sponsoring or supervising physician spends at least ten percent of the practice time of the licensee in the remote site unless the

sponsoring physician demonstrates that adequate supervision is being maintained by an alternate method such as telecommunication.

(b) The names of the sponsoring or supervising physician and the licensee must be prominently displayed at the entrance to the clinic or in the reception area.

(3) No physician assistant holding an interim permit may be utilized in a remote site setting.

**NEW SECTION. Sec. 2.** A new section is added to chapter 18.71A RCW to read as follows:

(1) No licensee may be utilized in a remote site without approval by the commission or its designee. A "remote site" is defined as a setting physically separate from the sponsoring or supervising physician's primary place for meeting patients or a setting where the physician is present less than twenty-five percent of the practice time of the licensee.

(2)(a) Approval by the commission or its designee may be granted to utilize a licensee in a remote site if:

(i) There is a demonstrated need for the utilization;

(ii) Adequate provision for timely communication between the primary or alternate physician and the licensee exists;

(iii) The responsible sponsoring or supervising physician spends at least ten percent of the practice time of the licensee in the remote site unless the sponsoring physician demonstrates that adequate supervision is being maintained by an alternate method such as telecommunication.

(b) The names of the sponsoring or supervising physician and the licensee must be prominently displayed at the entrance to the clinic or in the reception area.

(3) No physician assistant holding an interim permit may be utilized in a remote site setting.

**Sec. 3.** RCW 18.57A.030 and 1993 c 28 s 2 are each amended to read as follows:

An osteopathic physician assistant as defined in this chapter may practice osteopathic medicine in this state only with the approval of the (~~practice arrangement plan~~) delegation agreement by the board and only to the extent permitted by the board. An osteopathic physician assistant who has received a license but who has not received board approval of the (~~practice arrangement plan~~) delegation agreement under RCW 18.57A.040 may not practice. An osteopathic physician assistant shall be subject to discipline by the board under the provisions of chapter 18.130 RCW.

**Sec. 4.** RCW 18.57A.040 and 1993 c 28 s 3 are each amended to read as follows:

(1) No osteopathic physician assistant practicing in this state shall be employed or supervised by an osteopathic physician or physician group without the approval of the board.

(2) Prior to commencing practice, an osteopathic physician assistant licensed in this state shall apply to the board for permission to be employed or supervised by an osteopathic physician or physician group. The (~~practice arrangement plan~~) delegation agreement shall be jointly submitted by the osteopathic physician or physician group and osteopathic physician assistant.

The secretary may charge a fee as provided in RCW 43.70.250 to recover the cost for the plan review. The (~~(practice arrangement plan)~~) delegation agreement shall delineate the manner and extent to which the physician assistant would practice and be supervised. Whenever an osteopathic physician assistant is practicing in a manner inconsistent with the approved (~~(practice arrangement plan)~~) delegation agreement, the board may take disciplinary action under chapter 18.130 RCW.

(3) An osteopathic physician may enter into delegation agreements with five physician assistants, but may petition the board for a waiver of this limit. However, no osteopathic physician may have under his or her supervision: (a) More than three physician assistants who are working in remote sites; or (b) more physician assistants than the osteopathic physician can adequately supervise.

**Sec. 5.** RCW 18.57A.080 and 2007 c 264 s 2 are each amended to read as follows:

An osteopathic physician(~~(s)~~) assistant may sign and attest to any certificates, cards, forms, or other required documentation that the osteopathic physician(~~(s)~~) assistant's supervising osteopathic physician or osteopathic physician group may sign, provided that it is within the osteopathic physician(~~(s)~~) assistant's scope of practice and is consistent with the terms of the osteopathic physician(~~(s)~~) assistant's (~~(practice arrangement plan)~~) delegation agreement as required by this chapter.

**Sec. 6.** RCW 18.71A.030 and 1994 sp.s. c 9 s 320 are each amended to read as follows:

A physician assistant may practice medicine in this state only with the approval of the (~~(practice arrangement plan)~~) delegation agreement by the commission and only to the extent permitted by the commission. A physician assistant who has received a license but who has not received commission approval of the (~~(practice arrangement plan)~~) delegation agreement under RCW 18.71A.040 may not practice. A physician assistant shall be subject to discipline under chapter 18.130 RCW.

**Sec. 7.** RCW 18.71A.040 and 1996 c 191 s 58 and 1996 c 191 s 40 are each reenacted and 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)~~) delegation agreement shall be jointly submitted by the physician or physician group and physician assistant. Administrative procedures, administrative requirements, and fees shall be established as provided in RCW 43.70.250 and 43.70.280. The (~~(practice arrangement plan)~~) delegation agreement 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)~~) delegation agreement, the commission may take disciplinary action under chapter 18.130 RCW.

(3) A physician may enter into delegation agreements with five physician assistants, but may petition the commission for a waiver of this limit. However, no physician may have under his or her supervision: (a) More than three physician assistants who are working in remote sites; or (b) more physician assistants than the physician can adequately supervise.

**NEW SECTION, Sec. 8.** The medical quality assurance commission and board of osteopathic medicine and surgery, working in collaboration with a statewide organization representing the interests of physician assistants, shall adopt new rules modernizing the current rules regulating physician assistants and report to the legislature by December 31, 2014.

Passed by the House April 22, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 204

[Second Substitute House Bill 1764]

### GEODUCK DIVER LICENSES

AN ACT Relating to geoduck diver licenses; amending RCW 77.65.410; reenacting and amending RCW 79.135.210; adding a new section to chapter 77.65 RCW; adding new sections to chapter 43.30 RCW; creating new sections; and providing an expiration date.

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

**Sec. 1.** RCW 77.65.410 and 1993 c 340 s 24 are each amended to read as follows:

(1)(a) Every diver engaged in the commercial harvest of subtidal geoduck clams shall obtain a ((nontransferable)) geoduck diver license. An individual may only own one license and all geoduck harvesting performed under the license must be done personally by the actual license holder.

(b) The licensing requirement created in this section does not apply to divers engaged in activities related to the cultivation of geoduck clams as private sector cultured aquatic products as defined in RCW 15.85.020.

(c) The geoduck diver license is a nontransferable license.

(2) Beginning January 1, 2015, the director may not issue more than seventy-seven geoduck diver licenses in any one year.

(3) The annual geoduck diver license fee is as provided in RCW 77.65.440.

(4) A geoduck diver license expires on December 31st of each year. Prior to the license's expiration, a license holder may apply to renew the license holder's geoduck diver license only if the license holder is included on a department of natural resources' geoduck harvest agreement plan of operation during the applicable current calendar year.

(5) Beginning January 1, 2015, each person applying for or renewing a geoduck diver license under this section must complete the geoduck diver safety program established in section 5 of this act prior to being issued a license.

**NEW SECTION, Sec. 2.** (1) The director of the department of fish and wildlife shall give individuals who held a geoduck diver license in 2011, 2012, 2013, or 2014, and who were listed on a department of natural resources'

geoduck harvest agreement plan of operation during the same period, the right of first refusal to purchase a geoduck diver license for the 2015 license year.

(2) Any license holder who qualifies for the right of first refusal under this section must have his or her intent to purchase a geoduck diver license in 2015 known to the director of the department of fish and wildlife within six months of the effective date of this section.

(3) This section expires June 30, 2016.

**NEW SECTION, Sec. 3.** A new section is added to chapter 77.65 RCW to read as follows:

The department must revoke a geoduck diver license issued under RCW 77.65.410, and the licensee must surrender the license, if the licensee is found in violation of a department of natural resources' geoduck harvest agreement two or more times. The person surrendering the geoduck diver license may not hold another geoduck diver license for a period of one calendar year from the date the license is surrendered.

**NEW SECTION, Sec. 4.** A new section is added to chapter 43.30 RCW to read as follows:

(1) The department shall establish a geoduck harvest safety committee. The geoduck harvest safety committee consists of one representative from the department, one representative from the department's geoduck diver advisory committee, one representative from an organization representing the interests of geoduck harvesters, and one representative from an organization representing the interests of geoduck divers. Each representative must be appointed by the administrator.

(2) The geoduck harvest safety committee must meet at least quarterly. By December 1, 2013, the committee must submit a recommendation to the department regarding the establishment of a geoduck diver safety program and safety requirements for geoduck divers licensed under RCW 77.65.410.

(3) Upon the establishment of the geoduck diver safety program under section 5 of this act, the geoduck harvest safety committee must continue to review and evaluate the safety program's success and effectiveness and recommend to the department appropriate changes to improve the geoduck diver safety program.

**NEW SECTION, Sec. 5.** A new section is added to chapter 43.30 RCW to read as follows:

(1) By December 1, 2014, the department must, by rule, create a geoduck diver safety program and establish safety requirements for geoduck divers licensed under RCW 77.65.410. The department must adopt rules based on the recommendation of the geoduck harvest safety committee established in section 4 of this act.

(2) The department may adopt, amend, or repeal rules as needed to ensure the success and effectiveness of the geoduck diver safety program created under subsection (1) of this section. The department must consider the recommendations provided by the geoduck harvest safety committee under section 4(3) of this act.

(3) The department may not adopt rules in conflict with commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal



occupational safety and health act of 1970 (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.).

(4) A civil suit or action may not be commenced or prosecuted against the administrator, department, or any other government officer or entity by reason of any actions taken in connection with the adoption or enforcement of the geoduck diver safety program and safety requirements established under subsections (1) and (2) of this section. The state of Washington does not waive its sovereign immunity with respect to any actions taken by the department under this section.

**Sec. 6.** RCW 79.135.210 and 2005 c 155 s 708 and 2005 c 113 s 3 are each reenacted and amended to read as follows:

(1) Except as provided in RCW 79.135.040, geoducks shall be sold as valuable materials under the provisions of chapter 79.90 RCW. After confirmation of the sale, the department may enter into an agreement with the purchaser for the harvesting of geoducks. The department may place terms and conditions in the harvesting agreements as the department deems necessary. The department may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting, for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon termination of the agreement by the harvester, the harvester shall be reimbursed by the department for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as the law exists or as amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.). However, for the purposes of this section and RCW 77.60.070, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement. Further, for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such an entity until compliance with this subsection is secured.

(3) Beginning January 1, 2015, geoduck divers licensed under RCW 77.65.410 must annually complete the geoduck diver safety program established in section 5 of this act in order to be maintained on a department of natural resources' harvest agreement plan of operation.

**NEW SECTION. Sec. 7.** The department of fish and wildlife may adopt any rules deemed necessary to implement sections 1 through 3 of this act.

Passed by the House April 23, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

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## CHAPTER 205

[Engrossed Substitute House Bill 1774]

### CHILD WELFARE SYSTEM—PERFORMANCE—CONTRACTING

AN ACT Relating to measuring performance and performance-based contracting of the child welfare system; amending RCW 74.13B.020 and 74.13.360; adding a new section to chapter 74.13 RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** (1) The legislature recognizes that the goals of the child welfare system are to protect the safety, permanence, and well-being of the children it serves. The legislature further recognizes the importance of maintaining publicly accessible data that tracks the performance of the child welfare system, leading to transparency and public understanding of the system.

(2) The legislature believes it is important to measure safety, permanence, and well-being such that the public and the legislature may understand how the child welfare system is performing. This information will also serve the legislature in determining priorities for investment of public dollars as well as need for substantive legislative changes to facilitate improvement.

(3) The reports to the legislature under section 2 of this act will be used to provide feedback to the department of social and health services. The agencies referenced in section 2 of this act will not disclose individually identifiable private information except as allowable under federal and state law.

**NEW SECTION. Sec. 2.** A new section is added to chapter 74.13 RCW to read as follows:

(1) A university-based child welfare research entity and the department, in collaboration with other stakeholders, shall develop measurements in the areas of safety, permanency, and well-being, using existing and available data. Measurements must be calculated from data used in the routine work of the state agencies' data and information technology departments. Any new record linkage or data-matching activities required in fulfillment of this section may be performed by the research entity pursuant to agreements developed under subsection (6) of this section.

(2) For the purposes of this section, "state agencies" means any agency or subagency providing data used in the integrated client database maintained by the research and data analysis division of the department. Any exchange of data must be in accordance with applicable federal and state law.

(3) All measurements must use a methodology accepted by the scientific community. All measurements must address any disproportionate racial and ethnic inequality. The initial measurements must be developed by December 1, 2013.

(4) The measurements may not require the state agencies to revise their data collection systems, and may not require the state agencies to provide individually identifiable information.

(5) The state agencies shall provide the research entity with all measurement data related to the measurements developed under this section at least quarterly beginning July 1, 2014. The research entity shall make any nonidentifiable data publicly available. The research entity shall report on the data to the legislature and the governor annually starting December 31, 2014.

(6) By January 1, 2014, the state agencies shall execute agreements with the research entity to enable sharing of data pursuant to RCW 42.48.020 sufficient to comply with this section.

(7) The fact that the research entity has chosen to use a specific measure, use a specific baseline, or compare any measure to a baseline is not admissible as evidence of negligence by the department in a civil action.

**Sec. 3.** RCW 74.13B.020 and 2012 c 205 s 3 are each amended to read as follows:

(1) No later than (~~December 1, 2013~~) July 1, 2014, the department shall enter into performance-based contracts for the provision of family support and related services. The department may enter into performance-based contracts for additional services, other than case management.

(2) (~~Beginning December 1, 2013, the department may not renew its current contracts with individuals or entities for the provision of the child welfare services included in performance based contracts under this section for services in geographic areas served by network administrators under such contracts, except as mutually agreed upon between the department and the network administrator to allow for the successful transition of services that meet the needs of children and families.~~

~~(3))~~ The department shall conduct a procurement process to enter into performance-based contracts with one or more network administrators for family support and related services. As part of the procurement process, the department shall consult with department caseworkers, the exclusive bargaining representative for employees of the department, tribal representatives, parents who were formerly involved in the child welfare system, youth currently or previously in foster care, child welfare services researchers, and the Washington state institute for public policy to assist in identifying the categories of family support and related services that will be included in the procurement. The categories of family support and related services shall be defined no later than July 15, 2012. In identifying services, the department must review current data and research related to the effectiveness of family support and related services that mitigate child safety concerns and promote permanency, including reunification, and child well-being. Expenditures for family support and related services purchased under this section must remain within the levels appropriated in the operating budget.

~~((4))~~ (3)(a) Network administrators shall, directly or through subcontracts with service providers:

(i) Assist caseworkers in meeting their responsibility for implementation of case plans and individual service and safety plans; and

(ii) Provide the family support and related services within the categories of contracted services that are included in a child or family's case plan or individual service and safety plan within funds available under contract.

(b) While the department caseworker retains responsibility for case management, nothing in chapter 205, Laws of 2012 limits the ability of the

department to continue to contract for the provision of case management services by child-placing agencies, behavioral rehabilitation services agencies, or other entities that provided case management under contract with the department prior to July 1, 2005.

~~((5))~~ (4) In conducting the procurement, the department shall actively consult with other state agencies with relevant expertise, such as the health care authority, and with philanthropic entities with expertise in performance-based contracting for child welfare services. The director of the office of financial management must approve the request for proposal prior to its issuance.

~~((6))~~ (5) The procurement process must be developed and implemented in a manner that complies with applicable provisions of intergovernmental agreements between the state of Washington and tribal governments and must provide an opportunity for tribal governments to contract for service delivery through network administrators.

~~((7))~~ (6) The procurement and resulting contracts must include, but are not limited to, the following standards and requirements:

(a) The use of family engagement approaches to successfully motivate families to engage in services and training of the network's contracted providers to apply such approaches;

(b) The use of parents and youth who are successful veterans of the child welfare system to act as mentors through activities that include, but are not limited to, helping families navigate the system, facilitating parent engagement, and minimizing distrust of the child welfare system;

(c) The establishment of qualifications for service providers participating in provider networks, such as appropriate licensure or certification, education, and accreditation by professional accrediting entities;

(d) Adequate provider capacity to meet the anticipated service needs in the network administrator's contracted service area. The network administrator must be able to demonstrate that its provider network is culturally competent and has adequate capacity to address disproportionality, including utilization of tribal and other ethnic providers capable of serving children and families of color or who need language-appropriate services;

(e) Fiscal solvency of network administrators and providers participating in the network;

(f) The use of evidence-based, research-based, and promising practices, where appropriate, including fidelity and quality assurance provisions;

(g) Network administrator quality assurance activities, including monitoring of the performance of providers in their provider network, with respect to meeting measurable service outcomes;

(h) Network administrator data reporting, including data on contracted provider performance and service outcomes; and

(i) Network administrator compliance with applicable provisions of intergovernmental agreements between the state of Washington and tribal governments and the federal and Washington state Indian child welfare act.

~~((8))~~ (7) As part of the procurement process under this section, the department shall issue the request for proposals or request for information no later than December 31, ~~((2012. The department shall notify the apparently successful bidders no later than June 30, 2013))~~ 2013, shall begin

implementation of performance-based contracting no later than July 1, 2014, and shall fully implement performance-based contracting no later than July 1, 2015.

~~((9))~~ (8) Performance-based payment methodologies must be used in network administrator contracting. Performance measures should relate to successful engagement by a child or parent in services included in their case plan, and resulting improvement in identified problem behaviors and interactions. For the initial three-year period of implementation of performance-based contracting, the department may transfer financial risk for the provision of services to network administrators only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. However, the department may develop a shared savings methodology through which the network administrator will receive a defined share of any savings that result from improved performance. If the department receives a Title IV-E waiver, the shared savings methodology must be consistent with the terms of the waiver. If a shared savings methodology is adopted, the network administrator shall reinvest the savings in enhanced services to better meet the needs of the families and children they serve.

~~((10))~~ (9) The department must actively monitor network administrator compliance with the terms of contracts executed under this section.

~~((11))~~ (10) The use of performance-based contracts under this section must be done in a manner that does not adversely affect the state's ability to continue to obtain federal funding for child welfare-related functions currently performed by the state and with consideration of options to further maximize federal funding opportunities and increase flexibility in the use of such funds, including use for preventive and in-home child welfare services.

**Sec. 4.** RCW 74.13.360 and 2012 c 205 s 8 are each amended to read as follows:

(1) No later than December 30, ~~((2015))~~ 2016:

(a) In the demonstration sites selected under RCW 74.13.368(4)(a), child welfare services shall be provided by supervising agencies with whom the department has entered into performance-based contracts. Supervising agencies may enter into subcontracts with other licensed agencies; and

(b) Except as provided in subsection (3) of this section, and notwithstanding any law to the contrary, the department may not directly provide child welfare services to families and children provided child welfare services by supervising agencies in the demonstration sites selected under RCW 74.13.368(4)(a).

(2) No later than December 30, ~~((2015))~~ 2016, for families and children provided child welfare services by supervising agencies in the demonstration sites selected under RCW 74.13.368(4)(a), the department is responsible for only the following:

(a) Monitoring the quality of services for which the department contracts under this chapter;

(b) Ensuring that the services are provided in accordance with federal law and the laws of this state, including the Indian child welfare act;

(c) Providing child protection functions and services, including intake and investigation of allegations of child abuse or neglect, emergency shelter care functions under RCW 13.34.050, and referrals to appropriate providers; and

(d) Issuing licenses pursuant to chapter 74.15 RCW.

(3) No later than December 30, (~~2015~~) 2016, for families and children provided child welfare services by supervising agencies in the demonstration sites selected under RCW 74.13.368(4)(a), the department may provide child welfare services only:

(a) For the limited purpose of establishing a control or comparison group as deemed necessary by the child welfare transformation design committee, with input from the Washington state institute for public policy, to implement the demonstration sites selected and defined pursuant to RCW 74.13.368(4)(a) in which the performance in achieving measurable outcomes will be compared and evaluated pursuant to RCW 74.13.370; or

(b) In an emergency or as a provider of last resort. The department shall adopt rules describing the circumstances under which the department may provide those services. For purposes of this section, "provider of last resort" means the department is unable to contract with a private agency to provide child welfare services in a particular geographic area or, after entering into a contract with a private agency, either the contractor or the department terminates the contract.

(4) For purposes of this chapter, on and after September 1, 2010, performance-based contracts shall be structured to hold the supervising agencies accountable for achieving the following goals in order of importance: Child safety; child permanency, including reunification; and child well-being.

(5) A federally recognized tribe located in this state may enter into a performance-based contract with the department to provide child welfare services to Indian children whether or not they reside on a reservation. Nothing in this section prohibits a federally recognized Indian tribe located in this state from providing child welfare services to its members or other Indian children pursuant to existing tribal law, regulation, or custom, or from directly entering into agreements for the provision of such services with the department, if the department continues to otherwise provide such services, or with federal agencies.

**NEW SECTION. Sec. 5.** RCW 74.13.368 (Performance-based contracts—Child welfare transformation design committee) and 2012 c 205 s 10, 2010 c 291 s 2, & 2009 c 520 s 8 are each suspended as of the effective date of this section until December 1, 2015.

Passed by the House April 22, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 206

[Substitute House Bill 1821]

### PERMANENCY PLANNING HEARINGS—GOOD CAUSE EXCEPTIONS

AN ACT Relating to good cause exceptions during permanency hearings; and amending RCW 13.34.145.

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

**Sec. 1.** RCW 13.34.145 and 2011 c 330 s 6 are each amended to read as follows:

(1) The purpose of a permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and reach decisions regarding the permanent placement of the child.

(a) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as provided in this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or a permanent custody order is entered, or the dependency is dismissed. Every effort shall be made to provide stability in long-term placement, and to avoid disruption of placement, unless the child is being returned home or it is in the best interest of the child.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(3) At the permanency planning hearing, the court shall conduct the following inquiry:

(a) If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate.

(b) In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. The court shall review the permanency plan prepared by the agency and make explicit findings regarding each of the following:

(i) The continuing necessity for, and the safety and appropriateness of, the placement;

(ii) The extent of compliance with the permanency plan by the department or supervising agency and any other service providers, the child's parents, the child, and the child's guardian, if any;

(iii) The extent of any efforts to involve appropriate service providers in addition to department or supervising agency staff in planning to meet the special needs of the child and the child's parents;

(iv) The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child;

(v) The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement; and

(vi) If the child has been placed outside of his or her home for fifteen of the most recent twenty-two months, not including any period during which the child was a runaway from the out-of-home placement or the first six months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan, whether reasonable efforts were made by the department or supervising agency to achieve the goal of the permanency plan, and the circumstances which prevent the child from any of the following:

(A) Being returned safely to his or her home;

(B) Having a petition for the involuntary termination of parental rights filed on behalf of the child;

(C) Being placed for adoption;

(D) Being placed with a guardian;

(E) Being placed in the home of a fit and willing relative of the child; or

(F) Being placed in some other alternative permanent placement, including independent living or long-term foster care.

At this hearing, the court shall order the department or supervising agency to file a petition seeking termination of parental rights if the child has been in out-of-home care for fifteen of the last twenty-two months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not appropriate. Any good cause finding shall be reviewed at all subsequent hearings pertaining to the child. For purposes of this section, "good cause exception" includes but is not limited to the following:

(I) The child is being cared for by a relative;

(II) The department has not provided to the child's family such services as the court and the department have deemed necessary for the child's safe return home; ~~((øø))~~

(III) The department has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the child's best interests;

(IV) Until June 30, 2015, where a parent has been accepted into a dependency treatment court program or long-term substance abuse or dual diagnoses treatment program and is demonstrating compliance with treatment goals; or

(V) Until June 30, 2015, where a parent who has been court ordered to complete services necessary for the child's safe return home files a declaration under penalty of perjury stating the parent's financial inability to pay for the same court-ordered services, and also declares the department was unwilling or unable to pay for the same services necessary for the child's safe return home.

(c)(i) If the permanency plan identifies independent living as a goal, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to



manage his or her financial, personal, social, educational, and nonfinancial affairs prior to approving independent living as a permanency plan of care. The court will inquire whether the child has been provided information about extended foster care services.

(ii) The permanency plan shall also specifically identify the services, including extended foster care services, where appropriate, that will be provided to assist the child to make a successful transition from foster care to independent living.

(iii) The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(d) If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall:

(i) Enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280, 13.34.215(6), and 13.34.096; and

(ii) If the department or supervising agency is recommending a placement other than the child's current placement with a foster parent, relative, or other suitable person, enter a finding as to the reasons for the recommendation for a change in placement.

(4) In all cases, at the permanency planning hearing, the court shall:

(a)(i) Order the permanency plan prepared by the supervising agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(5) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(6) Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(7) If the court orders the child returned home, casework supervision by the department or supervising agency shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

(8) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining

whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection (8) of this section are met.

(10) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the department or supervising agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(11) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

(12) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter.

Passed by the House April 25, 2013.

Passed by the Senate April 24, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

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## CHAPTER 207

[Substitute House Bill 1853]

### INDEPENDENT CONTRACTORS—REAL ESTATE BROKERS

AN ACT Relating to clarifying that real estate brokers licensed under chapter 18.85 RCW are independent contractors; and amending RCW 49.46.130.

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

**Sec. 1.** RCW 49.46.130 and 2010 c 8 s 12045 are each amended to read as follows:

(1) Except as otherwise provided in this section, no employer shall employ any of his or her employees for a work week longer than forty hours unless such employee receives compensation for his or her employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he or she is employed.

(2) This section does not apply to:

(a) Any person exempted pursuant to RCW 49.46.010(~~((5))~~) (3). The payment of compensation or provision of compensatory time off in addition to a salary shall not be a factor in determining whether a person is exempted under RCW 49.46.010(~~((5))~~) (3)(c);

(b) Employees who request compensating time off in lieu of overtime pay;

(c) Any individual employed as a seaman whether or not the seaman is employed on a vessel other than an American vessel;

(d) Seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, including those seasonal employees employed by agricultural fairs, within the state provided that the period of employment for any seasonal employee at any or all agricultural fairs does not exceed fourteen working days a year;

(e) Any individual employed as a motion picture projectionist if that employee is covered by a contract or collective bargaining agreement which regulates hours of work and overtime pay;

(f) An individual employed as a truck or bus driver who is subject to the provisions of the Federal Motor Carrier Act (49 U.S.C. Sec. 3101 et seq. and 49 U.S.C. Sec. 10101 et seq.), if the compensation system under which the truck or bus driver is paid includes overtime pay, reasonably equivalent to that required by this subsection, for working longer than forty hours per week;

(g) Any individual employed (i) on a farm, in the employ of any person, in connection with the cultivation of the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife, or in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment; or (ii) in packing, packaging, grading, storing or delivering to storage, or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; or (iii) commercial canning, commercial freezing, or any other commercial processing, or with respect to services performed in connection with the cultivation, raising, harvesting, and processing of oysters or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption;

(h) Any industry in which federal law provides for an overtime payment based on a work week other than forty hours. However, the provisions of the federal law regarding overtime payment based on a work week other than forty hours shall nevertheless apply to employees covered by this section without regard to the existence of actual federal jurisdiction over the industrial activity of the particular employer within this state. For the purposes of this subsection, "industry" means a trade, business, industry, or other activity, or branch, or group thereof, in which individuals are gainfully employed (section 3(h) of the Fair Labor Standards Act of 1938, as amended (Public Law 93-259));

(i) Any hours worked by an employee of a carrier by air subject to the provisions of subchapter II of the Railway Labor Act (45 U.S.C. Sec. 181 et seq.), when such hours are voluntarily worked by the employee pursuant to a shift-trading practice under which the employee has the opportunity in the same or in other work weeks to reduce hours worked by voluntarily offering a shift for trade or reassignment; and

(j) Any individual licensed under chapter 18.85 RCW unless the individual is providing real estate brokerage services under a written contract with a real estate firm which provides that the individual is an employee. For purposes of this subsection (2)(j), "real estate brokerage services" and "real estate firm" mean the same as defined in RCW 18.85.011.

(3) No employer shall be deemed to have violated subsection (1) of this section by employing any employee of a retail or service establishment for a work week in excess of the applicable work week specified in subsection (1) of this section if:

(a) The regular rate of pay of the employee is in excess of one and one-half times the minimum hourly rate required under RCW 49.46.020; and

(b) More than half of the employee's compensation for a representative period, of not less than one month, represents commissions on goods or services.

In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate is to be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

(4) No employer of commissioned salespeople primarily engaged in the business of selling automobiles, trucks, recreational vessels, recreational vessel trailers, recreational vehicle trailers, recreational campers, manufactured housing, or farm implements to ultimate purchasers shall violate subsection (1) of this section with respect to such commissioned salespeople if the commissioned salespeople are paid the greater of:

(a) Compensation at the hourly rate, which may not be less than the rate required under RCW 49.46.020, for each hour worked up to forty hours per week, and compensation of one and one-half times that hourly rate for all hours worked over forty hours in one week; or

(b) A straight commission, a salary plus commission, or a salary plus bonus applied to gross salary.

(5) No public agency shall be deemed to have violated subsection (1) of this section with respect to the employment of any employee in fire protection activities or any employee in law enforcement activities (including security personnel in correctional institutions) if: (a) In a work period of twenty-eight consecutive days the employee receives for tours of duty which in the aggregate exceed two hundred forty hours; or (b) in the case of such an employee to whom a work period of at least seven but less than twenty-eight days applies, in his or her work period the employee receives for tours of duty which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in his or her work period as two hundred forty hours bears to twenty-eight days; compensation at a rate not less than one and one-half times the regular rate at which he or she is employed.

Passed by the House March 4, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

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**CHAPTER 208**

[Substitute Senate Bill 5002]

**MOSQUITO CONTROL DISTRICTS**

AN ACT Relating to mosquito control districts; and amending RCW 17.28.160.

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

**Sec. 1.** RCW 17.28.160 and 1981 c 156 s 1 are each amended to read as follows:

A mosquito control district organized under this chapter may:

(1) Take all necessary or proper steps for the extermination of mosquitoes.

(2) Subject to the paramount control of the county or city in which they exist, abate as nuisances all stagnant pools of water and other breeding places for mosquitoes.

(3) If necessary or proper, in the furtherance of the objects of this chapter, build, construct, repair, and maintain necessary dikes, levees, cuts, canals, or ditches upon any land, and acquire by purchase, condemnation, or by other lawful means, in the name of the district, any lands, rights-of-way, easements, property, or material necessary for any of those purposes.

(4) Make contracts to indemnify or compensate any owner of land or other property for any injury or damage necessarily caused by the use or taking of property for dikes, levees, cuts, canals, or ditches.

(5)(a) Enter upon without hindrance any lands within the district and adjacent thereto for the purpose of inspection to ascertain whether breeding places of mosquitoes exist upon such lands; or to abate public nuisances in accordance with this chapter; or to ascertain if notices to abate the breeding of mosquitoes upon such lands have been complied with; or to treat (with oil or other larvicidal material any breeding places of mosquitoes) using integrated pest management, as defined in RCW 17.15.010, methods in places where mosquitoes are found or are likely to exist upon such lands.

(b) For land adjacent to land within the district, a district must give prior written notice to the property owner of the district's intent to enter upon the land for the purposes specified in (a) of this subsection.

(6) Sell or lease any land, rights-of-way, easements, property or material acquired by the district.

(7) Issue warrants payable at the time stated therein to evidence the obligation to repay money borrowed or any other obligation incurred by the district, warrants so issued to draw interest at a rate fixed by the board payable annually or semiannually as the board may prescribe.

(8) Make contracts with the United States, or any state, municipality, or any department of those entities for carrying out the general purpose for which the district is formed.

(9) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for its purposes.

(10) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants; and publish information or literature and do any and all other things necessary or incident to the powers granted by, and to carry out the projects specified in this chapter.

(11) Subject to management considerations identified during consultation with the landowner, cut or remove shrubbery or undergrowth as necessary or proper in order to carry out this chapter.

Passed by the Senate April 19, 2013.

Passed by the House April 17, 2013.

Approved by the Governor May 10, 2013.  
Filed in Office of Secretary of State May 10, 2013.

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## CHAPTER 209

[Engrossed Substitute Senate Bill 5324]

### STORM WATER CONTROL RETENTION PONDS—MOSQUITO ABATEMENT

AN ACT Relating to mosquito abatement in storm water control retention ponds; and adding a new section to chapter 90.03 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 90.03 RCW to read as follows:

(1) A county, city, town, water-sewer district, or flood control zone district constructing, improving, operating, or maintaining storm water control facilities under chapter 35.67, 35.92, 36.89, 36.94, 57.08, or 86.15 RCW that include storm water retention ponds, also known as wet ponds, wet retention ponds, or wet extended detention ponds, as part of a storm water control facility for which the primary function of the pond is to detain storm water, must:

(a) Consider and to the extent possible consistent with department design guidelines, and without compromising the intended function of the storm water retention pond, construct storm water retention ponds to maintain and control vegetation to minimize mosquito propagation;

(b) Consult with the local mosquito control district, where established, in the development of construction plans that include storm water retention ponds; and

(c) Provide for maintenance and control of vegetation growth in storm water retention ponds to reduce mosquito habitat and inhibit mosquito propagation without compromising the intended function of a storm water retention pond.

(2) A county, city, town, water-sewer district, or flood control zone district operating or maintaining storm water control facilities must, except where mosquito control districts are established, when notified by the department of health or a local health jurisdiction of the positive identification of west nile virus or other mosquito-borne human disease viruses in mosquitoes, birds, or mammals, including humans, consult with the department of health or a mosquito control district concerning which integrated pest management strategies, as defined under chapter 17.15 RCW, for mosquito control or abatement in storm water retention ponds would be most effective to prevent the spread of the disease.

(3) Where a mosquito control district is established, when notified by the department of health or a local health jurisdiction of the positive identification of west nile virus or other mosquito-borne human disease viruses in mosquitoes, birds, or mammals, including humans, the mosquito control district is responsible for mosquito control or abatement in storm water retention ponds.

Passed by the Senate April 22, 2013.

Passed by the House April 12, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

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## CHAPTER 210

[Senate Bill 5052]

## WHATCOM COUNTY—SUPERIOR COURT JUDGES

AN ACT Relating to increasing the number of superior court judges in Whatcom county; amending RCW 2.08.063; and creating a new section.

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

**Sec. 1.** RCW 2.08.063 and 2005 c 95 s 1 are each amended to read as follows:

There shall be in the county of Lincoln one judge of the superior court; in the county of Skagit, four judges of the superior court; in the county of Walla Walla, two judges of the superior court; in the county of Whitman, one judge of the superior court; in the county of Yakima, eight judges of the superior court; in the county of Adams, one judge of the superior court; in the county of Whatcom, ~~((three))~~ four judges of the superior court.

**NEW SECTION. Sec. 2.** The additional judicial position created by section 1 of this act in Whatcom county becomes effective only if the county, through its duly constituted legislative authority, documents its approval of the additional position and its agreement that it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position as provided by statute.

Passed by the Senate January 30, 2013.

Passed by the House April 17, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 211

[Substitute Senate Bill 5072]

TAX EXEMPTION—DISABLED VETERANS AND MILITARY PERSONNEL—  
VEHICLE OPERATION

AN ACT Relating to a sales and use tax exemption for disabled veterans and members of the armed forces for certain equipment and services that assist physically challenged persons to safely operate a motor vehicle; adding a new section to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; creating a new section; providing an effective date; and providing expiration dates.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that it is important to recognize the service of active duty military and veterans and to acknowledge the continued sacrifice of those veterans who have been catastrophically injured. The legislature further finds that many disabled veterans often need customized, accessible transportation to be self-sufficient and to maintain a high quality of life. The legislature further finds that individuals with a severe disability are three times more likely to be at or below the national poverty level. The legislature further finds that the federal government pays for the cost of mobility adaptive equipment for severely injured veterans; however, it does not cover the cost of sales or use tax owed on this equipment. The legislature further finds that this cost is then shifted onto the veterans, who often times cannot afford the tax due to the substantial amount of adaptive equipment required in such customized

vehicles. The legislature further finds that this added financial burden has the unintended effect of causing some veterans to acquire their mobility adaptive equipment in neighboring states that do not impose a sales tax, thereby negatively impacting Washington businesses providing mobility enhancing equipment and services to Washington veterans.

(2) It is the legislature's intent to provide specific financial relief for severely injured veterans and to ameliorate a negative consequence of Washington's tax structure by providing a sales and use tax exemption for mobility adaptive equipment required to customize vehicles for disabled veterans. It is the further intent of the legislature to reexamine this exemption in five years to determine whether it has mitigated the competitive disadvantage stemming from Washington's tax structure on mobility businesses and to assess whether the cost of the exemption in terms of forgone state revenue is beyond what was reasonably assumed in the fiscal estimate for the legislation.

**NEW SECTION. Sec. 2.** A new section is added to chapter 82.08 RCW to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to sales to eligible purchasers of prescribed add-on automotive adaptive equipment, including charges incurred for labor and services rendered in respect to the installation and repairing of such equipment. The exemption provided in this section only applies if the eligible purchaser is reimbursed in whole or part for the purchase by the United States department of veterans affairs or other federal agency, and the reimbursement is paid directly by that federal agency to the seller.

(2) Sellers making tax-exempt sales under this section must:

(a) Obtain an exemption certificate from the eligible purchaser in a form and manner prescribed by the department. The seller must retain a copy of the exemption certificate for the seller's files. In lieu of an exemption certificate, a seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement;

(b) File their tax return with the department electronically; and

(c) Report their total gross sales on their return and deduct the exempt sales under subsection (1) of this section from their reported gross sales.

(3) For purposes of this section, the following definitions apply unless the context clearly requires otherwise:

(a) "Add-on automotive adaptive equipment" means equipment installed in, and modifications made to, a motor vehicle that are necessary to assist physically challenged persons to enter, exit, or safely operate a motor vehicle. The term includes but is not limited to wheelchair lifts, wheelchair restraints, ramps, under vehicle lifts, power door openers, power seats, lowered floors, raised roofs, raised doors, hand controls, left foot gas pedals, chest and shoulder harnesses, parking brake extensions, dual battery systems, steering devices, reduced and zero effort steering and braking, voice-activated controls, and digital driving systems. The term does not include motor vehicles and equipment installed in a motor vehicle by the manufacturer of the motor vehicle.

(b) "Eligible purchaser" means a veteran, or member of the armed forces serving on active duty, who is disabled, regardless of whether the disability is service connected as that term is defined by federal statute 38 U.S.C. Sec. 101, as amended, as of August 1, 2013.



(c) "Prescribed add-on automotive adaptive equipment" means add-on automotive adaptive equipment prescribed by a physician.

(4) This section expires July 1, 2018.

**NEW SECTION. Sec. 3.** A new section is added to chapter 82.12 RCW to read as follows:

(1) The tax imposed by RCW 82.12.020 does not apply to the use of prescribed add-on automotive adaptive equipment or to labor and services rendered in respect to the installation and repairing of such equipment. The exemption under this section only applies if the sale of the prescribed add-on automotive adaptive equipment or labor and services was exempt from sales tax under section 1 of this act or would have been exempt from sales tax under section 1 of this act if the equipment or labor and services had been purchased in this state.

(2) For purposes of this section, "prescribed add-on automotive adaptive equipment" has the same meaning as provided in section 1 of this act.

(3) This section expires July 1, 2018.

**NEW SECTION. Sec. 4.** This act takes effect August 1, 2013.

Passed by the Senate April 28, 2013.

Passed by the House April 26, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 212

[Engrossed Second Substitute Senate Bill 5078]

### PROPERTY TAX—EXEMPTIONS—NONPROFIT FAIRS

AN ACT Relating to modifying the property tax exemption for nonprofit fairs; amending RCW 84.36.480; reenacting and amending RCW 84.36.805; and creating a new section.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that nonprofit fairs provide educational opportunities for youth and promote agriculture and the welfare of rural Washington. The legislature further finds that publicly owned fairgrounds can be rented or loaned out on a temporary basis without jeopardizing the property's exempt status for property tax purposes. The legislature further finds that many cities and counties have transferred ownership in fairground properties to nonprofit fair associations to achieve operational efficiencies. The legislature further finds that properties previously owned by cities or counties, and now owned and operated by nonprofit fair associations, may be subject to property tax even though the use of the property has not changed.

(2) It is the intent of the legislature to mitigate an unintended consequence of the property tax code that would otherwise interfere with a city's or county's ability to achieve operational efficiencies and follows best practices by transferring fairgrounds to nonprofit fair associations for an identical use of the property. It is the further intent of the legislature to expire the property tax exemption in five years to evaluate if the exemption has created any unintended consequences, including any unfair competitive advantage that may be conferred by the property tax exemption over private businesses, and identify other similar

tax situations where ownership of property may be transferred from a public entity to a nonprofit association.

**Sec. 2.** RCW 84.36.480 and 1984 c 220 s 6 are each amended to read as follows:

~~((The following property shall be exempt from taxation:))~~ (1) Except as provided otherwise in subsections (2) and (3) of this section, the real and personal property of a nonprofit fair association that sponsors or conducts a fair or fairs ((which)) that is eligible to receive support from ((revenues collected pursuant to RCW 67.16.100)) the fair fund, as created in RCW 15.76.115 and allocated by the director of the department of agriculture, is exempt from taxation. To be exempt under this ~~((section))~~ subsection (1), the property must be used exclusively for fair purposes, except as provided in RCW 84.36.805. However, the loan or rental of property otherwise exempt under this section to a private concessionaire or to any person for use as a concession in conjunction with activities permitted under this section shall not nullify the exemption if the concession charges are subject to agreement and the rental income, if any, is reasonable and is devoted solely to the operation and maintenance of the property.

(2)(a) Except as provided otherwise in subsection (3) of this section, the real and personal property owned by a nonprofit fair association organized under chapter 24.06 RCW and used for fair purposes is exempt from taxation if the majority of such property, as determined by assessed value, was purchased or acquired by the same nonprofit fair association from a county or a city between 1995 and 1998.

(b) The exemption under this subsection (2) may not be claimed for taxes levied for collection in 2019 and thereafter.

(3) A nonprofit fair association with real and personal property having an assessed value of more than fifteen million dollars is not eligible for the exemptions under this section.

**Sec. 3.** RCW 84.36.805 and 2006 c 319 s 1 and 2006 c 226 s 3 are each reenacted and amended to read as follows:

(1) In order to qualify for an exemption under this chapter, the nonprofit organizations, associations, or corporations must satisfy the conditions in this section.

(2) The property must be used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4), 84.36.037, 84.36.050, and 84.36.060(1) (a) and (b), the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted.

(3) The facilities and services must be available to all regardless of race, color, national origin or ancestry.

(4) The organization, association, or corporation must be duly licensed or certified where such licensing or certification is required by law or regulation.

(5) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller (~~shall~~) does not qualify for exempt status. This subsection does not apply to property sold to a nonprofit entity, as defined in RCW 84.36.560(7), by:

(a) A nonprofit as defined in RCW 84.36.800 that is exempt from income tax under (~~section~~) 26 U.S.C. Sec. 501(c) of the federal internal revenue code;

(b) A governmental entity established under RCW 35.21.660, 35.21.670, or 35.21.730;

(c) A housing authority created under RCW 35.82.030;

(d) A housing authority meeting the definition in RCW 35.82.210(2)(a); or

(e) A housing authority established under RCW 35.82.300.

(6) The department (~~shall~~) must have access to its books in order to determine whether the nonprofit organization, association, or corporation is exempt from taxes under this chapter.

(7) This section does not apply to exemptions granted under RCW 84.36.020, 84.36.032, 84.36.250, (~~and~~) 84.36.260, and 84.36.480(2).

Passed by the Senate April 19, 2013.

Passed by the House April 17, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

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## CHAPTER 213

[Senate Bill 5220]

### CITY DISABILITY BOARDS—MEMBERSHIP

AN ACT Relating to membership on city disability boards; and amending RCW 41.26.110.

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

**Sec. 1.** RCW 41.26.110 and 2005 c 66 s 1 are each amended to read as follows:

(1) All claims for disability shall be acted upon and either approved or disapproved by either type of disability board authorized to be created in this section.

(a) Each city having a population of twenty thousand or more shall establish a disability board having jurisdiction over all members employed by those cities and composed of the following five members: Two members of the city legislative body to be appointed by the mayor; one active or retired firefighter employed by or retired from the city to be elected by the firefighters employed by or retired from the city who are subject to the jurisdiction of the board; one active or retired law enforcement officer employed by or retired from the city to be elected by the law enforcement officers employed by or retired from the city who are subject to the jurisdiction of the board; and one member from the public at large who resides within the city to be appointed by the other four members designated in this subsection. Only those active or retired firefighters and law enforcement officers who are subject to the jurisdiction of the board have the

right to elect under this section. All firefighters and law enforcement officers employed by or retired from the city are eligible for election. Each of the elected members shall serve a two year term. If there are either no firefighters or law enforcement officers under the jurisdiction of the board eligible to vote, a second eligible employee representative shall be elected by the law enforcement officers or firefighters eligible to vote. The members appointed pursuant to this subsection shall serve for two year terms: PROVIDED, That cities of the first class only, shall retain existing (~~firemen's~~) firefighters' pension boards established pursuant to RCW 41.16.020 and existing boards of trustees of the relief and pension fund of the police department as established pursuant to RCW 41.20.010 which such boards shall have authority to act upon and approve or disapprove claims for disability by firefighters or law enforcement officers as provided under the Washington law enforcement officers' and firefighters' retirement system act.

(b) Each county shall establish a disability board having jurisdiction over all members employed by or retired from an employer within the county and not employed by a city in which a disability board is established. The county disability board so created shall be composed of five members to be chosen as follows: One member of the legislative body of the county to be appointed by the county legislative body; one member of a city or town legislative body located within the county which does not contain a city disability board established pursuant to (~~subsection (4))~~(a) of this subsection to be chosen by a majority of the mayors of such cities and towns within the county which does not contain a city disability board; one active firefighter or retired firefighter employed by or retired from an employer within the county to be elected by the firefighters employed or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of that board; one law enforcement officer or retired law enforcement officer employed by or retired from an employer within the county to be elected by the law enforcement officers employed in or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established and who are subject to the jurisdiction of that board; and one member from the public at large who resides within the county but does not reside within a city in which a city disability board is established, to be appointed by the other four members designated in this subsection. However, in counties with a population less than sixty thousand, the member of the disability board appointed by a majority of the mayors of the cities and towns within the county that do not contain a city disability board must be a resident of one of the cities and towns but need not be a member of a city or town legislative body. Only those active or retired firefighters and law enforcement officers who are subject to the jurisdiction of the board have the right to elect under this section. All firefighters and law enforcement officers employed by or retired from an employer within the county who are not employed by or retired from a city in which a disability board is established are eligible for election. All members appointed or elected pursuant to this subsection shall serve for two year terms. If there are no firefighters under the jurisdiction of the board eligible to vote, a second eligible employee representative shall be elected by the law enforcement officers eligible to vote. If there are no law enforcement officers under the jurisdiction of the board

eligible to vote, a second eligible representative shall be elected by the firefighters eligible to vote.

(2) The members of both the county and city disability boards shall not receive compensation for their service upon the boards but the members shall be reimbursed by their respective county or city for all expenses incidental to such service as to the amount authorized by law.

(3) The disability boards authorized for establishment by this section shall perform all functions, exercise all powers, and make all such determinations as specified in this chapter.

Passed by the Senate April 23, 2013.

Passed by the House April 3, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 214

[Engrossed Senate Bill 5221]

### INCOMPETENCE TO STAND TRIAL—NOTIFICATION OF RELEASE

AN ACT Relating to notification of release of a person following dismissal of charges based on incompetence to stand trial; and amending RCW 10.77.065.

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

**Sec. 1.** RCW 10.77.065 and 2012 c 256 s 4 are each amended to read as follows:

(1)(a)(i) The expert conducting the evaluation shall provide his or her report and recommendation to the court in which the criminal proceeding is pending. For a competency evaluation of a defendant who is released from custody, if the evaluation cannot be completed within twenty-one days due to a lack of cooperation by the defendant, the evaluator shall notify the court that he or she is unable to complete the evaluation because of such lack of cooperation.

(ii) A copy of the report and recommendation shall be provided to the designated mental health professional, the prosecuting attorney, the defense attorney, and the professional person at the local correctional facility where the defendant is being held, or if there is no professional person, to the person designated under (a)(iv) of this subsection. Upon request, the evaluator shall also provide copies of any source documents relevant to the evaluation to the designated mental health professional.

(iii) Any facility providing inpatient services related to competency shall discharge the defendant as soon as the facility determines that the defendant is competent to stand trial. Discharge shall not be postponed during the writing and distribution of the evaluation report. Distribution of an evaluation report by a facility providing inpatient services shall ordinarily be accomplished within two working days or less following the final evaluation of the defendant. If the defendant is discharged to the custody of a local correctional facility, the local correctional facility must continue the medication regimen prescribed by the facility, when clinically appropriate, unless the defendant refuses to cooperate with medication.

(iv) If there is no professional person at the local correctional facility, the local correctional facility shall designate a professional person as defined in

RCW 71.05.020 or, in cooperation with the regional support network, a professional person at the regional support network to receive the report and recommendation.

(v) Upon commencement of a defendant's evaluation in the local correctional facility, the local correctional facility must notify the evaluator of the name of the professional person, or person designated under (a)(iv) of this subsection, to receive the report and recommendation.

(b) If the evaluator concludes, under RCW 10.77.060(3)(f), the person should be evaluated by a designated mental health professional under chapter 71.05 RCW, the court shall order such evaluation be conducted prior to release from confinement when the person is acquitted or convicted and sentenced to confinement for twenty-four months or less, or when charges are dismissed pursuant to a finding of incompetent to stand trial.

(2) The designated mental health professional shall provide written notification within twenty-four hours of the results of the determination whether to commence proceedings under chapter 71.05 RCW. The notification shall be provided to the persons identified in subsection (1)(a) of this section.

(3) The prosecuting attorney shall provide a copy of the results of any proceedings commenced by the designated mental health professional under subsection (2) of this section to the secretary.

(4) A facility conducting a civil commitment evaluation under RCW 10.77.086(4) or 10.77.088(1)(b)(ii) that makes a determination to release the person instead of filing a civil commitment petition must provide written notice to the prosecutor and defense attorney at least twenty-four hours prior to release. The notice may be given by electronic mail, facsimile, or other means reasonably likely to communicate the information immediately.

(5) The fact of admission and all information and records compiled, obtained, or maintained in the course of providing services under this chapter may also be disclosed to the courts solely to prevent the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

Passed by the Senate April 26, 2013.

Passed by the House April 25, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

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## CHAPTER 215

[Engrossed Second Substitute Senate Bill 5267]

### MEDICAL AND PHARMACY MANAGEMENT— STANDARDIZED PRIOR AUTHORIZATION

AN ACT Relating to developing standardized prior authorization for medical and pharmacy management; creating new sections; and providing an expiration date.

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

**NEW SECTION. Sec. 1.** (1) A work group is formed to develop criteria to streamline the prior authorization process for prescription drugs, medical procedures, and medical tests, with the goal of simplification and uniformity.

(2) The work group shall be cochaired by the chair of the senate health care committee and the chair of the house of representatives health care committee, and membership of the work group shall be determined by the cochairs, not to exceed eleven participants.

(3) The work group shall examine elements that may include the following:

(a) National standard transaction information, such as HIPAA 278 standards, for sending or receiving authorizations electronically;

(b) Standard transaction information and uniform prior authorization forms;

(c) Clean, uniform, and readily accessible forms for prior authorization including determining the appropriate number of forms;

(d) A core set of common data requirements for nonclinical information for prior authorization and electronic prescriptions, or both;

(e) The prior authorization process, which considers electronic forms and allows for flexibility for health insurance carriers to develop electronic forms; and

(f) Existing prior authorization forms by health insurance carriers and by state agencies, in developing the uniform prior authorization forms.

(4) The work group must:

(a) Establish timelines for urgent requests and timeliness for nonurgent requests;

(b) Work on a receipt and missing information time frame;

(c) Determine time limits for a response of acknowledgment of receipts or requests of missing information;

(d) Establish when an authorization request will be deemed as granted when there is no response.

(5) The work group must submit their recommendations to the appropriate committees of the legislature by November 15, 2013.

(6) This section expires January 1, 2014.

**NEW SECTION. Sec. 2.** The insurance commissioner shall adopt rules implementing only the recommendations of the work group established in section 1 of this act. The rules must take effect no later than January 1, 2015.

Passed by the Senate April 27, 2013.

Passed by the House April 24, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

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## CHAPTER 216

[Substitute Senate Bill 5282]

### MENTAL HEALTH COMMITMENT INFORMATION—STATEWIDE DATABASE

AN ACT Relating to creating a statewide database of mental health commitment information; adding a new section to chapter 71.05 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The department of licensing, Washington state patrol, department of social and health services, administrative office of the courts, and representatives of regional support networks and superior courts shall participate in a work group convened by the department of licensing for the purpose of making a proposal for consolidation of statewide involuntary

commitment information for the purpose of accurate and efficient verification of eligibility to possess a firearm. The work group shall also make recommendations with respect to how to maintain the privacy of commitment information and whether access to the database can legally be provided to designated mental health professionals or law enforcement officials for use in the official course of their duties. The work group shall report its recommendations to the governor and the appropriate committees of the legislature by December 1, 2013.

NEW SECTION. Sec. 2. A new section is added to chapter 71.05 RCW to read as follows:

By August 1, 2013, all regional support networks in the state of Washington must forward historical mental health involuntary commitment information retained by the organization including identifying information and dates of commitment to the department. As soon as feasible, the regional support networks must arrange to report new commitment data to the department within twenty-four hours. Commitment information under this section does not need to be resent if it is already in the possession of the department. Regional support networks and the department shall be immune from liability related to the sharing of commitment information under this section.

Passed by the Senate April 22, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 217

[House Bill 1645]

### HIGHER EDUCATION FACILITIES AUTHORITY

AN ACT Relating to the Washington higher education facilities authority; and amending RCW 28B.07.030.

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

**Sec. 1.** RCW 28B.07.030 and 2011 1st sp.s. c 11 s 137 are each amended to read as follows:

(1) The Washington higher education facilities authority is hereby established as a public body corporate and politic, with perpetual corporate succession, constituting an agency of the state of Washington exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010.

(2) The authority shall consist of (~~six~~) seven members as follows: The governor, lieutenant governor, chair of the student achievement council or the chair's designee, and four public members, one of whom shall be the president of a higher education institution at the time of appointment. The public members shall be residents of the state and appointed by the governor, subject to confirmation by the senate, on the basis of their interest or expertise in the provision of higher education and the financing of higher education. The public members of the authority shall serve for terms of four years. The initial terms of the public members shall be staggered in a manner determined by the governor. In the event of a vacancy on the authority due to death, resignation, or removal



of one of the public members, and upon the expiration of the term of any public member, the governor shall appoint a successor for a term expiring on the fourth anniversary of the successor's date of the appointment. If any of the state offices are abolished, the resulting vacancy on the authority shall be filled by the state officer who shall succeed substantially to the power and duties of the abolished office. Any public member of the authority may be removed by the governor for misfeasance, malfeasance, willful neglect of duty, or any other cause after notice and a public hearing, unless such notice and hearing shall be expressly waived in writing.

(3) The governor shall serve as chairperson of the authority. The authority shall elect annually one of its members as secretary. If the governor shall be absent from a meeting of the authority, the secretary shall preside. However, the governor may designate an employee of the governor's office to act on the governor's behalf in all other respects during the absence of the governor at any meeting of the authority. If the designation is in writing and is presented to the person presiding at the meetings of the authority who is included in the designation, the vote of the designee has the same effect as if cast by the governor.

(4) Any person designated by resolution of the authority shall keep a record of the proceedings of the authority and shall be the custodian of all books, documents, and papers filed with the authority, the minute book or a journal of the authority, and the authority's official seal, if any. The person may cause copies to be made of all minutes and other records and documents of the authority, and may give certificates to the effect that such copies are true copies. All persons dealing with the authority may rely upon the certificates.

(5) Four members of the authority constitute a quorum. Members participating in a meeting through the use of any means of communication by which all members participating can hear each other during the meeting shall be deemed to be present in person at the meeting for all purposes. The authority may act on the basis of a motion except when authorizing the issuance and sale of bonds, in which case the authority shall act by resolution. Bond resolutions and other resolutions shall be adopted upon the affirmative vote of four members of the authority, and shall be signed by those members voting yes. Motions shall be adopted upon the affirmative vote of a majority of a quorum of members present at any meeting of the authority. All actions taken by the authority shall take effect immediately without need for publication or other public notice. A vacancy in the membership of the authority does not impair the power of the authority to act under this chapter.

(6) The members of the authority shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement, solely from the funds of the authority, for travel expenses as determined by the authority incurred in the discharge of their duties under this chapter.

Passed by the House April 22, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 218

[House Bill 1736]

## HIGHER EDUCATION OPERATING EFFICIENCIES

AN ACT Relating to higher education operating efficiencies; amending RCW 28B.85.020; adding a new section to chapter 28B.10 RCW; adding a new section to chapter 28B.15 RCW; 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) In order to enhance the efficiency and effectiveness of operations of institutions of higher education, the office of financial management shall work with the department of enterprise services, the department of transportation, the department of commerce, institutions of higher education, and others as necessary to comprehensively review reporting requirements related to the provisions in RCW 19.27A.020, 19.27A.150, 70.235.020, 39.35D.020, 43.19.565, 43.41.130, 47.01.440, 70.94.151, 70.94.161, 70.94.527, 70.120A.010, 70.120A.050, 70.235.030, 70.235.040, 70.235.050, 70.235.060, 70.235.070, 80.80.030, 80.80.040, and 80.80.080. By September 1, 2014, the office of financial management shall report to the governor and the higher education committees of the legislature. The report shall include recommendations for coordinating and streamlining reporting, and promoting the most efficient use of state resources at institutions of higher education.

(2) This section expires August 1, 2015.

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

(1) Institutions of higher education and state higher education agencies may use or accept secure electronic signatures for any human resource, benefits, or payroll processes that require a signature. Such signatures are valid and enforceable.

(2) The definitions in this subsection apply throughout this section.

(a) "Electronic signature" means an electronic sound, symbol, or process, attached to, or logically associated with, a contract or other record and executed or adopted by a person with the intent to sign the record.

(b) "Secure electronic signature" means an electronic signature that:

(i) Is unique to the person making the signature;

(ii) Uses a technology or process to make the signature that is under the sole control of the person making the signature;

(iii) Uses a technology or process that can identify the person using the technology or process; and

(iv) Can be linked with an electronic record in such a way that it can be used to determine whether the electronic record has been changed since the electronic signature was incorporated in, attached to, or associated with the electronic record.

**Sec. 3.** RCW 28B.85.020 and 2012 c 229 s 543 are each amended to read as follows:

(1) The council:

(a) Shall adopt by rule, in accordance with chapter 34.05 RCW, minimum standards for degree-granting institutions concerning granting of degrees, quality of education, unfair business practices, financial stability, and other

necessary measures to protect citizens of this state against substandard, fraudulent, or deceptive practices. The rules shall require that an institution operating in Washington:

- (i) Be accredited;
- (ii) Have applied for accreditation and such application is pending before the accrediting agency;
- (iii) Have been granted a waiver by the council waiving the requirement of accreditation; or
- (iv) Have been granted an exemption by the council from the requirements of this subsection (1)(a);

(b) May investigate any entity the council reasonably believes to be subject to the jurisdiction of this chapter. In connection with the investigation, the council may administer oaths and affirmations, issue subpoenas and compel attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the council deems relevant or material to the investigation. The council, including its staff and any other authorized persons, may conduct site inspections, the cost of which shall be borne by the institution, and examine records of all institutions subject to this chapter;

(c) May negotiate and enter into interstate reciprocity agreements with other state or multistate entities if the agreements are consistent with the purposes in this chapter as determined by the council;

(d) May enter into agreements with degree-granting institutions of higher education based in this state, that are otherwise exempt under the provisions of subsection (1)(a) of this section, for the purpose of ensuring consistent consumer protection in interstate distance delivery of higher education;

(e) Shall develop an interagency agreement with the workforce training and education coordinating board to regulate degree-granting private vocational schools with respect to degree and nondegree programs; and

~~((+))~~ (f) Shall develop and disseminate information to the public about entities that sell or award degrees without requiring appropriate academic achievement at the postsecondary level, including but not limited to, a description of the substandard and potentially fraudulent practices of these entities, and advice about how the public can recognize and avoid the entities. To the extent feasible, the information shall include links to additional resources that may assist the public in identifying specific institutions offering substandard or fraudulent degree programs.

(2) Financial disclosures provided to the council by degree-granting private vocational schools are not subject to public disclosure under chapter 42.56 RCW.

**NEW SECTION. Sec. 4.** A new section is added to chapter 28B.15 RCW to read as follows:

(1) One student advisory committee may be formed at each four-year institution of higher education by that institution's recognized student government organization for the purpose of advising and assisting the administration of that four-year institution of higher education on issues that directly affect students' ability to access and succeed in their educational programs. Issues that the student advisory committee may consider include:

- (a) The institution's annual budget;

- (b) Tuition and fee levels;
- (c) Financial aid policies;
- (d) Long-range budget priorities and allocation planning; and
- (e) Admission and enrollment policies.

(2) Members of a student advisory committee may be appointed in a manner that is consistent with policies adopted by the recognized student government organizations at each institution. If there is both an undergraduate and graduate recognized student government organization at one institution, members of the student advisory committee may be appointed in a manner consistent with policies adopted by both organizations.

(3) The administration of each four-year institution of higher education must: (a) Make readily available all nonconfidential information, documents, and reports requested by the student advisory committee and that are necessary for the committee to provide informed recommendations; and (b) provide the opportunity to present recommendations to the boards of regents or trustees before final decisions of the administration that relate to the issues described in subsection (1) of this section.

(4) A student advisory committee must: (a) Make reasonable efforts to solicit feedback from students regarding the issues described in subsection (1) of this section and matters that are of general interest and impact students; and (b) take reasonable steps to keep students informed of deliberations and actions of the student advisory committee.

Passed by the House April 22, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 10, 2013.

Filed in Office of Secretary of State May 10, 2013.

## CHAPTER 219

[Substitute House Bill 1001]

### BEER AND WINE—THEATER LICENSES

AN ACT Relating to beer and wine theater licenses; amending RCW 66.20.300 and 66.20.310; adding a new section to chapter 66.24 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 66.24 RCW to read as follows:

(1) There is a theater license to sell beer, including strong beer, or wine, or both, at retail, for consumption on theater premises. The annual fee is four hundred dollars for a beer and wine theater license.

(2) If the theater premises is to be frequented by minors, an alcohol control plan must be submitted to the board at the time of application. The alcohol control plan must be approved by the board, and be prominently posted on the premises, prior to minors being allowed.

(3) For the purposes of this section:

(a) "Alcohol control plan" means a written, dated, and signed plan submitted to the board by an applicant or licensee for the entire theater premises, or rooms or areas therein, that shows where and when alcohol is permitted, where and when minors are permitted, and the control measures used to ensure

that minors are not able to obtain alcohol or be exposed to environments where drinking alcohol predominates.

(b) "Theater" means a place of business where motion pictures or other primarily nonparticipatory entertainment are shown, and includes only theaters with up to four screens.

(4) The board must adopt rules regarding alcohol control plans and necessary control measures to ensure that minors are not able to obtain alcohol or be exposed to areas where drinking alcohol predominates. All alcohol control plans must include a requirement that any person involved in the serving of beer and/or wine must have completed a mandatory alcohol server training program.

(5)(a) A licensee that is an entity that is exempt from taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended as of January 1, 2013, may enter into arrangements with a beer or wine manufacturer, importer, or distributor for brand advertising at the theater or promotion of events held at the theater. The financial arrangements providing for the brand advertising or promotion of events may not be used as an inducement to purchase the products of the manufacturer, importer, or distributor entering into the arrangement and such arrangements may not result in the exclusion of brands or products of other companies.

(b) The arrangements allowed under this subsection (5) are an exception to arrangements prohibited under RCW 66.28.305. The board must monitor the impacts of these arrangements. The board may conduct audits of a licensee and the affiliated business to determine compliance with this subsection (5). Audits may include, but are not limited to: Product selection at the facility; purchase patterns of the licensee; contracts with the beer or wine manufacturer, importer, or distributor; and the amount allocated or used for wine or beer advertising by the licensee, affiliated business, manufacturer, importer, or distributor under the arrangements.

(6) The maximum penalties prescribed by the board in WAC 314-29-020 relating to fines and suspensions are double for violations involving minors or the failure to follow the alcohol control plan with respect to theaters licensed under this section.

**Sec. 2.** RCW 66.20.300 and 2011 c 325 s 5 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout RCW 66.20.310 through 66.20.350 unless the context clearly requires otherwise.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person who as part of his or her employment participates in the sale or service of alcoholic beverages for on-premise consumption at a retail licensed premise as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any:

(a) Premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by this section and RCW 66.20.310, 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, ~~(and)~~ 66.24.610, and section 1 of this act;

(b) Distillery licensed pursuant to RCW 66.24.140 that is authorized to serve samples of its own production;

(c) Facility established by a domestic winery for serving and selling wine pursuant to RCW 66.24.170(4); and

(d) Grocery store licensed under RCW 66.24.360, but only with respect to employees whose duties include serving during tasting activities under RCW 66.24.363.

**Sec. 3.** RCW 66.20.310 and 2011 c 325 s 4 are each amended to read as follows:

(1)(a) There (~~shall be~~) is an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There (~~shall be~~) is an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every alcohol server employed, under contract or otherwise, at a retail licensed premise (~~shall~~) must be issued a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued (~~shall~~) must be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder (~~shall~~) must present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit (~~shall be~~) is valid for employment at any retail licensed premises described in (a) of this subsection.

(c) Except as provided in (d) of this subsection, no licensee holding a license as authorized by this section and RCW 66.20.300, 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, 66.24.600, ~~(and)~~ 66.24.610, and section 1 of this act may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor (~~shall~~) must have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350, except for employees whose duties include serving during tasting activities under RCW 66.24.363.

Passed by the House April 22, 2013.

Passed by the Senate April 12, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 220

[House Bill 1203]

### PUBLIC RECORDS—EXEMPTIONS—CHILDREN'S INFORMATION

AN ACT Relating to exempting from public inspection and copying personal information relating to children; and reenacting and amending RCW 42.56.230.

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

**Sec. 1.** RCW 42.56.230 and 2011 c 350 s 2 and 2011 c 173 s 1 are each reenacted and amended to read as follows:

The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2)(a) Personal information(~~(, including but not limited to, addresses, telephone numbers, personal electronic mail addresses, social security numbers, emergency contact and date of birth information))~~);

(i) For a child enrolled in licensed child care in any files maintained by the department of early learning; or

(ii) For a ((participant)) child enrolled in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not

limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs.

(b) Emergency contact information under this subsection (2) may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) 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;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093; and

(7)(a) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicaid.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system.

Passed by the House February 18, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 221

[Engrossed House Bill 1421]

### PROPERTY TAX—DEFERRED COLLECTION

AN ACT Relating to protecting the state's interest in collecting deferred property taxes; amending RCW 35.49.160, 36.35.110, 36.35.140, 36.35.190, 36.35.220, 36.35.250, 84.37.070, 84.38.100, 84.38.140, 84.60.010, and 84.64.050; and adding a new section to chapter 84.64 RCW.

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

**Sec. 1.** RCW 35.49.160 and 1965 c 7 s 35.49.160 are each amended to read as follows:

Whenever property struck off to or bid in by a county at a sale for general taxes is subsequently sold by the county, the proceeds of the sale (~~(shall first be applied to discharge in full the lien or liens for general taxes for which property was sold; the remainder, or such portion thereof as may be necessary, shall be paid to the city or town to discharge all local improvement assessment liens against the property; and the surplus, if any, shall)~~) must be applied as follows:

(1) First, to reimburse the county for the costs of foreclosure and sale as defined in RCW 36.35.110;



(2) Any remaining proceeds must next be applied to pay any amounts deferred under chapter 84.37 or 84.38 RCW on the property, including accrued interest, and outstanding at the time the county acquired the property by tax deed;

(3) Any remaining proceeds must next be applied to discharge in full the lien or liens for general taxes for which the property was sold;

(4) Any remaining proceeds must be paid to the city or town to discharge all local improvement assessment liens against the property; and

(5) Any surplus proceeds must be distributed among the proper county funds.

**Sec. 2.** RCW 36.35.110 and 1961 c 15 s 84.64.230 are each amended to read as follows:

(1) No claims (~~shall ever be~~) are allowed against the county from any municipality, school district, road district or other taxing district for taxes levied on property acquired by the county by tax deed under the provisions of this chapter, but all taxes (~~shall~~) must at the time of deeding (~~said~~) the property be thereby canceled(~~(- PROVIDED, That)~~). However, the proceeds of any sale of any property acquired by the county by tax deed (~~shall be~~) must first be applied to reimburse the county for the costs of foreclosure and sale. The remainder of the proceeds, if any, must be applied to pay any amounts deferred under chapter 84.37 or 84.38 RCW on the property, including accrued interest, and outstanding at the time the county acquired the property by tax deed. The remainder of the proceeds, if any, must be justly apportioned to the various funds existing at the date of the sale, in the territory in which such property is located, according to the tax levies of the year last in process of collection.

(2) For purposes of this section, "costs of foreclosure and sale" means those costs of foreclosing on the property that, when collected, are subject to RCW 84.56.020(9), and the direct costs incurred by the county in selling the property.

**Sec. 3.** RCW 36.35.140 and 1961 c 15 s 84.64.310 are each amended to read as follows:

The board of county commissioners of any county may, pending sale of any county property acquired by foreclosure of delinquent taxes or amounts deferred under chapter 84.37 or 84.38 RCW, rent any portion thereof on a tenancy from month to month. From the proceeds of the rentals the board of county commissioners (~~shall~~) must first pay all expense in management of said property and in repairing, maintaining and insuring the improvements thereon(~~(- and)~~). The balance of said proceeds (~~shall~~) must first be paid to reimburse the county for the costs of foreclosure and sale as defined in RCW 36.35.110. The remainder of the proceeds, if any, must be paid to the department of revenue in the amount of any taxes deferred under chapter 84.37 or 84.38 RCW on the property, including accrued interest, outstanding at the time the county acquired the property by tax deed, and then the various taxing units interested in the taxes levied against said property in the same proportion as the current tax levies of the taxing units having levies against said property.

**Sec. 4.** RCW 36.35.190 and 2009 c 549 s 4076 are each amended to read as follows:

(1) Any person, firm or corporation who or which may have been entitled to redeem the property involved prior to the issuance of the treasurer's deed to the

county, and his or her or its successor in interest, (~~shall have~~) has the right, at any time after the commencement of, and prior to the judgment in the action authorized herein, to redeem such property by paying to the county treasurer:

(a) The amount of any taxes deferred under chapter 84.37 or 84.38 RCW on the property, including accrued interest, outstanding at the time the county acquired the property by tax deed;

(b) The amount of the taxes for which the property was sold to the county, and the amount of any other general taxes which may have accrued prior to the issuance of said treasurer's deed, together with interest on all such taxes from the date of delinquency thereof, respectively, at the rate of twelve percent per annum(~~, and by paying~~);

(c) For the benefit of the assessment district concerned the amount of principal, penalty and interest of all special assessments, if any, which (~~shall~~) have been levied against such property (~~and by paying~~); and

(d) Such proportional part of the costs of the tax or tax deferral foreclosure proceedings and of the action herein authorized as the county treasurer (~~shall~~) determines.

(2) Upon redemption of any property before judgment as herein provided, the county treasurer (~~shall~~) must issue to the redemptioner a certificate specifying the amount of the taxes, including amounts deferred under chapters 84.37 and 84.38 RCW, special assessments, penalty, interest and costs charged describing the land and stating that the taxes, including any applicable deferred taxes, special assessments, penalty, interest and costs specified have been fully paid, and the liens thereof discharged. Such certificate (~~shall~~) must clear the land described therein from any claim of the county based on the treasurer's deed previously issued in the tax or tax deferral foreclosure proceedings.

**Sec. 5.** RCW 36.35.220 and 2009 c 549 s 4077 are each amended to read as follows:

Any person filing a statement in such action (~~shall~~) must pay the clerk of the court an appearance fee in the amount required by the county for appearances in civil actions, and (~~shall be~~) is required to tender the amount of all taxes, including any amounts deferred under chapter 84.37 or 84.38 RCW, interest and costs charged against the real property to which he or she lays claim, and no further costs in such action (~~shall~~) may be required or recovered.

**Sec. 6.** RCW 36.35.250 and 1998 c 106 s 19 are each amended to read as follows:

Nothing in RCW 36.35.160 through 36.35.270 contained (~~shall~~) may be construed to deprive any city, town, or other unit of local government that imposed special assessments on the property by including the property in a local improvement or special assessment district of its right to reimbursement for special assessments out of any surplus over and above the taxes, including amounts deferred under chapters 84.37 and 84.38 RCW, interest and costs involved.

**Sec. 7.** RCW 84.37.070 and 2010 c 161 s 1167 are each amended to read as follows:

Whenever a person's special assessment or real property tax obligation, or both, is deferred under this chapter, the amount deferred and required to be paid pursuant to RCW 84.38.120 (~~shall~~) becomes a lien in favor of the state upon

his or her property and (~~shall have~~) has priority as provided in chapters 35.49, 35.50, 36.35, and 84.60 RCW(~~(= PROVIDED, That)~~). However, the interest of a mortgage or purchase contract holder who requires an accumulation of reserves out of which real estate taxes are paid (~~shall have~~) has priority to said deferred lien. This lien may accumulate up to forty percent of the amount of the claimant's equity value in (~~said~~) the property and the rate of interest (~~shall~~) must 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 set for each new year (~~shall be~~) is computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average (~~shall~~) must be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year. The interest (~~shall be~~) is calculated from the time it could have been paid before delinquency until (~~said~~) such obligation is paid or the date that the obligation is charged off as finally uncollectible. In the case of a mobile home, the department of licensing (~~shall~~) must show the state's lien on the certificate of title for the mobile home. In the case of all other property, the department of revenue (~~shall~~) must file a notice of the deferral with the county recorder or auditor.

**Sec. 8.** RCW 84.38.100 and 2010 c 161 s 1168 are each amended to read as follows:

Whenever a person's special assessment and/or real property tax obligation is deferred under the provisions of this chapter, the amount deferred and required to be paid pursuant to RCW 84.38.120 (~~shall~~) becomes a lien in favor of the state upon his or her property and (~~shall have~~) has priority as provided in chapters 35.49, 35.50, 36.35, and 84.60 RCW(~~(= PROVIDED, That)~~). However, the interest of a mortgage or purchase contract holder who is required to cosign a declaration of deferral under RCW 84.38.090, (~~shall have~~) has priority to (~~said~~) such deferred lien. This lien may accumulate up to eighty percent of the amount of the claimant's equity value in (~~said~~) the property and (~~shall~~) must bear interest at the rate of five percent per year from the time it could have been paid before delinquency until said obligation is paid(~~(= PROVIDED, That)~~). However, when taxes are deferred as provided in RCW 84.64.050, the amount (~~shall~~) must bear interest at the rate of five percent per year from the date the declaration is filed until the obligation is paid or the date that the obligation is charged off as finally uncollectible. In the case of a mobile home, the department of licensing (~~shall~~) must show the state's lien on the certificate of title for the mobile home. In the case of all other property, the department of revenue (~~shall~~) must file a notice of the deferral with the county recorder or auditor.

**Sec. 9.** RCW 84.38.140 and 2001 c 299 s 18 are each amended to read as follows:

(1) The department (~~shall~~) must collect all the amounts deferred together with interest under this chapter. However, in the event that the department is unable to collect an amount deferred together with interest, that amount deferred together with interest (~~shall~~) must be collected by the county treasurer in the manner provided for in chapter 84.56 RCW. For purposes of collection of

deferred taxes, the provisions of chapters 84.56, 84.60, and 84.64 RCW (~~shall be~~) are applicable.

(2) When any deferred special assessment and/or real property taxes together with interest are collected the moneys (~~shall~~) must be deposited in the state general fund.

(3) The department may charge off as finally uncollectible any amount deferred under this chapter or chapter 84.37 RCW, including accrued interest, if the department is satisfied that there are no cost-effective means of collecting the amount due.

**Sec. 10.** RCW 84.60.010 and 1969 ex.s. c 251 s 1 are each amended to read as follows:

All taxes and levies which may hereafter be lawfully imposed or assessed (~~shall be and they~~) are (~~hereby~~) declared to be a lien respectively upon the real and personal property upon which they may hereafter be imposed or assessed, which liens (~~shall~~) include all charges and expenses of and concerning the (~~said~~) taxes which, by the provisions of this title, are directed to be made. The (~~said~~) lien (~~shall have~~) has priority to and (~~shall~~) must be fully paid and satisfied before any recognizance, mortgage, judgment, debt, obligation, or responsibility to or with which (~~said~~) the real and personal property may become charged or liable, except that the lien is of equal rank with liens for amounts deferred under chapter 84.37 or 84.38 RCW.

**NEW SECTION. Sec. 11.** A new section is added to chapter 84.64 RCW to read as follows:

Unless the context clearly requires otherwise, for purposes of this chapter:

- (1) "Interest" means interest and penalties; and
- (2) "Taxes;" "taxes, interest and costs;" and "taxes, interest, or costs" include any assessments and amounts deferred under chapters 84.37 and 84.38 RCW, where such assessments and deferred amounts are included in a certificate of delinquency by the county treasurer.

**Sec. 12.** RCW 84.64.050 and 1999 c 18 s 7 are each amended to read as follows:

(1) After the expiration of three years from the date of delinquency, when any property remains on the tax rolls for which no certificate of delinquency has been issued, the county treasurer (~~shall~~) must proceed to issue certificates of delinquency on the property to the county for all years' taxes, interest, and costs (~~(= PROVIDED, That)~~). However, the county treasurer, with the consent of the county legislative authority, may elect to issue a certificate for fewer than all years' taxes, interest, and costs to a minimum of the taxes, interest, and costs for the earliest year.

(2) Certificates of delinquency (~~shall be~~) are prima facie evidence that:

~~((1))~~ (a) The property described was subject to taxation at the time the same was assessed;

~~((2))~~ (b) The property was assessed as required by law;

~~((3))~~ (c) The taxes or assessments were not paid at any time before the issuance of the certificate;

~~((4))~~ (d) Such certificate (~~shall have~~) has the same force and effect as a lis pendens required under chapter 4.28 RCW.

(3) The county treasurer may include in the certificate of delinquency any assessments which are due on the property and are the responsibility of the county treasurer to collect. ~~((For purposes of this chapter, "taxes, interest, and costs" include any assessments which are so included by the county treasurer, and "interest" means interest and penalties unless the context requires otherwise.))~~ However, if the department of revenue has previously notified the county treasurer in writing that the property has a lien on it for deferred property taxes, the county treasurer must include in the certificate of delinquency any amounts deferred under chapters 84.37 and 84.38 RCW that remain unpaid, including accrued interest and costs.

(4) The treasurer ~~((shall))~~ must file the certificates when completed with the clerk of the court at no cost to the treasurer, and the treasurer ~~((shall))~~ must thereupon, with legal assistance from the county prosecuting attorney, proceed to foreclose in the name of the county, the tax liens embraced in such certificates. Notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, and any person having a recorded interest in or lien of record upon the property, of the foreclosure action to appear within thirty days after service of such notice and defend such action or pay the amount due. Either (a) personal service upon the owner or owners and any person having a recorded interest in or lien of record upon the property, or (b) publication once in a newspaper of general circulation, which is circulated in the area of the property and mailing of notice by certified mail to the owner or owners and any person having a recorded interest in or lien of record upon the property, or, if a mailing address is unavailable, personal service upon the occupant of the property, if any, is sufficient. If such notice is returned as unclaimed, the treasurer ~~((shall))~~ must send notice by regular first-class mail. The notice ~~((shall))~~ must include the legal description on the tax rolls, the year or years for which assessed, the amount of tax and interest due, and the name of owner, or reputed owner, if known, and the notice must include the local street address, if any, for informational purposes only. The certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against the property may be brought in one action and all persons interested in any of the property involved in the proceedings may be made codefendants in the action, and if unknown may be therein named as unknown owners, and the publication of such notice ~~((shall be))~~ is sufficient service thereof on all persons interested in the property described therein, except as provided above. The person or persons whose name or names appear on the treasurer's rolls as the owner or owners of the property ~~((shall))~~ must be considered and treated as the owner or owners of the property for the purpose of this section, and if upon the treasurer's rolls it appears that the owner or owners of the property are unknown, then the property ~~((shall))~~ must be proceeded against, as belonging to an unknown owner or owners, as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of the proceedings and of any and all steps thereunder ~~((: PROVIDED, That))~~. However, prior to the sale of the property, the treasurer ((shall)) must order or conduct a title search of the property to be sold to determine the legal description of the property to be sold and the record title holder, and if the record title holder or holders differ from the person or persons whose name or names appear on the

treasurer's rolls as the owner or owners, the record title holder or holders (~~(shall)~~) must be considered and treated as the owner or owners of the property for the purpose of this section, and (~~(shall be)~~) are entitled to the notice provided for in this section. Such title search (~~(shall)~~) must be included in the costs of foreclosure.

(5) If the title search required by subsection (4) of this section reveals a lien in favor of the state for deferred taxes on the property under RCW 84.37.070 or 84.38.100 and such deferred taxes are not already included in the certificate of delinquency, the county treasurer must issue an amended certificate of delinquency on the property to include the outstanding amount of deferred taxes, including accrued interest. The amended certificate of delinquency must be filed with the clerk of the court as provided in subsection (4) of this section.

(6) The county treasurer (~~(shall)~~) may not sell property (~~(which)~~) that is eligible for deferral of taxes under chapter 84.38 RCW but (~~(shall)~~) must require the owner of the property to file a declaration to defer taxes under chapter 84.38 RCW.

Passed by the House April 18, 2013.

Passed by the Senate April 25, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

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## CHAPTER 222

[Substitute House Bill 1466]

### PUBLIC WORKS—ALTERNATIVE PUBLIC WORKS CONTRACTING PROCEDURE

AN ACT Relating to revisions to alternative public works contracting procedures; amending RCW 39.10.220, 39.10.230, 39.10.240, 39.10.250, 39.10.260, 39.10.270, 39.10.280, 39.10.300, 39.10.320, 39.10.330, 39.10.340, 39.10.360, 39.10.380, 39.10.385, 39.10.390, 39.10.400, 39.10.420, 39.10.440, 39.10.490, 43.131.407, and 43.131.408; reenacting and amending RCW 39.10.210; adding a new section to chapter 43.131 RCW; repealing RCW 39.10.500 and 39.10.510; providing an effective date; providing a contingent effective date; providing an expiration date; and declaring an emergency.

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

**Sec. 1.** RCW 39.10.210 and 2010 1st sp.s. c 36 s 6014 are each reenacted and amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alternative public works contracting procedure" means the design-build, general contractor/construction manager, and job order contracting procedures authorized in RCW 39.10.300, 39.10.340, and 39.10.420, respectively.

(2) "Board" means the capital projects advisory review board.

(3) "Certified public body" means a public body certified to use design-build or general contractor/construction manager contracting procedures, or both, under RCW 39.10.270.

(4) "Committee<sub>2</sub>" unless otherwise noted, means the project review committee.

(5) "Design-build procedure" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract.

~~(6)~~ "Disadvantaged business enterprise" means any business entity certified with the office of minority and women's business enterprises under chapter 39.19 RCW.

~~(7)~~ "General contractor/construction manager" means a firm with which a public body has selected ((and negotiated a maximum allowable construction cost)) to provide services during the design phase and negotiated a maximum allowable construction cost to act as construction manager and general contractor during the construction phase.

~~((7))~~ (8) "Job order contract" means a contract in which the contractor agrees to a fixed period, indefinite quantity delivery order contract which provides for the use of negotiated, definitive work orders for public works as defined in RCW 39.04.010.

~~((8))~~ (9) "Job order contractor" means a registered or licensed contractor awarded a job order contract.

~~((9))~~ (10) "Maximum allowable construction cost" means the maximum cost of the work to construct the project including a percentage for risk contingency, negotiated support services, and approved change orders.

~~((10))~~ (11) "Negotiated support services" means items a general contractor would normally manage or perform on a construction project including, but not limited to surveying, hoisting, safety enforcement, provision of toilet facilities, temporary heat, cleanup, and trash removal, and that are negotiated as part of the maximum allowable construction cost.

~~((11))~~ (12) "Percent fee" means the percentage amount to be earned by the general contractor/construction manager as overhead and profit.

~~((12))~~ (13) "Public body" means any general or special purpose government in the state of Washington, including but not limited to state agencies, institutions of higher education, counties, cities, towns, ports, school districts, and special purpose districts((, provided that for the 2009-2011 fiscal biennium, the definition of public body for this chapter does not include public bodies funded in section 1012, chapter 36, Laws of 2010 1st sp. sess. if alternative requirements or procedures of federal law or regulations are authorized)).

~~((13))~~ (14) "Public works project" means any work for a public body within the definition of "public work" in RCW 39.04.010.

~~((14))~~ (15) "Small business entity" means a small business as defined in RCW 39.26.010.

(16) "Total contract cost" means the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, and the percent fee on the negotiated maximum allowable construction cost.

~~((15))~~ (17) "Total project cost" means the cost of the project less financing and land acquisition costs.

~~((16))~~ (18) "Unit price book" means a book containing specific prices, based on generally accepted industry standards and information, where available, for various items of work to be performed by the job order contractor. The prices may include: All the costs of materials; labor; equipment; overhead, including bonding costs; and profit for performing the items of work. The unit

prices for labor must be at the rates in effect at the time the individual work order is issued.

~~((47))~~ (19) "Work order" means an order issued for a definite scope of work to be performed pursuant to a job order contract.

**Sec. 2.** RCW 39.10.220 and 2007 c 494 s 102 are each amended to read as follows:

(1) The board is created in the department of ~~((general administration))~~ enterprise services to provide an evaluation of public capital projects construction processes, including the impact of contracting methods on project outcomes, and to advise the legislature on policies related to public works delivery methods.

(2) Members of the board are appointed as follows:

(a) ~~((The board shall consist of the following members appointed by the governor:))~~ Two representatives from construction general contracting; one representative from the architectural profession; one representative from the engineering profession; two representatives from construction specialty subcontracting; two representatives from construction trades labor organizations; one representative from the office of minority and women's business enterprises; one representative from a higher education institution; one representative from the department of ~~((general administration))~~ enterprise services; one individual representing Washington cities; two representatives from private industry; and one representative of a domestic insurer authorized to write surety bonds for contractors in Washington state, each appointed by the governor. All appointed members must be knowledgeable about public works contracting procedures. If a vacancy occurs, the governor shall fill the vacancy for the unexpired term:

(b) ~~((Three members shall be positions representing different local public owners, selected by the association of Washington cities;))~~ One member representing counties, selected by the Washington state association of counties; ~~(; and the Washington public ports association, respectively.);~~

(c) ~~((One member shall be a representative from the public hospital districts, selected by the association of Washington public hospital districts.~~

~~(d))~~ One member representing public ports, selected by the Washington public ports association;

(d) One member representing public hospital districts, selected by the association of Washington public hospital districts;

~~(e)~~ One member ~~((shall be a representative from))~~ representing school districts, selected by the Washington state school directors' association~~((:))~~; and

~~((e) The board shall include)~~ (f) Two members of the house of representatives, one from each major caucus, appointed by the speaker of the house of representatives, and two members of the senate, one from each major caucus, appointed by the president of the senate. Legislative members are nonvoting.

(3) Members selected under subsection (2)(a) of this section shall serve for terms of four years, with the terms expiring on June 30th on the fourth year of the term.

(4) The board chair is selected from among the appointed members by the majority vote of the voting members.



(5) Legislative members of the board shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members of the board, project review committee members, and (~~subcommittee~~) committee chairs shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) (~~If a vacancy occurs of the appointive members of the board, the governor shall fill the vacancy for the unexpired term.~~) Vacancies are filled in the same manner as appointed. Members of the board may be removed for malfeasance or misfeasance in office, upon specific written charges by the governor, under chapter 34.05 RCW.

(7) The board shall meet as often as necessary.

(8) Board members are expected to consistently attend board meetings. The chair of the board may ask the governor to remove any member who misses more than two meetings in any calendar year without cause.

(9) The department of (~~general administration~~) enterprise services shall provide staff support as may be required for the proper discharge of the function of the board.

(10) The board may establish (~~subcommittees~~) committees as it desires and may invite nonmembers of the board to serve as committee members.

(11) The board shall encourage participation from persons and entities not represented on the board.

**Sec. 3.** RCW 39.10.230 and 2010 1st sp.s. c 21 s 3 are each amended to read as follows:

The board has the following powers and duties:

(1) Develop and recommend to the legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods;

(2) Evaluate the use of existing contracting procedures and the potential future use of other alternative contracting procedures including competitive negotiation contracts;

(3) Submit recommendations to the appropriate committees of the legislature evaluating alternative contracting procedures that are not authorized under this chapter;

(4) Appoint members of (~~the~~) committees; and

(5) Develop and administer questionnaires designed to provide quantitative and qualitative data on alternative public works contracting procedures on which evaluations are based.

The capital projects advisory review board is directed to review current statutes regarding life-cycle cost analysis and energy efficiency as related to the design-build procurement method performed under chapter 39.10 RCW. Capital projects advisory review board shall report to the appropriate committees of the legislature by December 31, 2013, with recommendations for statutory changes that promote energy efficiency and reduce the total cost to construct, operate and maintain public buildings. Recommendation must include provisions for postoccupancy validation of estimated energy efficiency measures, and operating and maintenance cost estimates. Life-cycle estimates of energy use

must include estimates of energy consumptions for materials used in construction.

**Sec. 4.** RCW 39.10.240 and 2007 c 494 s 104 are each amended to read as follows:

(1) The board shall establish a project review committee to review and approve public works projects using the design-build and general contractor/construction manager contracting procedures authorized in RCW 39.10.300 and 39.10.340 and to certify public bodies as provided in RCW 39.10.270.

(2) The board shall, by a majority vote of the board, appoint persons to the committee who are knowledgeable in the use of the design-build and general contractor/construction manager contracting procedures. Appointments must represent a balance among the industries and public owners on the board listed in RCW 39.10.220.

(a) ~~((When making initial appointments to the committee, the board shall consider for appointment former members of the school district project review board and the public hospital district project review board.~~

~~(b))~~ Each member of the committee shall be appointed for a term of three years. However, for initial appointments, the board shall stagger the appointment of committee members so that the first members are appointed to serve terms of one, two, or three years from the date of appointment. Appointees may be reappointed to serve more than one term.

~~((e))~~ (b) The committee shall, by a majority vote, elect a chair and vice chair for the committee.

~~((d))~~ (c) The committee chair may select a person or persons on a temporary basis as a nonvoting member if project specific expertise is needed to assist in a review.

(3) The chair of the committee, in consultation with the vice chair, may appoint one or more panels of at least six committee members to carry out the duties of the committee. Each panel shall have balanced representation of the private and public sector representatives serving on the committee.

(4) Any member of the committee directly or indirectly affiliated with a submittal before the committee must recuse himself or herself from the committee consideration of that submittal.

(5) Any person who sits on the committee or panel is not precluded from subsequently bidding on or participating in projects that have been reviewed by the committee.

(6) The committee shall meet as often as necessary to ensure that certification and approvals are completed in a timely manner.

**Sec. 5.** RCW 39.10.250 and 2009 c 75 s 2 are each amended to read as follows:

The committee shall:

(1) Certify, or ~~((recertify))~~ renew certification for, public bodies ~~((for a period of three years))~~ to use ~~((the))~~ design-build or general contractor/construction manager contracting procedures, or both~~((, contracting procedures for projects with a total project cost of ten million dollars or more))~~;

(2) Review and approve the use of the design-build or general contractor/construction manager contracting procedures on a project by project basis for public bodies that are not certified under RCW 39.10.270;

(3) ~~((Review and approve the use of the general contractor/construction manager contracting procedure by certified public bodies for projects with a total project cost under ten million dollars;~~

~~(4))~~ Review and approve not more than ~~((ten))~~ fifteen projects using the design-build contracting procedure by ~~((certified and))~~ noncertified public bodies for projects that have a total project cost between two million and ten million dollars. Projects must meet the criteria in RCW 39.10.300(1). Where possible, the committee shall approve projects among multiple public bodies. ~~((In June 2010))~~ At least annually, the committee shall report to the board regarding the committee's review procedure of these projects and its recommendations for further use; and

~~((5))~~ (4) Review and approve not more than two design-build demonstration projects that include procurement of operations and maintenance services for a period longer than three years.

**Sec. 6.** RCW 39.10.260 and 2007 c 494 s 106 are each amended to read as follows:

(1) The committee shall hold regular public meetings to carry out its duties as described in RCW 39.10.250. Committee meetings are subject to chapter 42.30 RCW.

(2) The committee shall publish notice of its public meetings at least twenty days before the meeting in a legal newspaper circulated in the area where the public body seeking certification is located, or where each of the proposed projects under consideration will be constructed. All meeting notices must be posted on the committee's web site.

(3) The meeting notice must identify the public body that is seeking certification or project approval, and where applicable, a description of projects to be considered at the meeting. The notice must indicate when, where, and how the public may present comments regarding the committee's certification of a public body or approval of a project. Information submitted by a public body to be reviewed at the meeting shall be available on the committee's web site at the time the notice is published.

(4) The committee must allow for public comment on the appropriateness of certification of a public body or on the appropriateness of the use of the proposed contracting procedure and the qualifications of a public body to use the contracting procedure. The committee shall receive and record both written and oral comments at the public ~~((hearing))~~ meeting.

**Sec. 7.** RCW 39.10.270 and 2009 c 75 s 3 are each amended to read as follows:

(1) A public body may apply for certification to use the design-build or general contractor/construction manager contracting procedure, or both. Once certified, a public body may use the contracting procedure for which it is certified on individual projects ~~((with a total project cost over ten million dollars))~~ without seeking committee approval ~~((The certification period is))~~ for a period of three years. Public bodies certified to use the design-build procedure are limited to no more than five projects with a total project cost between two and ten million dollars during the certification period. A public body seeking certification must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of

the public body's qualifications, its capital plan during the certification period, and its intended use of alternative contracting procedures.

(2) A public body seeking certification for the design-build procedure must demonstrate successful management of at least one design-build project within the previous five years. A public body seeking certification for the general contractor/construction manager procedure must demonstrate successful management of at least one general contractor/construction manager project within the previous five years.

(3) To certify a public body, the committee shall determine that the public body:

(a) Has the necessary experience and qualifications to determine which projects are appropriate for using alternative contracting procedures;

(b) Has the necessary experience and qualifications to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) personnel with appropriate construction experience; (iii) a management plan and rationale for its alternative public works projects; (iv) demonstrated success in managing public works projects; (v) the ability to properly manage its capital facilities plan including, but not limited to, appropriate project planning and budgeting experience; and (vi) the ability to meet requirements of this chapter; and

(c) Has resolved any audit findings on previous public works projects in a manner satisfactory to the committee.

(4) The committee shall, if practicable, make its determination at the public meeting during which an application for certification is reviewed. Public comments must be considered before a determination is made. Within ten business days of the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's web site.

(5) The committee may revoke any public body's certification upon a finding, after a public hearing, that its use of design-build or general contractor/construction manager contracting procedures no longer serves the public interest.

(6) The committee may renew the certification of a public body for ~~((one))~~ additional three-year periods. The public body must submit an application for recertification at least three months before the initial certification expires. The application shall include updated information on the public body's ~~((capital plan for the next three years, its intended use of the procedures))~~ experience and current staffing with the procedure it is applying to renew, and any other information requested in advance by the committee. The committee must review the application for recertification at a meeting held before expiration of the applicant's initial certification period. A public body must reapply for certification under the process described in subsection (1) of this section once the period of recertification expires.

(7) Certified public bodies must submit project data information as required in RCW 39.10.320 and 39.10.350.

**Sec. 8.** RCW 39.10.280 and 2007 c 494 s 108 are each amended to read as follows:

(1) A public body not certified under RCW 39.10.270 must apply for approval from the committee to use the design-build or general contractor/

construction manager contracting procedure on a project. A public body seeking approval must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, a description of the project, and its intended use of alternative contracting procedures.

(2) To approve a proposed project, the committee shall determine that:

(a) The alternative contracting procedure will provide a substantial fiscal benefit or the use of the traditional method of awarding contracts in lump sum to the low responsive bidder is not practical for meeting desired quality standards or delivery schedules;

(b) The proposed project meets the requirements for using the alternative contracting procedure as described in RCW 39.10.300 or 39.10.340;

(c) The public body has the necessary experience or qualified team to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) sufficient personnel with construction experience to administer the contract; (iii) a written management plan that shows clear and logical lines of authority; (iv) the necessary and appropriate funding and time to properly manage the job and complete the project; (v) continuity of project management team, including personnel with experience managing projects of similar scope and size to the project being proposed; and (vi) necessary and appropriate construction budget;

(d) For design-build projects, ~~((construction))~~ public body personnel ~~((independent of the design-build team))~~ or consultants are knowledgeable in the design-build process and are able to oversee and administer the contract; and

(e) The public body has resolved any audit findings related to previous public works projects in a manner satisfactory to the committee.

(3) The committee shall, if practicable, make its determination at the public meeting during which a submittal is reviewed. Public comments must be considered before a determination is made.

(4) Within ten business days after the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's web site. If the committee fails to make a written determination within ten business days of the public meeting, the request of the public body to use the alternative contracting procedure on the requested project shall be deemed approved.

~~((The requirements of subsection (1) of this section also apply to certified public bodies seeking to use the general contractor/construction manager contracting procedure on projects with a total project cost of less than ten million dollars.~~

~~((6))~~ Failure of the committee to meet within sixty calendar days of a public body's application to use an alternative contracting procedure on a project shall be deemed an approval of the application.

**Sec. 9.** RCW 39.10.300 and 2009 c 75 s 4 are each amended to read as follows:

(1) Subject to the ~~((process))~~ requirements in RCW 39.10.250, 39.10.270, or 39.10.280, public bodies may utilize the design-build procedure for public works projects in which the total project cost is over ten million dollars and where:

(a) The ~~((design and construction activities, technologies, or schedule to be used are highly specialized and a design-build approach is critical in developing~~

~~the construction methodology or implementing the proposed technology))~~  
construction activities are highly specialized and a design-build approach is critical in developing the construction methodology; or

(b) ~~The ((project design is repetitive in nature and is an incidental part of the installation or construction))~~ projects selected provide opportunity for greater innovation or efficiencies between the designer and the builder; or

(c) ~~((Regular interaction with and feedback from facilities users and operators during design is not critical to an effective facility design.))~~ Significant savings in project delivery time would be realized.

(2) Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may use the design-build procedure for parking garages, regardless of cost.

(3) The design-build procedure may be used for the construction or erection of portable facilities as defined in WAC 392-343-018, preengineered metal buildings, or not more than ten prefabricated modular buildings per installation site, regardless of cost and is not subject to approval by the committee.

(4) Except for utility projects and approved demonstration projects, the design-build procedure may not be used to procure operations and maintenance services for a period longer than three years. State agency projects that propose to use the design-build-operate-maintain procedure shall submit cost estimates for the construction portion of the project consistent with the office of financial management's capital budget requirements. Operations and maintenance costs must be shown separately and must not be included as part of the capital budget request.

(5) Subject to the process in RCW 39.10.280, public bodies may use the design-build procedure for public works projects in which the total project cost is between two million and ten million dollars and that meet one of the criteria in subsection (1)(a), (b), or (c) of this section.

(6) Subject to the process in RCW 39.10.280, a public body may seek committee approval for a design-build demonstration project that includes procurement of operations and maintenance services for a period longer than three years.

**Sec. 10.** RCW 39.10.320 and 2007 c 494 s 203 are each amended to read as follows:

(1) A public body utilizing the design-build contracting procedure shall provide ~~((for))~~:

(a) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;

(b) ~~((Employment of))~~ Staff or consultants with expertise and prior experience in the management of comparable projects;

(c) Contract documents that include alternative dispute resolution procedures to be attempted prior to the initiation of litigation;

(d) Submission of project information, as required by the board; and

(e) Contract documents that require the contractor, subcontractors, and designers to submit project information required by the board.

(2) A public body utilizing the design-build contracting procedure may provide incentive payments to contractors for early completion, cost savings, or other goals if such payments are identified in the request for proposals.

**Sec. 11.** RCW 39.10.330 and 2009 c 75 s 5 are each amended to read as follows:

(1) Contracts for design-build services shall be awarded through a competitive process using public solicitation of proposals for design-build services. The public body shall publish at least once in a legal newspaper of general circulation published in, or as near as possible to, that part of the county in which the public work will be done, a notice of its request for qualifications from proposers for design-build services, and the availability and location of the request for proposal documents. The request for qualifications documents shall include:

(a) A general description of the project that provides sufficient information for proposers to submit qualifications;

(b) The reasons for using the design-build procedure;

(c) A description of the qualifications to be required of the proposer including, but not limited to, submission of the proposer's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and finalists' proposals, including evaluation factors and the relative weight of factors and any specific forms to be used by the proposers;

(i) Evaluation factors for request for qualifications shall include, but not be limited to, technical qualifications, such as specialized experience and technical competence; capability to perform; past performance of the proposers' team, including the architect-engineer and construction members; and other appropriate factors. Evaluation factors may also include: (A) The proposer's past performance in utilization of small business entities; and (B) disadvantaged business enterprises. Cost or price-related factors are not permitted in the request for qualifications phase;

(ii) Evaluation factors for finalists' proposals shall include, but not be limited to, the factors listed in (d)(i) of this subsection, as well as technical approach design concept; (~~(proposal price)~~) ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; ability to provide a performance and payment bond for the project; recent, current, and projected workloads of the firm; (~~and~~) location; and cost or price-related factors that may include operating costs. The public body may also consider a proposer's outreach plan to include small business entities and disadvantaged business enterprises as subcontractor and suppliers for the project. Alternatively, if the public body determines that all finalists will be capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price;

(e) Protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(~~f~~) The form of the contract to be awarded;

(~~(f)~~) (~~g~~) The (~~amount~~) honorarium to be paid to finalists submitting responsive proposals and who are not awarded a design-build contract;

(~~(g)~~) (~~h~~) The schedule for the procurement process and the project; and

(~~(h)~~) (~~i~~) Other information relevant to the project.

(2) The public body shall establish an evaluation committee to evaluate the responses to the request for qualifications based solely on the factors, weighting, and process identified in the request for qualifications and any addenda issued by the public body. Based on the evaluation committee's findings, the public body shall select not more than five responsive and responsible finalists to submit proposals. The public body may, in its sole discretion, reject all proposals and shall provide its reasons for rejection in writing to all proposers.

(3) The public body must notify all proposers of the finalists selected to move to the next phase of the selection process. The process may not proceed to the next phase until two business days after all proposers are notified of the committee's selection decision. At the request of a proposer not selected as a finalist, the public body must provide the requesting proposer with a scoring summary of the evaluation factors for its proposal. Proposers filing a protest on the selection of the finalists must file the protest in accordance with the published protest procedures. The selection process may not advance to the next phase of selection until two business days after the final protest decision is transmitted to the protestor.

(4) Upon selection of the finalists, the public body shall issue a request for proposals to the finalists, which shall provide the following information:

(a) A detailed description of the project including programmatic, performance, and technical requirements and specifications; functional and operational elements; minimum and maximum net and gross areas of any building; and, at the discretion of the public body, preliminary engineering and architectural drawings; and

(b) The target budget for the design-build portion of the project.

~~((4))~~ (5) The public body shall establish an evaluation committee to evaluate the proposals submitted by the finalists. Design-build contracts shall be awarded using the procedures in (a) or (b) of this subsection. The public body must identify in the request for qualifications which procedure will be used.

(a) The finalists' proposals shall be evaluated and scored based solely on the factors, weighting, and process identified in the initial request for qualifications and in any addenda published by the public body. Public bodies may request best and final proposals from finalists. The public body ~~((shall))~~ may initiate negotiations with the firm submitting the highest scored proposal. If the public body is unable to execute a contract with the firm submitting the highest scored proposal, negotiations with that firm may be suspended or terminated and the public body may proceed to negotiate with the next highest scored firm. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(b) If the public body determines that all finalists are capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price.

~~((5))~~ (6) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a finalist firm, the public body may not execute a contract until two business days after the final protest decision is transmitted to



the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(7) The firm awarded the contract shall provide a performance and payment bond for the contracted amount.

(8) The public body shall provide appropriate honorarium payments to finalists submitting responsive proposals that are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. In determining the amount of the honorarium, the public body shall consider the level of effort required to meet the selection criteria.

**Sec. 12.** RCW 39.10.340 and 2007 c 494 s 301 are each amended to read as follows:

Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may utilize the general contractor/construction manager procedure for public works projects where at least one of the following is met:

(1) Implementation of the project involves complex scheduling, phasing, or coordination;

(2) The project involves construction at an occupied facility which must continue to operate during construction;

(3) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project;

(4) The project encompasses a complex or technical work environment; or

(5) The project requires specialized work on a building that has historic significance.

**Sec. 13.** RCW 39.10.360 and 2009 c 75 s 6 are each amended to read as follows:

(1) Public bodies should select general contractor/construction managers early in the life of public works projects, and in most situations no later than the completion of schematic design.

(2) 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. The public solicitation of proposals shall include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;

(b) The reasons for using the general contractor/construction manager procedure;

(c) A description of the qualifications to be required of the firm, including submission of the firm's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors (~~and~~), the relative weight of factors, and protest procedures including time limits for filing a protest, which in no event may limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(e) The form of the contract, including any contract for preconstruction services, to be awarded;

(f) The estimated maximum allowable construction cost; and

(g) The bid instructions to be used by the general contractor/ construction manager finalists.

(3)(a) Evaluation factors for selection of the general contractor/construction manager shall include, but not be limited to:

((~~Ⓐ~~)) (i) Ability of the firm's professional personnel;

((~~Ⓑ~~)) (ii) The firm's past performance in negotiated and complex projects;

((~~Ⓒ~~)) (iii) The firm's ability to meet time and budget requirements;

((~~Ⓓ~~)) (iv) The scope of work the firm proposes to self-perform and its ability to perform that work;

((~~Ⓔ~~)) (v) The firm's proximity to the project location;

((~~Ⓕ~~)) (vi) Recent, current, and projected workloads of the firm; and

((~~Ⓖ~~)) (vii) The firm's approach to executing the project.

(b) An agency may also consider the firm's outreach plan to include small business entities and disadvantaged business enterprises, and the firm's past performance in the utilization of such firms as an evaluation factor.

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, at the time specified by the public body, these finalists shall submit final proposals, including sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. The public body shall establish a time and place for the opening of sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. At the time and place named, these bids must be publicly opened and read and the public body shall make all previous scoring available to the public. The public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals. A public body shall not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(5) The public body shall notify all finalists of the selection decision and make a selection summary of the final proposals available to all proposers within two business days of such notification. If the public body receives a timely written protest from a proposer, the public body may not execute a contract until two business days after the final protest decision is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(6) Public bodies may contract with the selected firm 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.

**Sec. 14.** RCW 39.10.380 and 2007 c 494 s 305 are each amended to read as follows:

(1) All subcontract work and equipment and material purchases shall be competitively bid with public bid openings. Subcontract bid packages and equipment and materials purchases shall be awarded to the responsible bidder submitting the lowest responsive bid. In preparing subcontract bid packages, the

general contractor/construction manager shall not be required to violate or waive terms of a collective bargaining agreement.

(2) All subcontract bid packages in which bidder eligibility was not determined in advance shall include the specific objective criteria that will be used by the general contractor/construction manager and the public body to evaluate bidder responsibility. If the lowest bidder submitting a responsive bid is determined by the general contractor/construction manager and the public body not to be responsible, the general contractor/construction manager and the public body must provide written documentation to that bidder explaining their intent to reject the bidder as not responsible and afford the bidder the opportunity to establish that it is a responsible bidder. Responsibility shall be determined in accordance with criteria listed in the bid documents. Protests concerning bidder responsibility determination by the general contractor/construction manager and the public body shall be in accordance with subsection (4) of this section.

(3) All subcontractors who bid work over three hundred thousand dollars shall post a bid bond. All subcontractors who are awarded a contract over three hundred thousand dollars shall provide a performance and payment bond for the contract amount. All other subcontractors shall provide a performance and payment bond if required by the general contractor/construction manager.

(4) If the general contractor/construction manager receives a written protest from a subcontractor bidder or an equipment or material supplier, the general contractor/construction manager shall not execute a contract for the subcontract bid package or equipment or material purchase order with anyone other than the protesting bidder without first providing at least two full business days' written notice to all bidders of the intent to execute a contract for the subcontract bid package. The protesting bidder must submit written notice of its protest no later than two full business days following the bid opening. Intermediate Saturdays, Sundays, and legal holidays are not counted.

(5) 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.

(6) The general contractor/construction manager may negotiate with the lowest responsible and responsive bidder to negotiate an adjustment to the lowest bid or proposal price based upon agreed changes to the contract plans and specifications under the following conditions:

(a) All responsive bids or proposal prices exceed the available funds(~~as certified by an appropriate fiscal officer~~);

(b) The apparent low responsive bid or proposal does not exceed the available funds by the greater of one hundred twenty-five thousand dollars or two percent for projects valued over ten million dollars; and

(c) The negotiated adjustment will bring the bid or proposal price within the amount of available funds.

(7) If the negotiation is unsuccessful, the subcontract work or equipment or material purchases must be rebid.

(8) The general contractor/construction manager must provide a written explanation if all bids are rejected.

**Sec. 15.** RCW 39.10.385 and 2010 c 163 s 1 are each amended to read as follows:

As an alternative to the subcontractor selection process outlined in RCW 39.10.380, a general contractor/construction manager may, with the approval of the public body, select ~~((and))~~ mechanical subcontractors, ~~((and))~~ electrical subcontractors, or both, using the process outlined in this section. This alternative selection process may only be used when the anticipated value of the subcontract will exceed three million dollars. When using the alternative selection process, the general contractor/construction manager should select the subcontractor early in the life of the public works project.

(1) In order to use this alternative selection process, the general contractor/construction manager and the public body must determine that it is in the best interest of the public. In making this determination the general contractor/construction manager and the public body must:

(a) Publish a notice of intent to use this alternative selection process in a legal newspaper published in or as near as possible to that part of the county where the public work will be constructed. Notice must be published at least fourteen calendar days before conducting a public hearing. The notice must include the date, time, and location of the hearing; a statement justifying the basis and need for the alternative selection process; ~~((and))~~ how interested parties may, prior to the hearing, obtain the evaluation criteria and applicable weight given to each criteria that will be used for evaluation; and protest procedures including time limits for filing a protest, which may in no event, limit the time to file a protest to fewer than four business days from the date the proposer was notified of the selection decision;

(b) Conduct a hearing and provide an opportunity for any interested party to submit written and verbal comments regarding the justification for using this selection process, the evaluation criteria, ~~((and))~~ weights for each criteria, and protest procedures;

(c) After the public hearing, consider the written and verbal comments received and determine if using this alternative selection process is in the best interests of the public; and

(d) Issue a written final determination to all interested parties. All protests of the decision to use the alternative selection process must be in writing and submitted to the public body within seven calendar days of the final determination. Any modifications to the criteria ~~((and))~~, weights, and protest procedures based on comments received during the public hearing process must be included in the final determination.

(2) Contracts for the services of a subcontractor under this section must be awarded through a competitive process requiring a public solicitation of proposals. Notice of the public solicitation of proposals must be provided to the office of minority and women's business enterprises. The public solicitation of proposals must include:

(a) A description of the project, including programmatic, performance, and technical requirements and specifications when available;

(b) The reasons for using the alternative selection process;

(c) A description of the minimum qualifications required of the firm;

(d) A description of the process used to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors;

(e) Protest procedures;

(f) The form of the contract, including any contract for preconstruction services, to be awarded;

~~((f))~~ (g) The estimated maximum allowable subcontract cost; and

~~((g))~~ (h) The bid instructions to be used by the finalists.

(3) Evaluation factors for selection of the subcontractor must include, but not be limited to:

(a) Ability of the firm's professional personnel;

(b) The firm's past performance on similar projects;

(c) The firm's ability to meet time and budget requirements;

(d) The scope of work the firm proposes to perform with its own forces and its ability to perform that work;

(e) The firm's plan for outreach to minority and women-owned businesses;

(f) The firm's proximity to the project location;

(g) The firm's capacity to successfully complete the project;

(h) The firm's approach to executing the project;

(i) The firm's approach to safety on the project;

(j) The firm's safety history; and

(k) If the firm is selected as one of the most qualified finalists, the firm's fee and cost proposal.

(4) The general contractor/construction manager shall establish a committee to evaluate the proposals. At least one representative from the public body shall serve on the committee. Final proposals, including sealed bids for the percent fee on the estimated maximum allowable subcontract cost, and the fixed amount for the subcontract general conditions work specified in the request for proposal, will be requested from the most qualified firms.

(5) The general contractor/construction manager must notify all proposers of the most qualified firms that will move to the next phase of the selection process. The process may not proceed to the next phase until two business days after all proposers are notified of the committee's selection decision. At the request of a proposer, the general contractor/construction manager must provide the requesting proposer with a scoring summary of the evaluation factors for its proposal. Proposers filing a protest on the selection of the most qualified finalists must file the protest with the public body in accordance with the published protest procedures. The selection process may not advance to the next phase of selection until two business days after the final protest decision issued by the public body is transmitted to the protestor.

(6) The general contractor/construction manager and the public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors identified in the solicitation of proposals. The scoring of the nonprice factors must be made available at the opening of the fee and cost proposals. The general contractor/construction manager shall notify all proposers of the selection decision and make a selection summary of the final proposals, which shall be available to all proposers within two business days of such notification. The general contractor/construction manager may not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

~~((5))~~ (7) If the public body receives a timely written protest from a "most qualified firm," the general contractor/construction manager may not execute a contract for the protested subcontract work until two business days after the final

protest decision issued by the public body is transmitted to the protestor. The protestor must submit its protest in accordance with the published protest procedures.

(8) If the general contractor/construction manager is unable to negotiate a satisfactory maximum allowable subcontract cost with the firm selected deemed by public body and the general contractor/construction manager to be fair, reasonable, and within the available funds, negotiations with that firm must be formally terminated and the general contractor/construction manager may negotiate with the next highest scored firm until an agreement is reached or the process is terminated.

~~((6) If the general contractor/construction manager receives a written protest from a bidder, it may not execute a contract for the subject work with anyone other than the protesting bidder, without first providing at least two full business days' written notice to all bidders of the intent to execute a contract for the subcontract bid package. The protesting bidder must submit written notice to the general contractor/construction manager of its protest no later than two full business days following the bid opening.~~

~~(7))~~ (9) With the approval of the public body, the general contractor/construction manager may contract with the selected firm to provide preconstruction 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 mechanical or electrical subcontractor during the construction phase.

~~((8))~~ (10) The maximum allowable subcontract cost must be used to establish a total subcontract cost for purposes of a performance and payment bond. Total subcontract cost means the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable subcontract cost, and the percent fee on the negotiated maximum allowable subcontract cost. Maximum allowable subcontract cost means the maximum cost to complete the work specified for the subcontract, including the estimated cost of work to be performed by the subcontractor's own forces, a percentage for risk contingency, negotiated support services, and approved change orders. The maximum allowable subcontract cost must be negotiated between the general contractor/construction manager and the selected firm when the construction documents and specifications are at least ninety percent complete. Final agreement on the maximum allowable subcontract cost is subject to the approval of the public body.

~~((9))~~ (11) If the work of the mechanical contractor or electrical contractor is completed for less than the maximum allowable subcontract cost, any savings not otherwise negotiated as part of an incentive clause becomes part of the risk contingency included in the general contractor/construction manager's maximum allowable construction cost. If the work of the mechanical contractor or the electrical contractor is completed for more than the maximum allowable subcontract cost, the additional cost is the responsibility of that subcontractor. An independent audit, paid for by the public body, must be conducted ~~((upon completion of the contract))~~ to confirm the proper accrual of costs as outlined in the contract.

~~((10))~~ (12) A mechanical or electrical contractor selected under this section may perform work with its own forces. In the event it elects to subcontract some of its work, it must select a subcontractor utilizing the procedure outlined in RCW 39.10.380.

**Sec. 16.** RCW 39.10.390 and 2007 c 494 s 306 are each amended to read as follows:

(1) Except as provided in this section, bidding on subcontract work or for the supply of equipment or materials by the general contractor/construction manager or its subsidiaries is prohibited.

(2) The general contractor/construction manager, or its subsidiaries, may bid on subcontract work or for the supply of equipment or materials if:

(a) The work within the subcontract bid package or equipment or materials is customarily performed or supplied by the general contractor/construction manager;

(b) The bid opening is managed by the public body and is in compliance with RCW 39.10.380; and

(c) Notification of the general contractor/construction manager's intention to bid is included in the public solicitation of bids for the bid package or for the equipment or materials.

(3) In no event may the general contractor/construction manager or its subsidiaries (~~(purchase equipment or materials for assignment to subcontract bid package bidders for installation or warranty)~~) assign warranty responsibility or the terms of its contract or purchase order with vendors for equipment or material purchases to subcontract bid package bidders or subcontractors who have been awarded a contract. The value of subcontract work performed and equipment and materials supplied by the general contractor/construction manager may not exceed thirty percent of the negotiated maximum allowable construction cost. Negotiated support services performed by the general contractor/construction manager shall not be considered subcontract work for purposes of this subsection.

**Sec. 17.** RCW 39.10.400 and 2007 c 494 s 307 are each amended to read as follows:

(1) If determination of subcontractor eligibility prior to seeking bids is in the best interest of the project and critical to the successful completion of a subcontract bid package, the general contractor/construction manager and the public body may determine subcontractor eligibility to bid. The general contractor/construction manager and the public body must:

(a) Conduct a hearing and provide an opportunity for any interested party to submit written and verbal comments regarding the justification for conducting bidder eligibility, the evaluation criteria, and weights for each criteria and subcriteria;

(b) Publish a notice of intent to evaluate and determine bidder eligibility in a legal newspaper published in or as near as possible to that part of the county where the public work will be constructed at least fourteen calendar days before conducting a public hearing;

(c) Ensure the public hearing notice includes the date, time, and location of the hearing, a statement justifying the basis and need for performing eligibility analysis before bid opening, and how interested parties may, at least five days

before the hearing, obtain the specific eligibility criteria and applicable weights given to each criteria and subcriteria that will be used during evaluation;

(d) After the public hearing, consider written and verbal comments received and determine if establishing bidder eligibility in advance of seeking bids is in the best interests of the project and critical to the successful completion of a subcontract bid package; and

(e) Issue a written final determination to all interested parties. All protests of the decision to establish bidder eligibility before issuing a subcontractor bid package must be filed with the superior court within seven calendar days of the final determination. Any modifications to the eligibility criteria and weights shall be based on comments received during the public hearing process and shall be included in the final determination.

(2) Determinations of bidder eligibility shall be in accordance with the evaluation criteria and weights for each criteria established in the final determination and shall be provided to interested persons upon request. Any potential bidder determined not to meet eligibility criteria must be afforded ~~((the))~~ one opportunity to establish its eligibility. Protests concerning bidder eligibility determinations shall be in accordance with subsection (1) of this section.

**Sec. 18.** RCW 39.10.420 and 2012 c 102 s 1 are each amended to read as follows:

(1) The following public bodies of the state of Washington are authorized to award job order contracts and use the job order contracting procedure:

(a) The department of enterprise services;

(b) The state universities, regional universities, and The Evergreen State College;

(c) Sound transit (central Puget Sound regional transit authority);

(d) Every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755;

(e) Every county with a population greater than four hundred fifty thousand;

(f) Every port district with total revenues greater than fifteen million dollars per year;

(g) Every public utility district with revenues from energy sales greater than twenty-three million dollars per year;

(h) Every school district; and

(i) The state ferry system.

(2)(a) The department of enterprise services may issue job order contract work orders for Washington state parks department projects.

(b) The department of enterprise services, the University of Washington, and Washington State University may issue job order contract work orders for the state regional universities and The Evergreen State College.

(3) Public bodies may use a job order contract for public works projects when a determination is made that the use of job order contracts will benefit the public by providing an effective means of reducing the total lead-time and cost for the construction of public works projects for repair and renovation required at public facilities through the use of unit price books and work orders by eliminating time-consuming, costly aspects of the traditional public works process, which require separate contracting actions for each small project.



**Sec. 19.** RCW 39.10.440 and 2007 c 494 s 403 are each amended to read as follows:

(1) The maximum total dollar amount that may be awarded under a job order contract is four million dollars per year for a maximum of three years. The maximum total dollar amount that may be awarded under a job order contract for counties with a population of more than one million is six million dollars per year for a maximum of three years.

(2) Job order contracts may be executed for an initial contract term of not to exceed two years, with the option of extending or renewing the job order contract for one year. All extensions or renewals must be priced as provided in the request for proposals. The extension or renewal must be mutually agreed to by the public body and the job order contractor.

(3) A public body may have no more than two job order contracts in effect at any one time, with the exception of the department of (~~general administration~~) enterprise services, which may have four job order contracts in effect at any one time.

(4) At least ninety percent of work contained in a job order contract must be subcontracted to entities other than the job order contractor. The job order contractor must distribute contracts as equitably as possible among qualified and available subcontractors including minority and woman-owned subcontractors to the extent permitted by law.

(5) The job order contractor shall publish notification of intent to perform public works projects at the beginning of each contract year in a statewide publication and in a legal newspaper of general circulation in every county in which the public works projects are anticipated.

(6) Job order contractors shall pay prevailing wages for all work that would otherwise be subject to the requirements of chapter 39.12 RCW. Prevailing wages for all work performed pursuant to each work order must be the rates in effect at the time the individual work order is issued.

(7) If, in the initial contract term, the public body, at no fault of the job order contractor, fails to issue the minimum amount of work orders stated in the public request for proposals, the public body shall pay the contractor an amount equal to the difference between the minimum work order amount and the actual total of the work orders issued multiplied by an appropriate percentage for overhead and profit contained in the contract award coefficient for services as specified in the request for proposals. This is the contractor's sole remedy.

(8) All job order contracts awarded under this section must be signed before July 1, (~~2013~~) 2021; however the job order contract may be extended or renewed as provided for in this section.

(9) Public bodies may amend job order contracts awarded prior to July 1, 2007, in accordance with this chapter.

**Sec. 20.** RCW 39.10.490 and 2007 c 494 s 501 are each amended to read as follows:

The alternative public works contracting procedures authorized under this chapter are limited to public works contracts signed before July 1, (~~2013~~) 2021. Methods of public works contracting authorized under this chapter shall remain in full force and effect until completion of contracts signed before July 1, (~~2013~~) 2021.

**Sec. 21.** RCW 43.131.407 and 2007 c 494 s 506 are each amended to read as follows:

The alternative (~~(public)~~) public works contracting procedures under chapter 39.10 RCW shall be terminated June 30, (~~(2013)~~) 2021, as provided in RCW 43.131.408.

**Sec. 22.** RCW 43.131.408 and 2012 c 102 s 4 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, (~~(2014)~~) 2022:

(1) RCW 39.10.200 and 2010 1st sp.s. c 21 s 2, 2007 c 494 s 1, & 1994 c 132 s 1;

(2) RCW 39.10.210 and 2013 c ... s 1 (section 1 of this act), 2010 1st sp.s. c 36 s 6014, 2007 c 494 s 101, & 2005 c 469 s 3;

(3) RCW 39.10.220 and 2013 c ... s 2 (section 2 of this act), 2007 c 494 s 102, & 2005 c 377 s 1;

(4) RCW 39.10.230 and 2013 c ... s 3 (section 3 of this act), 2010 1st sp.s. c 21 s 3, 2009 c 75 s 1, 2007 c 494 s 103, & 2005 c 377 s 2;

(5) RCW 39.10.240 and 2013 c ... s 4 (section 4 of this act) & 2007 c 494 s 104;

(6) RCW 39.10.250 and 2013 c ... s 5 (section 5 of this act), 2009 c 75 s 2, & 2007 c 494 s 105;

(7) RCW 39.10.260 and 2013 c ... s 6 (section 6 of this act) & 2007 c 494 s 106;

(8) RCW 39.10.270 and 2013 c ... s 7 (section 7 of this act), 2009 c 75 s 3, & 2007 c 494 s 107;

(9) RCW 39.10.280 and 2013 c ... s 8 (section 8 of this act) & 2007 c 494 s 108;

(10) RCW 39.10.290 and 2007 c 494 s 109;

(11) RCW 39.10.300 and 2013 c ... s 9 (section 9 of this act), 2009 c 75 s 4, & 2007 c 494 s 201;

(12) RCW 39.10.320 and 2013 c ... s 10 (section 10 of this act), 2007 c 494 s 203, & 1994 c 132 s 7;

(13) RCW 39.10.330 and 2013 c ... s 11 (section 11 of this act), 2009 c 75 s 5, & 2007 c 494 s 204;

(14) RCW 39.10.340 and 2013 c ... s 12 (section 12 of this act) & 2007 c 494 s 301;

(15) RCW 39.10.350 and 2007 c 494 s 302;

(16) RCW 39.10.360 and 2013 c ... s 13 (section 13 of this act), 2009 c 75 s 6, & 2007 c 494 s 303;

(17) RCW 39.10.370 and 2007 c 494 s 304;

(18) RCW 39.10.380 and 2013 c ... s 14 (section 14 of this act) & 2007 c 494 s 305;

(19) RCW 39.10.385 and 2013 c ... s 15 (section 15 of this act) & 2010 c 163 s 1;

(20) RCW 39.10.390 and 2013 c ... s 16 (section 16 of this act) & 2007 c 494 s 306;

(21) RCW 39.10.400 and 2013 c ... s 17 (section 17 of this act) & 2007 c 494 s 307;

(22) RCW 39.10.410 and 2007 c 494 s 308;

(23) RCW 39.10.420 and 2013 c ... s 18 (section 18 of this act), 2012 c 102 s 1, 2009 c 75 s 7, 2007 c 494 s 401, & 2003 c 301 s 1;

(24) RCW 39.10.430 and 2007 c 494 s 402;

(25) RCW 39.10.440 and 2013 c ... s 19 (section 19 of this act) & 2007 c 494 s 403;

(26) RCW 39.10.450 and 2012 c 102 s 2 & 2007 c 494 s 404;

(27) RCW 39.10.460 and 2012 c 102 s 3 & 2007 c 494 s 405;

(28) RCW 39.10.470 and 2005 c 274 s 275 & 1994 c 132 s 10;

(29) RCW 39.10.480 and 1994 c 132 s 9;

(30) RCW 39.10.490 and 2013 c ... s 20 (section 20 of this act), 2007 c 494 s 501, & 2001 c 328 s 5;

(31) (~~RCW 39.10.500 and 2007 c 494 s 502~~;

~~RCW 39.10.510 and 2007 c 494 s 503~~;

~~RCW 39.10.900 and 1994 c 132 s 13~~;

~~(34))~~ (32) RCW 39.10.901 and 1994 c 132 s 14;

~~(35))~~ (33) RCW 39.10.903 and 2007 c 494 s 510;

~~(36))~~ (34) RCW 39.10.904 and 2007 c 494 s 512; and

~~(37))~~ (35) RCW 39.10.905 and 2007 c 494 s 513.

**NEW SECTION. Sec. 23.** The following acts or parts of acts are each repealed:

(1) RCW 39.10.500 (Exemptions) and 2007 c 494 s 502; and

(2) RCW 39.10.510 (Previously advertised projects) and 2007 c 494 s 503.

**NEW SECTION. Sec. 24.** A new section is added to chapter 43.131 RCW to read as follows:

(1) If the sunset review process in RCW 43.131.010 through 43.131.150 expires before June 30, 2021, the joint legislative audit and review committee must conduct a program and fiscal review of the alternative public works contracting procedures authorized in chapter 39.10 RCW. The review must be completed by June 30, 2021, and findings reported to the office of financial management and any affected entities. The report must be prepared in the manner set forth in RCW 44.28.071 and 44.28.075.

(2) This section expires July 1, 2022.

**NEW SECTION. Sec. 25.** Section 24 of this act takes effect upon the expiration of RCW 43.131.051.

**NEW SECTION. Sec. 26.** Sections 1 through 23 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect June 30, 2013.

Passed by the House April 23, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 223

[Engrossed Substitute House Bill 1633]

BIDDING REQUIREMENTS—IMPROVEMENTS AND REPAIR PROJECTS—  
SCHOOL DISTRICTS

AN ACT Relating to modifying school district bidding requirements for improvement and repair projects; and amending RCW 28A.335.190.

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

**Sec. 1.** RCW 28A.335.190 and 2008 c 215 s 6 are each amended to read as follows:

(1) When, in the opinion of the board of directors of any school district, the cost of any furniture, supplies, equipment, building, improvements, or repairs, or other work or purchases, except books, will equal or exceed the ~~((sum of fifty thousand dollars))~~ threshold levels specified in subsections (2) and (4) of this section, complete plans and specifications for such work or purchases shall be prepared and notice by publication given in at least one newspaper of general circulation within the district, once each week for two consecutive weeks, of the intention to receive bids and that specifications and other information may be examined at the office of the board or any other officially designated location ~~(= PROVIDED, That the board without giving such notice may make improvements or repairs to the property of the district through the shop and repair department of such district when the total of such improvements or repair does not exceed the sum of forty thousand dollars))~~. The cost of any public work, improvement, or repair for the purposes of this section shall be the aggregate of all amounts to be paid for labor, material, and equipment on one continuous or interrelated project where work is to be performed simultaneously or in close sequence. The bids shall be in writing and shall be opened and read in public on the date and in the place named in the notice and after being opened shall be filed for public inspection.

(2) Every purchase of furniture, equipment, or supplies, except books, the cost of which is estimated to be in excess of forty thousand dollars, shall be on a competitive basis. The board of directors shall establish a procedure for securing telephone and/or written quotations for such purchases. Whenever the estimated cost is from forty thousand dollars up to seventy-five thousand dollars, the procedure shall require quotations from at least three different sources to be obtained in writing or by telephone, and recorded for public perusal. Whenever the estimated cost is in excess of seventy-five thousand dollars, the public bidding process provided in subsection (1) of this section shall be followed.

(3) Any school district may purchase goods produced or provided in whole or in part from class II inmate work programs operated by the department of corrections pursuant to RCW 72.09.100, including but not limited to furniture, equipment, or supplies. School districts are encouraged to set as a target to contract, beginning after June 30, 2006, to purchase up to one percent of the total goods required by the school districts each year, goods produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(4) ~~((Every building, improvement, repair or other public works project, the cost of which is estimated to be in excess of forty thousand dollars, shall be on a competitive bid process.))~~ The board may make improvements or repairs to the

property of the district through a department within the district without following the public bidding process provided in subsection (1) of this section when the total of such improvements or repairs does not exceed the sum of seventy-five thousand dollars. Whenever the estimated cost of a building, improvement, repair, or other public works project is one hundred thousand dollars or more, the public bidding process provided in subsection (1) of this section shall be followed unless the contract is let using the small works roster process in RCW 39.04.155 or under any other procedure authorized for school districts. One or more school districts may authorize an educational service district to establish and operate a small works roster for the school district under the provisions of RCW 39.04.155.

(5) The contract for the work or purchase shall be awarded to the lowest responsible bidder as ~~((defined))~~ described in RCW ~~((43.19.1914))~~ 39.26.160(2) but the board may by resolution reject any and all bids and make further calls for bids in the same manner as the original call. On any work or purchase the board shall provide bidding information to any qualified bidder or the bidder's agent, requesting it in person.

(6) In the event of any emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the board declaring the existence of such an emergency and reciting the facts constituting the same, the board may waive the requirements of this section with reference to any purchase or contract: PROVIDED, That an "emergency," for the purposes of this section, means a condition likely to result in immediate physical injury to persons or to property of the school district in the absence of prompt remedial action.

(7) This section does not apply to the direct purchase of school buses by school districts and educational services in accordance with RCW 28A.160.195.

(8) This section does not apply to the purchase of Washington grown food.

(9) At the discretion of the board, a school district may develop and implement policies and procedures to facilitate and maximize to the extent practicable, purchases of Washington grown food including, but not limited to, policies that permit a percentage price preference for the purpose of procuring Washington grown food.

(10) As used in this section, "Washington grown" has the definition in RCW 15.64.060.

(11) As used in this section, "price percentage preference" means the percent by which a responsive bid from a responsible bidder whose product is a Washington grown food may exceed the lowest responsive bid submitted by a responsible bidder whose product is not a Washington grown food.

Passed by the House April 22, 2013.

Passed by the Senate April 12, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 224

[Substitute House Bill 1752]

## MOTOR VEHICLES—COMMERCIAL—FEDERAL REGULATIONS

AN ACT Relating to requirements for the operation of commercial motor vehicles in compliance with federal regulations; amending RCW 46.01.130, 46.25.010, 46.25.010, 46.25.050, 46.25.060, 46.25.070, 46.25.075, 46.25.080, 46.25.100, 46.25.130, 46.25.160, 46.61.667, and 46.61.668; adding new sections to chapter 46.25 RCW; and providing an effective date.

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

**Sec. 1.** RCW 46.01.130 and 2010 c 161 s 203 are each amended to read as follows:

The director:

(1) Shall supervise and control the issuing of vehicle certificates of title, vehicle registrations, and vehicle license plates, and has the full power to do all things necessary and proper to carry out the provisions of the law relating to the registration of vehicles;

(2) May appoint and employ deputies, assistants, representatives, and clerks;

(3) May establish branch offices in different parts of the state;

(4) May appoint county auditors in Washington state or, in the absence of a county auditor, the department or an official of county government as agents for applications for and the issuance of vehicle certificates of title and vehicle registrations; and

(5)(a) Shall investigate the conviction records and pending charges of any current employee of or prospective employee being considered for any position with the department (~~that~~) who has or will have:

(i)(A) The ability to create or modify records of applicants for enhanced drivers' licenses and identicards issued under RCW 46.20.202; and

~~((ii))~~ (B) The ability to issue enhanced drivers' licenses and identicards under RCW 46.20.202; or

(ii) The ability to conduct examinations under RCW 46.25.060.

(b) The investigation consists of a background check as authorized under RCW 10.97.050, 43.43.833, and 43.43.834, and the federal bureau of investigation. The background check must be conducted through the Washington state patrol criminal identification section and may include a national check from the federal bureau of investigation, which is through the submission of fingerprints. The director shall use the information solely to determine the character, suitability, and competence of current or prospective employees subject to this section.

(c) The director shall investigate the conviction records and pending charges of an employee subject to (~~this subsection~~):

(i) Subsection (5)(a)(i) of this section every five years; and

(ii) Subsection (5)(a)(ii) of this section as required under 49 C.F.R. Sec. 384.228 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(d) Criminal justice agencies shall provide the director with information that they may possess and that the director may require solely to determine the employment suitability of current or prospective employees subject to this section.

**Sec. 2.** RCW 46.25.010 and 2011 c 227 s 1 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 to an individual under chapter 46.20 RCW that has been endorsed in accordance with the requirements of this chapter to authorize 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 49 U.S.C. Sec. 31309 to serve as a clearinghouse 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(5).

(6) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross (~~vehicle~~) combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of (~~the~~) any towed unit or units with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds or more), whichever is greater; or

(b) Has a gross vehicle weight rating or gross vehicle weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater; or

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(e) Is a school bus regardless of weight or size.

(7) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, entry into a deferred prosecution program under chapter 10.05 RCW, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(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, including, but not limited to, those substances defined by 49 C.F.R. Sec. 40.3.

(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 vehicle. 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. If the GVWR of any unit cannot be determined, the actual gross weight will be used. If a vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or less) has been structurally modified to carry a heavier load, then the actual gross weight capacity of the modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will be used as the GVWR.

(13) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. Part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. Part 73.

(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 declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out-of-service pursuant to 49 C.F.R. Secs. 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American uniform out-of-service criteria.

(16) "Positive alcohol confirmation test" means an alcohol confirmation test that:

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. Part 40; and

(b) Indicates an alcohol concentration of 0.04 or more.

A report that a person has refused an alcohol test, under circumstances that constitute the refusal of an alcohol test under 49 C.F.R. Part 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

(17) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(18) "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) Driving while using a hand-held mobile telephone, defined as a violation of RCW 46.61.667(1)(b) or an equivalent administrative rule or local law, ordinance, rule, or resolution;

(d) Texting, defined as a violation of RCW 46.61.668(1)(b) or an equivalent administrative rule or local law, ordinance, rule, or resolution;



(e) 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;

~~((f))~~ (f) Driving a commercial motor vehicle without obtaining a commercial driver's license;

~~((g))~~ (g) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic ~~(offense)~~ violation";

~~((h))~~ (h) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

~~((i))~~ (i) 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.

(19) "State" means a state of the United States and the District of Columbia.

(20) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. Sec. 40.281.

(21) "Tank vehicle" means ~~((a))~~ any commercial motor vehicle that is designed to transport ((a)) any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than one hundred nineteen gallons and an aggregate rated capacity of one thousand gallons or more 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.)) A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of one thousand gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

(22) "Type of driving" means one of the following:

(a) "Nonexcepted interstate," which means the CDL holder or applicant operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. Part 391 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(b) "Excepted interstate," which means the CDL holder or applicant operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, from all or parts of the qualification requirements of 49 C.F.R. Part 391 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is

therefore not required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(c) "Nonexcepted intrastate," which means the CDL holder or applicant operates only in intrastate commerce and is therefore subject to state driver qualification requirements; or

(d) "Excepted intrastate," which means the CDL holder or applicant operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

(23) "United States" means the fifty states and the District of Columbia.

(24) "Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:

(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. Sec. 40.87; and

(b) Has undergone review and final determination by a medical review officer.

A report that a person has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. Part 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter.

**Sec. 3.** RCW 46.25.010 and 2013 c ... s 2 (section 2 of this act) 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 to an individual under chapter 46.20 RCW that has been endorsed in accordance with the requirements of this chapter to authorize 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 49 U.S.C. Sec. 31309 to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.

(5) "Commercial (~~driver's instruction~~) learner's permit" (CLP) means a permit issued under (~~RCW 46.25.060(5)~~) section 5 of this act for the purposes of behind-the-wheel training.

(6) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(a) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds or more), whichever is greater; or

(b) Has a gross vehicle weight rating or gross vehicle weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater; or

(c) Is designed to transport sixteen or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of hazardous materials as defined in this section; or

(e) Is a school bus regardless of weight or size.

(7) "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, entry into a deferred prosecution program under chapter 10.05 RCW, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(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, including, but not limited to, those substances defined by 49 C.F.R. Sec. 40.3.

(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 vehicle. 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. If the GVWR of any unit cannot be determined, the actual gross weight will be used. If a vehicle with a GVWR of less than 11,794 kilograms (26,001 pounds or less) has been structurally modified to carry a heavier load, then the actual gross weight capacity of the modified vehicle, as determined by RCW 46.44.041 and 46.44.042, will be used as the GVWR.

(13) "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. Sec. 5103 and is required to be placarded under subpart F of 49 C.F.R. Part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. Part 73.

(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 declaration by an authorized enforcement officer of a federal, state, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is

out-of-service pursuant to 49 C.F.R. Secs. 386.72, 392.5, 395.13, 396.9, or compatible laws, or the North American uniform out-of-service criteria.

(16) "Positive alcohol confirmation test" means an alcohol confirmation test that:

(a) Has been conducted by a breath alcohol technician under 49 C.F.R. Part 40; and

(b) Indicates an alcohol concentration of 0.04 or more.

A report that a person has refused an alcohol test, under circumstances that constitute the refusal of an alcohol test under 49 C.F.R. Part 40, will be considered equivalent to a report of a positive alcohol confirmation test for the purposes of this chapter.

(17) "School bus" means a commercial motor vehicle used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

(18) "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) Driving while using a hand-held wireless communications device, defined as a violation of RCW 46.61.667(1)(b) or an equivalent administrative rule or local law, ordinance, rule, or resolution;

(d) Texting, defined as a violation of RCW 46.61.668(1)(b) or an equivalent administrative rule or local law, ordinance, rule, or resolution;

(e) 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;

(f) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(g) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession; however, any individual who provides proof to the court by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, is not guilty of a "serious traffic violation";

(h) Driving a commercial motor vehicle without the proper class of commercial driver's license endorsement or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported; and

(i) 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.

(19) "State" means a state of the United States and the District of Columbia.

(20) "Substance abuse professional" means an alcohol and drug specialist meeting the credentials, knowledge, training, and continuing education requirements of 49 C.F.R. Sec. 40.281.

(21) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than one hundred nineteen gallons and an aggregate rated capacity of one thousand gallons or more that is either

permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of one thousand gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

(22) "Type of driving" means one of the following:

(a) "Nonexcepted interstate," which means the CDL or CLP holder or applicant operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 C.F.R. Part 391 as it existed on (~~January 30, 2012~~) the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on (~~January 30, 2012~~) the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(b) "Excepted interstate," which means the CDL or CLP holder or applicant operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 C.F.R. Secs. 390.3(f), 391.2, 391.68, or 398.3, as they existed on (~~January 30, 2012~~) the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, from all or parts of the qualification requirements of 49 C.F.R. Part 391 as it existed on (~~January 30, 2012~~) the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section, and is therefore not required to obtain a medical examiner's certificate under 49 C.F.R. Sec. 391.45 as it existed on (~~January 30, 2012~~) the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section;

(c) "Nonexcepted intrastate," which means the CDL or CLP holder or applicant operates only in intrastate commerce and is therefore subject to state driver qualification requirements; or

(d) "Excepted intrastate," which means the CDL or CLP holder or applicant operates in intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the state driver qualification requirements.

(23) "United States" means the fifty states and the District of Columbia.

(24) "Verified positive drug test" means a drug test result or validity testing result from a laboratory certified under the authority of the federal department of health and human services that:

(a) Indicates a drug concentration at or above the cutoff concentration established under 49 C.F.R. Sec. 40.87; and

(b) Has undergone review and final determination by a medical review officer.

A report that a person has refused a drug test, under circumstances that constitute the refusal of a federal department of transportation drug test under 49 C.F.R. Part 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter.

**Sec. 4.** RCW 46.25.050 and 2011 c 142 s 1 are each amended to read as follows:

(1) Drivers of commercial motor vehicles (~~(shall)~~) must obtain a commercial driver's license as required under this chapter. Except when driving under a commercial (~~(driver's instruction)~~) learner's permit and a valid (~~(automobile or classified)~~) driver's license and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle unless the person holds and is in immediate possession of a commercial driver's license and applicable endorsements valid for the vehicle they are driving. However, this requirement does not apply to any person:

(a) Who is the operator of a farm vehicle, and the vehicle is:

(i) Controlled and operated by a farmer;

(ii) Used to transport either agricultural products, which in this section include Christmas trees and wood products harvested from private tree farms and transported by vehicles weighing no more than forty thousand pounds licensed gross vehicle weight, farm machinery, farm supplies, animal manure, animal manure compost, or any combination of those materials to or from a farm;

(iii) Not used in the operations of a common or contract motor carrier; and

(iv) Used within one hundred fifty miles of the person's farm; or

(b) Who is a firefighter or law enforcement officer operating emergency equipment, and:

(i) The firefighter or law enforcement officer has successfully completed a driver training course approved by the director; and

(ii) The firefighter or law enforcement officer carries a certificate attesting to the successful completion of the approved training course; or

(c) Who is operating a recreational vehicle for noncommercial purposes. As used in this section, "recreational vehicle" includes a vehicle towing a horse trailer for a noncommercial purpose; or

(d) Who is operating a commercial motor vehicle for military purposes. This exception is applicable to active duty military personnel; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty United States coast guard personnel. This exception is not applicable to United States reserve technicians.

(2) No person may drive a commercial motor vehicle while his or her driving privilege is suspended, revoked, or canceled, while subject to disqualification, or in violation of an out-of-service order. Violations of this subsection shall be punished in the same way as violations of RCW 46.20.342(1).

(3) The department (~~(shall)~~) must, to the extent possible, enter into reciprocity agreements with adjoining states to allow the waivers described in subsection (1) of this section to apply to drivers holding commercial driver's licenses from those adjoining states.

**NEW SECTION. Sec. 5.** A new section is added to chapter 46.25 RCW to read as follows:

(1) The department may issue a CLP to an applicant who is at least eighteen years of age and holds a valid Washington state driver's license and who has:

(a) Submitted an application on a form or in a format provided by the department;

(b) Passed the general knowledge examination required for issuance of a CDL under RCW 46.25.060 for the commercial motor vehicle classification in which the applicant operates or expects to operate; and

(c) Paid the appropriate examination fee or fees and an application fee of ten dollars.

(2) A CLP must be marked "commercial learner's permit" or "CLP," and must be, to the maximum extent practicable, tamperproof. Other than a photograph of the applicant, it must include, but not be limited to, the information required on a CDL under RCW 46.25.080(1).

(3) The holder of a CLP may drive a commercial motor vehicle on a highway only when in possession of a valid driver's license and accompanied by the holder of a valid CDL who has the proper CDL classification and endorsement or endorsements necessary to operate the commercial motor vehicle. The CDL holder must at all times be physically present in the front seat of the vehicle next to the CLP holder or, in the case of a passenger vehicle, directly behind or in the first row behind the driver and must have the CLP holder under observation and direct supervision.

(4) A CLP may be classified in the same manner as a CDL under RCW 46.25.080(2)(a).

(5) CLPs may be issued with only P, S, or N endorsements as described in RCW 46.25.080(2)(b).

(a) The holder of a CLP with a P endorsement must have taken and passed the P endorsement knowledge examination. The holder of a CLP with a P endorsement is prohibited from operating a commercial motor vehicle carrying passengers other than authorized employees or representatives of the department and the federal motor carrier safety administration, examiners, other trainees, and the CDL holder accompanying the CLP holder as required under subsection (2) of this section. The P endorsement must be class specific.

(b) The holder of a CLP with an S endorsement must have taken and passed the S endorsement knowledge examination. The holder of a CLP with an S endorsement is prohibited from operating a school bus with passengers other than authorized employees or representatives of the department and the federal motor carrier safety administration, examiners, other trainees, and the CDL holder accompanying the CLP holder as required under subsection (2) of this section.

(c) The holder of a CLP with an N endorsement must have taken and passed the N endorsement knowledge examination. The holder of a CLP with an N endorsement may only operate an empty tank vehicle and is prohibited from operating any tank vehicle that previously contained hazardous materials and has not been purged of any residue.

(6) A CLP may be issued with appropriate restrictions as described in RCW 46.25.080(2)(c). In addition, a CLP may be issued with the following restrictions:

(a) "P" restricts the driver from operating a bus with passengers;

(b) "X" restricts the driver from operating a tank vehicle that contains cargo; and

(c) Any restriction as established by rule of the department.

(7) The holder of a CLP is not authorized to operate a commercial motor vehicle transporting hazardous materials.

(8) A CLP may not be issued for a period to exceed one hundred eighty days. The department may renew the CLP for one additional one hundred eighty-day period without requiring the CLP holder to retake the general and endorsement knowledge examinations.

(9) The department must transmit the fees collected for CLPs to the state treasurer for deposit in the highway safety fund.

**Sec. 6.** RCW 46.25.060 and 2011 c 153 s 1 are each amended to read as follows:

(1)(a) No person may be issued a commercial driver's license unless that person:

(i) Is a resident of this state((:));

(ii) Has successfully completed a course of instruction in the operation of a commercial motor vehicle that has been approved by the director or has been certified by an employer as having the skills and training necessary to operate a commercial motor vehicle safely((:));

(iii) If he or she does not hold a valid commercial driver's license of the appropriate classification, has been issued a commercial learner's permit under section 5 of this act; and

(iv) Has passed a knowledge and skills ((test)) examination for driving a commercial motor vehicle that complies with minimum federal standards established by federal regulation enumerated in 49 C.F.R. Part 383, subparts F, G, and H, ((and has satisfied all other requirements of the CMVSA)) in addition to other requirements imposed by state law or federal regulation. The department may not allow the person to take the skills examination during the first fourteen days after initial issuance of the person's commercial learner's permit. The ((tests)) examinations must be prescribed and conducted by the department.

(b) In addition to the fee charged for issuance or renewal of any license, the applicant shall pay a fee of no more than ten dollars for each classified knowledge examination, classified endorsement knowledge examination, or any combination of classified license and endorsement knowledge examinations. The applicant shall pay a fee of no more than one hundred dollars for each classified skill examination or combination of classified skill examinations conducted by the department.

~~((b))~~ (c) The department may authorize a person, including an agency of this or another state, an employer, a private driver training facility, or other private institution, or a department, agency, or instrumentality of local government, to administer the skills ((test)) examination specified by this section under the following conditions:

(i) The ((test)) examination is the same which would otherwise be administered by the state;

(ii) The third party has entered into an agreement with the state that complies with the requirements of 49 C.F.R. ((part)) Sec. 383.75; and

(iii) The director has adopted rules as to the third party testing program and the development and justification for fees charged by any third party.

~~((e))~~ (d) If the applicant's primary use of a commercial driver's license is for any of the following, then the applicant shall pay a fee of no more than



seventy-five dollars for each classified skill examination or combination of classified skill examinations whether conducted by the department or a third-party tester:

(i) Public benefit not-for-profit corporations that are federally supported head start programs; or

(ii) Public benefit not-for-profit corporations that support early childhood education and assistance programs as described in RCW 43.215.405(2).

~~(2) ((The department shall work with the office of the superintendent of public instruction to develop modified P1 and P2 skill examinations that also include the skill examination components required to obtain an "S" endorsement. In no event may a new applicant for an "S" endorsement be required to take two separate examinations to obtain an "S" endorsement and either a P1 or P2 endorsement, unless that applicant is upgrading his or her existing commercial driver's license to include an "S" endorsement. The combined P1/S or P2/S skill examination must be offered to the applicant at the same cost as a regular P1 or P2 skill examination.~~

~~(3))~~(a) The department may waive the skills ~~((test))~~ examination and the requirement for completion of a course of instruction in the operation of a commercial motor vehicle specified in this section for a commercial driver's license applicant who meets the requirements of 49 C.F.R. ~~((part))~~ Sec. 383.77.

(b) An applicant who operates a commercial motor vehicle for agribusiness purposes is exempt from the course of instruction completion and employer skills and training certification requirements under this section. By January 1, 2010, the department shall submit recommendations regarding the continuance of this exemption to the transportation committees of the legislature. For purposes of this subsection ~~((3))~~ (2)(b), "agribusiness" means a private carrier who in the normal course of business primarily transports:

(i) Farm machinery, farm equipment, implements of husbandry, farm supplies, and materials used in farming;

(ii) Agricultural inputs, such as seed, feed, fertilizer, and crop protection products;

(iii) Unprocessed agricultural commodities, as defined in RCW 17.21.020, where such commodities are produced by farmers, ranchers, vineyardists, or orchardists; or

(iv) Any combination of (b)(i) through (iii) of this subsection.

The department shall notify the transportation committees of the legislature if the federal government takes action affecting the exemption provided in this subsection ~~((3))~~ (2)(b).

~~((4))~~ (3) A commercial driver's license or commercial ~~((driver's instruction))~~ learner's permit may not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person's driver's license is suspended, revoked, or canceled in any state, nor may a commercial driver's license be issued to a person who has a commercial driver's license issued by any other state unless the person first surrenders all such licenses, which must be returned to the issuing state for cancellation.

~~((5))~~(a) ~~The department may issue a commercial driver's instruction permit to an applicant who is at least eighteen years of age and holds a valid Washington state driver's license and who has submitted a proper application, passed the general knowledge examination required for issuance of a~~

~~commercial driver's license under subsection (1) of this section, and paid the appropriate fee for the knowledge examination and an application fee of ten dollars.~~

~~(b) A commercial driver's instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period.~~

~~(c) The holder of a commercial driver's instruction permit may drive a commercial motor vehicle on a highway only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle. The holder of a commercial driver's instruction permit is not authorized to operate a commercial motor vehicle transporting hazardous materials.~~

~~(d) The department shall transmit the fees collected for commercial driver's instruction permits to the state treasurer.)~~

**Sec. 7.** RCW 46.25.070 and 2004 c 187 s 4 are each amended to read as follows:

(1) The application for a commercial driver's license or commercial ~~(driver's instruction)~~ learner's permit must include the following:

(a) The full name and current mailing and residential address of the person;  
 (b) A physical description of the person, including sex, height, weight, and eye color;

(c) Date of birth;

(d) The applicant's social security number;

(e) The person's signature;

(f) Certifications including those required by 49 C.F.R. ~~((part))~~ Sec. 383.71~~((a))~~;

(g) The names of all states where the applicant has previously been licensed to drive any type of motor vehicle during the previous ten years;

(h) Any other information required by the department; and

(i) A consent to release driving record information to parties identified in chapter 46.52 RCW and this chapter.

(2) An applicant for a commercial driver's license or commercial learner's permit, and every licensee seeking to renew his or her license, must meet the requirements of 49 C.F.R. Sec. 383.71 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section.

(3) An applicant for a hazardous materials endorsement must submit an application and comply with federal transportation security administration requirements as specified in 49 C.F.R. Part 1572~~((, and meet the requirements specified in 49 C.F.R. 383.71(a)(9))~~.

~~((3))~~ (4) When a licensee changes his or her name, mailing address, or residence address, the person shall notify the department as provided in RCW 46.20.205.

~~((4))~~ (5) No person who has been a resident of this state for thirty days may drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.

**Sec. 8.** RCW 46.25.075 and 2011 c 227 s 3 are each amended to read as follows:

(1)~~((a))~~ Any person applying for a CDL or CLP must certify that he or she is or expects to be engaged in one of the following types of driving:

- ~~((i))~~ (a) Nonexcepted interstate;
- ~~((ii))~~ (b) Excepted interstate;
- ~~((iii))~~ (c) Nonexcepted intrastate; or
- ~~((iv))~~ (d) Excepted intrastate.

~~((b) From January 30, 2012, to January 30, 2014, the department may require that any person holding a CDL prior to January 30, 2012, must provide the department with the certification required under (a) of this subsection. The CDL of a person failing to submit the required certification is subject to downgrade under subsection (4) of this section.))~~

(2) A CDL or CLP applicant or holder who certifies under subsection (1)(a)~~((i))~~ of this section that he or she is or expects to be engaged in nonexcepted interstate commerce must provide a copy of a medical examiner's certificate prepared by a medical examiner, as defined in 49 C.F.R. Sec. 390.5 as it existed on ~~((January 30, 2012))~~ the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section. Upon submission, a copy of the medical examiner's certificate must be date-stamped by the department. A CDL or CLP holder who certifies under subsection (1)(a)~~((i))~~ of this section must submit a copy of each subsequently issued medical examiner's certificate.

(3) For each operator of a commercial motor vehicle required to have a ~~((commercial driver's license))~~ CDL or CLP, the department must meet the following requirements:

(a)(i) The driver's self-certification of type of driving under subsection (1) of this section must be maintained on the driver's record and the CDLIS driver record;

(ii) The copy of a medical examiner's certificate, when submitted under subsection (2) of this section, must ~~((by [he]))~~ be retained for three years beyond the date the certificate was issued; and

(iii) When a medical examiner's certificate is submitted under subsection (2) of this section, the information required under 49 C.F.R. Sec. 383.73~~((j)(1)(iii))~~ as it existed on ~~((January 30, 2012))~~ the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section must be posted to the CDLIS driver record within ten calendar days from the date submitted. The indicator of medical certification status, such as "certified" or "not-certified," must be maintained on the driver's record.

(b) Within ten calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, the medical certification status of the driver must be updated to "not-certified."

(c) Within ten calendar days of receiving information from the federal motor carrier safety administration regarding issuance or renewal of a medical variance for a driver, the department must update the CDLIS driver record to include the medical variance information.

(4)(a) If a driver's medical certification or medical variance expires, or the federal motor carrier safety administration notifies the department that a medical variance was removed or rescinded, the department must:

(i) Notify the driver of his or her "not-certified" medical certification status and that the ~~((CDL))~~ privilege of operating a commercial motor vehicle will be removed from the ~~((driver's license))~~ CDL or CLP unless the driver submits a current medical certificate or medical variance, or changes his or her self-certification to driving only in excepted or intrastate commerce; and

(ii) Initiate procedures for downgrading the ~~((license))~~ CDL or CLP. The CDL or CLP downgrade must be completed and recorded within sixty days of the driver's medical certification status becoming "not-certified" to operate a commercial motor vehicle.

(b) ~~((Beginning January 30, 2014,))~~ If a driver fails to provide the department with the certification required in subsection (1) of this section, or a current medical examiner's certificate if the driver self-certifies under subsection (1)(a)~~((+))~~ of this section that he or she is operating in nonexcepted interstate commerce as required in subsection (2) of this section, the department must mark the CDLIS driver record as "not-certified" and initiate a CDL or CLP downgrade in accordance with (a)(ii) of this subsection.

(c) A driver whose CDL or CLP has been downgraded under this subsection may restore the CDL or CLP privilege by providing the necessary certifications or medical variance information to the department.

**Sec. 9.** RCW 46.25.080 and 2011 c 227 s 2 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 or vehicles being towed is in excess of 10,000 pounds))~~ vehicle.

(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))~~ heavy straight vehicle.

(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))~~ small vehicle that is:

(A) ~~((Vehicles))~~ Designed to transport sixteen or more passengers, including the driver; or

(B) ~~((Vehicles))~~ Used in the transportation of hazardous materials.

(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, other than school buses, carrying passengers.

~~((v))~~ "P2" authorizes driving vehicles with a GVWR of less than 26,001 pounds, other than school buses, carrying sixteen or more passengers, including the driver.

~~((vi)))~~ (iii) "P" authorizes driving vehicles carrying passengers, other than school buses.

(iv) "N" authorizes driving tank vehicles.

~~((vii)))~~ (v) "X" represents a combination of hazardous materials and tank vehicle endorsements.

~~((viii)))~~ (vi) "S" authorizes driving school buses.

~~((ix)))~~ (c) The following restrictions may be placed on a license:

(i) "E" restricts the driver from operating a commercial motor vehicle equipped with a manual transmission.

(ii) "K" restricts the driver from interstate operation of a commercial motor vehicle.

(iii) "L" restricts the driver from operating a commercial motor vehicle equipped with air brakes.

(iv) "M" restricts the driver from operating class A passenger vehicles.

(v) "N" restricts the driver from operating class A and B passenger vehicles.

(vi) "O" restricts the driver from operating tractor-trailer commercial motor vehicles.

(vii) "V" means that the driver has been issued a medical variance.

(viii) "Z" restricts the driver from operating a commercial motor vehicle equipped with full air brakes.

(d) 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:

(a) Through the commercial driver's license information system;

(b) Through the national driver register;

(c) From the current state of record; and

~~(d) From all states where the applicant was previously licensed over the last ten years to drive any type of motor vehicle.~~

~~A check under (d) of this subsection need be done only once, either at the time of application for a new commercial driver's license, or upon application for a renewal of a commercial driver's license for the first time after July 1, 2005, provided a notation is made on the driver's record confirming that the driving record check has been made and noting the date it was completed.~~

~~(5) Within ten days after issuing a commercial driver's license, the department must notify the commercial driver's license information system of the information required under 49 C.F.R. Sec. 383.73 as it existed on January 30, 2012, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section and provide all information required to ensure identification of the person.~~

~~(6) A commercial driver's license shall expire in the same manner as provided in RCW 46.20.181.~~

~~(7) When applying for renewal of a commercial driver's license, the applicant shall:~~

~~(a) Complete the application form required by RCW 46.25.070(1), providing updated information and required certifications;~~

~~(b) Submit the application to the department in person; and~~

~~(c) If the applicant wishes to retain a hazardous materials endorsement, take and pass the written test for a hazardous materials endorsement.))~~

NEW SECTION, Sec. 10. A new section is added to chapter 46.25 RCW to read as follows:

(1)(a) Before issuing a CDL or CLP, the department must obtain driving record information:

(i) Through the commercial driver's license information system;

(ii) Through the national driver register;

(iii) From the current state of record; and

(iv) From all states where the applicant was previously licensed over the last ten years to drive any type of motor vehicle.

(b) A driving record check under (a)(iv) of this subsection need only be performed once at the time of initial issuance of a CDL or CLP, provided a notation is made on the driver's record confirming that the driving record check has been made and noting the date it was completed.

(2) Within ten days after issuing a CDL or CLP, the department must notify the commercial driver's license information system of the information required under 49 C.F.R. Sec. 383.73 as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this section and provide all information required to ensure identification of the person.

NEW SECTION, Sec. 11. A new section is added to chapter 46.25 RCW to read as follows:

(1) A CDL expires in the same manner as provided in RCW 46.20.181.

(2) When applying for renewal of a CDL, the applicant must:

(a) Complete the application form required under RCW 46.25.070(1), providing updated information and required certifications, and meet all the requirements of RCW 46.25.070 and 49 C.F.R. Sec. 383.71;

(b) Submit the application to the department in person; and

(c) If the applicant wishes to retain a hazardous materials endorsement, take and pass the written test for a hazardous materials endorsement.

**Sec. 12.** RCW 46.25.100 and 2002 c 272 s 4 are each amended to read as follows:

When a person has been disqualified from operating a commercial motor vehicle, the person is not entitled to have the commercial driver's license or commercial learner's permit restored until after the expiration of the appropriate disqualification period required under RCW 46.25.090 or until the department has received a drug and alcohol assessment and evidence is presented of satisfactory participation in or completion of any required drug or alcohol treatment program for ending the disqualification under RCW 46.25.090(7). After expiration of the appropriate period and upon payment of a requalification fee of twenty dollars, or one hundred fifty dollars if the person has been disqualified under RCW 46.25.090(7), the person may apply for a new, duplicate, or renewal commercial driver's license or commercial learner's permit as provided by law. If the person has been disqualified for a period of one year or more, the person shall demonstrate that he or she meets the commercial driver's license or commercial learner's permit qualification standards specified in RCW 46.25.060.

**Sec. 13.** RCW 46.25.130 and 2004 c 187 s 8 are each amended to read as follows:

(1) Within ten days after receiving a report of the conviction of or finding that a traffic infraction has been committed by any nonresident holder of a commercial driver's license or commercial learner's permit, or any nonresident operating a commercial motor vehicle, for any violation of state law or local ordinance relating to motor vehicle traffic control, other than parking violations, the department shall notify the driver licensing authority in the licensing state of the conviction.

(2)(a) No later than ten days after disqualifying any nonresident holder of a commercial driver's license or commercial learner's permit from operating a commercial motor vehicle, or revoking, suspending, or canceling the nonresident driving privileges of the nonresident holder of a commercial driver's license or commercial learner's permit for at least sixty days, the department must notify the state that issued the license of the disqualification, revocation, suspension, or cancellation.

(b) The notification must include both the disqualification and the violation that resulted in the disqualification, revocation, suspension, or cancellation. The notification and the information it provides must be recorded on the driver's record.

**Sec. 14.** RCW 46.25.160 and 2004 c 187 s 9 are each amended to read as follows:

Notwithstanding any law to the contrary, a person may drive a commercial motor vehicle if the person has a commercial driver's license or commercial ~~(driver's instruction)~~ learner's permit issued by any state or jurisdiction in accordance with the minimum federal standards for the issuance of commercial motor vehicle driver's licenses or permits, if the person's license or permit is not

suspended, revoked, or canceled, and if the person is not disqualified from driving a commercial motor vehicle or is subject to an out-of-service order.

**Sec. 15.** RCW 46.61.667 and 2010 c 223 s 3 are each amended to read as follows:

(1)(a) Except as provided in subsections (2)(a) and (3)(a) of this section, a person operating a moving motor vehicle while holding a wireless communications device to his or her ear is guilty of a traffic infraction.

(b) Except as provided in subsection (2)(b) and (3)(b) of this section, a person driving a commercial motor vehicle, as defined in RCW 46.25.010, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, while using a hand-held mobile telephone is guilty of a traffic infraction. For purposes of this subsection, "driving" does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway and has stopped in a location where the vehicle can safely remain stationary.

(2)(a) Subsection (1)(a) of this section does not apply to a person operating:

~~((a))~~ (i) An authorized emergency vehicle, or a tow truck responding to a disabled vehicle;

~~((b))~~ (ii) A moving motor vehicle using a wireless communications device in hands-free mode;

~~((c))~~ (iii) A moving motor vehicle using a hand-held wireless communications device to:

~~((i))~~ (A) Report illegal activity;

~~((ii))~~ (B) Summon medical or other emergency help;

~~((iii))~~ (C) Prevent injury to a person or property; or

~~((iv))~~ (D) Relay information that is time sensitive between a transit or for-hire operator and that operator's dispatcher, in which the device is permanently affixed to the vehicle; or

~~((v))~~ (iv) A moving motor vehicle while using a hearing aid.

(b) Subsection (1)(b) of this section does not apply to a person operating a commercial motor vehicle:

(i) When necessary to communicate with law enforcement officials or other emergency services; or

(ii) Using a mobile telephone in hands-free mode.

(3)(a) Subsection (1)(a) of this section does not restrict the operation of an amateur radio station by a person who holds a valid amateur radio operator license issued by the federal communications commission.

(b) Subsection (1)(b) of this section does not restrict the operation of two-way or citizens band radio services.

(4) For purposes of this section, "hands-free mode" means the use of a wireless communications device with a speaker phone, headset, or earpiece.

(5) The state preempts the field of regulating the use of wireless communications devices in motor vehicles, and this section supersedes any local laws, ordinances, orders, rules, or regulations enacted by a political subdivision or municipality to regulate the use of wireless communications devices by the operator of a motor vehicle.

(6) Infractions that result from the use of a wireless communications device while operating a motor vehicle under subsection (1)(a) of this section shall not become part of the driver's record under RCW 46.52.101 and 46.52.120.



Additionally, a finding that a person has committed a traffic infraction under subsection (1)(a) of this section shall not be made available to insurance companies or employers.

**Sec. 16.** RCW 46.61.668 and 2010 c 223 s 4 are each amended to read as follows:

(1)(a) Except as provided in subsection (2)(a) of this section, a person operating a moving noncommercial motor vehicle who, by means of an electronic wireless communications device, sends, reads, or writes a text message, is guilty of a traffic infraction.

(b) Except as provided in subsection (2)(b) of this section, a person driving a commercial motor vehicle, as defined in RCW 46.25.010, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays, who, by means of an electronic wireless communications device, sends, reads, or writes a text message, is guilty of a traffic infraction. For purposes of this subsection, "driving" does not include operating a commercial motor vehicle with or without the motor running when the driver has moved the vehicle to the side of, or off, a highway and has stopped in a location where the vehicle can safely remain stationary.

(c) A person does not send, read, or write a text message when he or she reads, selects, or enters a phone number or name in a wireless communications device for the purpose of making a phone call.

(2)(a) Subsection (1)(a) of this section does not apply to a person operating:

((+)) (i) An authorized emergency vehicle;

((+)) (ii) A voice-operated global positioning or navigation system that is affixed to the vehicle and that allows the user to send or receive messages without diverting visual attention from the road or engaging the use of either hand; or

((+)) (iii) A moving motor vehicle while using an electronic wireless communications device to:

((+)) (A) Report illegal activity;

((+)) (B) Summon medical or other emergency help;

((+)) (C) Prevent injury to a person or property; or

((+)) (D) Relay information that is time sensitive between a transit or for-hire operator and that operator's dispatcher, in which the device is permanently affixed to the vehicle.

(b) Subsection (1)(b) of this section does not apply to a person operating a commercial motor vehicle when necessary to communicate with law enforcement officials or other emergency services.

(3) Infractions under subsection (1)(a) of this section shall not become part of the driver's record under RCW 46.52.101 and 46.52.120. Additionally, a finding that a person has committed a traffic infraction under subsection (1)(a) of this section shall not be made available to insurance companies or employers.

**NEW SECTION. Sec. 17.** Sections 1 and 3 through 14 of this act take effect July 8, 2014.

Passed by the House March 5, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 14, 2013.  
 Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 225

[Substitute House Bill 1883]

### FUEL TAX ADMINISTRATION

AN ACT Relating to simplifying and updating statutes related to fuel tax administration; amending RCW 82.38.010, 82.38.020, 82.38.030, 82.38.032, 82.38.035, 82.38.050, 82.38.060, 82.38.065, 82.38.066, 82.38.075, 82.38.080, 82.38.090, 82.38.110, 82.38.140, 82.38.150, 82.38.160, 82.38.170, 82.38.180, 82.38.190, 82.38.210, 82.38.220, 82.38.230, 82.38.235, 82.38.245, 82.38.260, 82.38.270, 82.38.280, 82.38.290, 82.38.310, 82.38.320, 82.38.360, 82.38.365, 82.38.370, 82.38.380, 82.38.385, 82.42.010, 82.42.020, 82.42.030, 82.42.040, 82.42.090, 82.42.110, 82.42.125, 19.112.110, 19.112.120, 35A.81.010, 36.70A.340, 43.06.400, 46.01.040, 46.09.310, 46.87.080, 47.02.070, 47.02.160, 47.10.040, 47.10.180, 47.10.310, 47.10.440, 47.10.714, 47.10.729, 47.10.756, 47.10.766, 47.10.793, 47.10.804, 47.10.815, 47.10.822, 47.10.838, 47.10.846, 47.10.864, 47.10.876, 47.10.883, 47.26.404, 47.26.424, 47.26.4252, 47.26.4254, 47.26.504, 47.56.771, 47.60.580, 79A.25.010, 79A.25.040, 79A.25.050, 82.04.4285, 82.08.0255, 82.80.010, 82.80.110, 82.80.120, 46.68.080, 46.68.090, and 82.12.0256; reenacting and amending RCW 82.38.120 and 46.09.520; adding new sections to chapter 82.38 RCW; adding new sections to chapter 82.42 RCW; decodifying RCW 82.38.800, 82.38.900, 82.38.910, 82.38.920, 82.38.930, 82.38.940, and 82.38.941; repealing RCW 82.36.010, 82.36.020, 82.36.022, 82.36.025, 82.36.026, 82.36.027, 82.36.028, 82.36.029, 82.36.031, 82.36.032, 82.36.035, 82.36.040, 82.36.044, 82.36.045, 82.36.047, 82.36.050, 82.36.060, 82.36.070, 82.36.075, 82.36.080, 82.36.090, 82.36.095, 82.36.100, 82.36.110, 82.36.120, 82.36.130, 82.36.140, 82.36.150, 82.36.160, 82.36.170, 82.36.180, 82.36.190, 82.36.200, 82.36.210, 82.36.230, 82.36.240, 82.36.245, 82.36.247, 82.36.250, 82.36.260, 82.36.270, 82.36.275, 82.36.280, 82.36.285, 82.36.290, 82.36.300, 82.36.310, 82.36.320, 82.36.330, 82.36.335, 82.36.340, 82.36.350, 82.36.370, 82.36.375, 82.36.380, 82.36.390, 82.36.400, 82.36.410, 82.36.415, 82.36.420, 82.36.430, 82.36.435, 82.36.440, 82.36.450, 82.36.460, 82.36.460, 82.36.470, 82.36.475, 82.36.480, 82.36.485, 82.36.490, 82.36.495, 82.36.800, 82.36.900, 82.36.901, 82.38.045, 82.38.047, 82.38.130, 82.38.240, 82.38.250, 82.38.265, 82.38.350, 82.41.060, 82.42.050, 82.42.060, 82.42.070, 82.42.080, and 82.42.120; prescribing penalties; and providing an effective date.

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

## PART I

### MOTOR VEHICLE FUEL TAX—STATUTE CONSOLIDATION

**Sec. 101.** RCW 82.38.010 and 1979 c 40 s 1 are each amended to read as follows:

The purpose of this chapter is to ~~((supplement the Motor Vehicle Fuel Tax Act, chapter 82.36 RCW, by imposing))~~ impose a tax upon ~~((all))~~ fuels ~~((not taxed under said Motor Vehicle Fuel Tax Act))~~ used for the propulsion of motor vehicles upon the highways of this state.

**Sec. 102.** RCW 82.38.020 and 2002 c 183 s 1 are each amended to read as follows:

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

(1) "Blended ~~((special))~~ fuel" means a mixture of ~~((undyed diesel))~~ fuel and another liquid, other than a de minimis amount of the liquid ~~((, that can be used as a fuel to propel a motor vehicle)).~~

(2) "Blender" means a person who produces blended ~~((special))~~ fuel outside the bulk transfer-terminal system.

(3) "Bond" means a bond duly executed with a corporate surety qualified under chapter 48.28 RCW(~~(, which bond is)~~) payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter(~~(; including the payment of all taxes, penalties, and other obligations arising out of this chapter)~~).

(4) "Bulk transfer-terminal system" means the (~~(special)~~) fuel distribution system consisting of refineries, pipelines, vessels, and terminals. (~~(Special)~~) Fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer-terminal system. (~~(Special fuel in the fuel tank of an engine, motor vehicle, or in a railcar, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer terminal system.)~~)

(5) "Bulk transfer" means a transfer of (~~(special)~~) fuel by pipeline or vessel.

(6) "Bulk storage" means the placing of (~~(special)~~) fuel into a receptacle other than the fuel supply tank of a motor vehicle.

(7) "Department" means the department of licensing.

(8) "Distributor" means a person who acquires fuel outside the bulk transfer-terminal system for importation into Washington, from a terminal or refinery rack located within Washington for distribution within Washington, or for immediate export outside the state of Washington.

(9) "Dyed special fuel user" means a person authorized by the internal revenue code to operate a motor vehicle on the highway using dyed special fuel, in which the use is not exempt from the (~~(special)~~) fuel tax.

~~((9))~~ (10) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement; omission; misrepresentation of fact; or other act of deception;

(b) An intentional: Failure to file a return or report; or other act of deception; or

(c) The unlawful use of dyed special fuel.

~~((10))~~ (11) "Exempt sale" means the sale of fuel to a person whose use of fuel is exempt from the fuel tax.

(12) "Export" means to obtain (~~(special)~~) fuel in this state for sales or distribution outside the state. Fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

~~((11))~~ (13) "Exporter" means a person who purchases fuel physically located in this state at the time of purchase and directly exports the fuel by a means other than the bulk transfer-terminal system to a destination outside of the state. If the exporter of record is acting as an agent, the person for whom the agent is acting is the exporter. If there is no exporter of record, the owner of the fuel at the time of exportation is the exporter.

(14) "Fuel" means motor vehicle fuel or special fuel.

(15) "Fuel user" means a person engaged in uses of fuel that are not specifically exempted from the fuel tax imposed under this chapter.

(16) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

~~((12))~~ (17) "Import" means to bring (~~(special)~~) fuel into this state by a means of conveyance other than the fuel supply tank of a motor vehicle.

~~((43))~~ (18) "Importer" means a person who imports fuel into the state by a means other than the bulk transfer-terminal system. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no importer of record, the owner of the fuel at the time of importation is the importer.

(19) "International fuel tax agreement licensee" means a ~~((special))~~ fuel user operating qualified motor vehicles in interstate commerce and licensed by the department under the international fuel tax agreement.

~~((14))~~ "Lessor" means a person: (a) Whose principal business is the bona fide leasing or renting of motor vehicles without drivers for compensation to the general public; and (b) who maintains established places of business and whose lease or rental contracts require the motor vehicles to be returned to the established places of business.

~~(45))~~ (20) "Licensee" means a person holding a license issued under this chapter.

~~((46))~~ (21) "Motor vehicle" means a self-propelled vehicle ~~((designed for operation upon land))~~ utilizing ~~((special))~~ fuel as ~~((the))~~ a means of propulsion.

~~((47))~~ (22) "Motor vehicle fuel" means gasoline and any other inflammable gas or liquid, by whatsoever name the gasoline, gas, or liquid may be known or sold the chief use of which is as a fuel for the propulsion of motor vehicles or vessels.

(23) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form.

~~((48))~~ (24) "Person" means ~~((a natural person, fiduciary, association, or corporation. The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof))~~ any individual, partnership, association, public or private corporation, limited liability company, or any other type of legal or commercial entity, including their members, managers, partners, directors, or officers.

~~((49))~~ (25) "Position holder" means a person who holds the inventory position in ~~((special))~~ fuel, as reflected by the records of the terminal operator. A person holds the inventory position ~~((in special fuel))~~ if the person has a contractual agreement with the terminal for the use of storage facilities and terminating services ~~((at a terminal with respect to special fuel))~~. "Position holder" includes a terminal operator that owns ~~((special))~~ fuel in their terminal.

~~((20))~~ (26) "Rack" means a mechanism for delivering ~~((special))~~ fuel from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer.

~~((24))~~ (27) "Refiner" means a person who owns, operates, or otherwise controls a refinery.

~~((22))~~ (28) "Removal" means a physical transfer of ~~((special))~~ fuel other than by evaporation, loss, or destruction.

~~((23))~~ "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined in chapter 82.36 RCW, nor does it include dyed special fuel as defined by federal regulations, unless the use is in violation of this chapter. If a person holds for sale, sells, purchases, or uses any dyed special fuel in violation of this chapter, all dyed special fuel held for sale, sold, purchased, stored, or used by that person is considered special fuel, and the

person is subject to all presumptions, reporting, and recordkeeping requirements and other obligations which apply to special fuel, along with payment of any applicable taxes, penalties, or interest for illegal use.

(24) "Special fuel distributor" means a person who acquires special fuel from a supplier, distributor, or licensee for subsequent sale and distribution.

(25) "Special fuel exporter" means a person who purchases special fuel in this state and directly exports the fuel by a means other than the bulk transfer-terminal system to a destination outside of the state.

(26) "Special fuel importer" means a person who imports special fuel into the state by a means other than the bulk transfer terminal system. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no importer of record, the owner of the special fuel at the time of importation is the importer.

(27) "Special fuel" means diesel fuel, propane, natural gas, kerosene, biodiesel, and any other combustible liquid or gas by whatever name the liquid or gas may be known or sold for the generation of power to propel a motor vehicle on the highways, except it does not include motor vehicle fuel.

(30) "Supplier" means a person who holds a federal certificate of registry issued under the internal revenue code and authorizes the person to engage in tax-free transactions (on special) of fuel in the bulk transfer-terminal system.

~~((28))~~ "Special fuel user" means a person engaged in uses of special fuel that are not specifically exempted from the special fuel tax imposed under this chapter.

~~((29))~~ (31) "Terminal" means a ~~((special))~~ fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service ~~((, is supplied by pipeline or vessel, and from which reportable special fuel is removed at a rack)).~~

~~((30))~~ (32) "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

~~((31))~~ (33) "Two-party exchange" or "buy-sell agreement" means a transaction in which taxable ~~((special))~~ fuel is transferred from one licensed supplier to another licensed supplier ~~((under an exchange or buy-sell agreement))~~ whereby the supplier that is the position holder agrees to deliver taxable ~~((special))~~ fuel to the other supplier or the other supplier's customer at the ~~((rack of the))~~ terminal at which the delivering supplier is the position holder.

**Sec. 103.** RCW 82.38.030 and 2007 c 515 s 21 are each amended to read as follows:

(1) There is ~~((hereby))~~ levied and imposed upon ~~((special))~~ fuel licensees ~~((, other than special fuel distributors,))~~ a tax at the rate of twenty-three cents per gallon of ~~((special))~~ fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature.

(2) Beginning July 1, 2003, an additional and cumulative tax rate of five cents per gallon of ~~((special))~~ fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature ~~((shall be))~~ is imposed on ~~((special))~~ fuel licensees ~~((, other than special fuel distributors)).~~ This subsection (2) expires when the bonds issued for transportation 2003 projects are retired.

(3) Beginning July 1, 2005, an additional and cumulative tax rate of three cents per gallon of ~~((special))~~ fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature ~~((shall be))~~ is imposed on ~~((special))~~ fuel licensees~~((, other than special fuel distributors))~~.

(4) Beginning July 1, 2006, an additional and cumulative tax rate of three cents per gallon of ~~((special))~~ fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature ~~((shall be))~~ is imposed on ~~((special))~~ fuel licensees~~((, other than special fuel distributors))~~.

(5) Beginning July 1, 2007, an additional and cumulative tax rate of two cents per gallon of ~~((special))~~ fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature ~~((shall be))~~ is imposed on ~~((special))~~ fuel licensees~~((, other than special fuel distributors))~~.

(6) Beginning July 1, 2008, an additional and cumulative tax rate of one and one-half cents per gallon of ~~((special))~~ fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature ~~((shall be))~~ is imposed on ~~((special))~~ fuel licensees~~((, other than special fuel distributors))~~.

(7) Taxes are imposed when:

(a) ~~((Special))~~ Fuel is removed in this state from a terminal if the ~~((special))~~ fuel is removed at the rack unless the removal is ~~((to a licensed exporter))~~ by a licensed supplier or distributor for direct delivery to a destination outside of the state, or the removal is by a ~~((special))~~ fuel supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(b) ~~((Special))~~ Fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the ~~((special))~~ fuel immediately before the removal is not a ~~((licensee))~~ licensed supplier; or

(ii) The removal is at the refinery rack unless the removal is to a licensed ~~((exporter))~~ supplier or distributor for direct delivery to a destination outside of the state, or the removal is to a ~~((special-fuel))~~ licensed supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(c) ~~((Special))~~ Fuel enters into this state for sale, consumption, use, or storage, unless the fuel enters this state for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320, if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a ~~((licensee))~~ licensed supplier; or

(ii) The entry is not by bulk transfer;

(d) ~~((Special))~~ Fuel enters this state by means outside the bulk transfer-terminal system and is delivered directly to a licensed terminal unless the owner is a licensed distributor or supplier.

(e) Fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the ~~((special))~~ fuel;

~~((e))~~ (f) Blended ~~((special))~~ fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended ~~((special))~~ fuel subject to tax is the difference between the total number of gallons of blended ~~((special))~~ fuel removed or sold and the number of gallons of previously taxed ~~((special))~~ fuel used to produce the blended ~~((special))~~ fuel;

~~((f))~~ (g) Dyed special fuel is used on a highway, as authorized by the internal revenue code, unless the use is exempt from the ~~((special))~~ fuel tax;

~~((g))~~ (h) Dyed special fuel is held for sale, sold, used, or is intended to be used in violation of this chapter;

~~((h))~~ (i) Special fuel purchased by an international fuel tax agreement licensee under RCW 82.38.320 is used on a highway; and

~~((i) Special)~~ (j) Fuel is sold by a licensed ~~((special))~~ fuel supplier to a ~~((special))~~ fuel distributor~~(, special fuel importer, or special)~~ or fuel blender and the ~~((special))~~ fuel is not removed from the bulk transfer-terminal system.

**Sec. 104.** RCW 82.38.032 and 2007 c 515 s 22 are each amended to read as follows:

International fuel tax agreement licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state of Washington, are liable for and must pay the tax under RCW 82.38.030 to the department on ~~((special))~~ fuel used to operate motor vehicles on the highways of this state. This provision does not apply if the tax under RCW 82.38.030 has previously been imposed and paid by the international fuel tax agreement licensee or if the use of such fuel is exempt from the tax under this chapter.

**Sec. 105.** RCW 82.38.035 and 2007 c 515 s 23 are each amended to read as follows:

(1) A licensed supplier ~~((shall be))~~ is liable for and must pay tax on ~~((special))~~ fuel ~~((to the department))~~ as provided in RCW 82.38.030(7) (a) and (i). On a two-party exchange, or buy-sell agreement between two licensed suppliers, the receiving exchange partner or buyer shall be liable for and pay the tax.

(2) A refiner ~~((shall be))~~ is liable for and must pay tax ~~((to the department on special))~~ on fuel removed from a refinery as provided in RCW 82.38.030(7)(b).

(3) A licensed ~~((importer shall be))~~ distributor is liable for and must pay tax ~~((to the department on special fuel imported into this state))~~ on fuel as provided in RCW 82.38.030(7)(c).

(4) A licensed blender ~~((shall be))~~ is liable for and must pay tax ~~((to the department on the removal or sale of blended special))~~ on fuel as provided in RCW 82.38.030(7)~~((e))~~ (f).

(5) A licensed dyed special fuel user ~~((shall be))~~ is liable for and must pay tax ~~((to the department on the use of dyed special))~~ on fuel as provided in RCW 82.38.030(7)~~((f))~~ (g).

(6) ~~((Nothing in this chapter prohibits the licensee liable for payment of the tax under this chapter from including as a part of the selling price an amount equal to such tax))~~ A terminal operator is jointly and severally liable for and must pay tax on fuel if, at the time of removal:

(a) The position holder of the fuel is a person other than the terminal operator and is not a licensee;

(b) The terminal operator is not a licensee;

(c) The position holder has an expired internal revenue notification certificate;

(d) The terminal operator has reason to believe that information on the internal revenue notification certificate is false.

(7) A terminal operator is jointly and severally liable for and must pay tax on special fuel if the special fuel is removed and is not dyed or marked in accordance with internal revenue service requirements, and the terminal operator provides a person with a bill of lading, shipping paper, or similar document indicating the special fuel is dyed or marked in accordance with internal revenue service requirements.

(8) International fuel tax agreement licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state of Washington, are liable for and must pay tax on fuel used to operate motor vehicles on state highways.

(9) Dyed special fuel users are liable for and must pay tax on dyed special fuel used on state highways unless the use of the fuel is exempt from the tax.

**Sec. 106.** RCW 82.38.050 and 2007 c 515 s 24 are each amended to read as follows:

(1) A lessor ((who is engaged regularly in the business of leasing or renting for compensation motor vehicles and equipment he owns without drivers to carriers or other lessees for interstate operation, may be deemed to be the special fuel user when he supplies or pays for the special fuel consumed in such vehicles, and such lessor may be issued an international fuel tax agreement license when application and bond have been properly filed with and approved by the department for such license. Any lessee may exclude motor vehicles of which he or she is the lessee from reports and liabilities pursuant to this chapter, but only if the motor vehicles in question have been leased from a lessor holding a valid international fuel tax agreement license.

When the license has been secured, such lessor shall make and assign to each motor vehicle leased for interstate operation a photocopy of such license to be carried in the cab compartment of the motor vehicle and on which shall be typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned and the name of the lessee. Such lessor shall be responsible for the proper use of such photocopy of the license issued and its return to the lessor with the motor vehicle to which it is assigned)) leasing motor vehicles without drivers to lessees for interstate operation, may be the fuel user when the lessor supplies or pays for the fuel consumed in the motor vehicles. Any lessee may exclude motor vehicles from reports and liabilities pursuant to this chapter, but only if the excluded motor vehicles have been leased from a lessor holding a valid international fuel tax agreement license.

(2) The lessor ((shall be)) is responsible for fuel tax licensing and reporting((, as required by this chapter, on)) for the operation of ((all)) motor vehicles leased ((to others)) for less than thirty days.

**Sec. 107.** RCW 82.38.060 and 1996 c 90 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, fuel consumption shall be calculated at the rate of one gallon 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))~~ If tax on fuel placed 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 adopt such basis. In the absence of records showing the number of miles actually operated per gallon of fuel consumed, fuel consumption must be calculated by the department.

**Sec. 108.** RCW 82.38.065 and 2002 c 183 s 3 are each amended to read as follows:

A person may operate or maintain a licensed or required to be licensed motor vehicle with dyed special fuel in the fuel supply tank only if the use is authorized by the internal revenue code and the person is either the holder of ~~((an uncancelled))~~ a dyed special fuel user license or the use is exempt from the special fuel tax. A person may maintain dyed special fuel for a taxable use in bulk storage if the person is the holder of ~~((an uncancelled))~~ a dyed special fuel user license issued under this chapter. ~~((The special fuel tax set forth in RCW 82.38.030 is imposed on users of dyed special fuel authorized by the internal revenue code to operate on highway motor vehicles using dyed special fuel, unless the use is exempt from the special fuel tax. It is unlawful for any person to sell, use, hold for sale, or hold for intended use dyed special fuel in a manner in violation of this chapter.))~~

**Sec. 109.** RCW 82.38.066 and 1998 c 176 s 57 are each amended to read as follows:

(1) Special fuel ~~((that is dyed))~~ satisfies the dyeing and marking requirements of this chapter if it meets the dyeing and marking requirements of the internal revenue service, including, but not limited to, requirements respecting type, dosage, and timing.

(2) ~~((Marking must meet the marking requirements of the internal revenue service.~~

~~((3) As required by the internal revenue service.))~~ Notice is required with respect to dyed special fuel. A notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be:

(a) Provided by the terminal operator to a person who receives dyed special fuel at a terminal rack ~~((of that terminal operator));~~

(b) Provided by a seller of dyed special fuel to ~~((its))~~ the buyer if the special fuel is located outside the bulk transfer-terminal system and is not sold from a retail pump posted in accordance with the requirements of this subsection; or

(c) Posted by a seller on a retail pump (~~((where it sells dyed special fuel for use by its buyer))~~) dispensing dyed special fuel and provided by the seller of dyed special fuel to the buyer at the retail pump.

**Sec. 110.** RCW 82.38.075 and 1983 c 212 s 1 are each amended to read as follows:

~~((In order))~~ (1) To encourage the use of nonpolluting fuels, an annual license fee in lieu of the tax imposed by RCW 82.38.030 ((shall be)) is imposed upon the use of natural gas ((as defined in this chapter or on liquefied petroleum gas, commonly called propane, which is used in any motor vehicle, as defined in RCW 46.04.320, which shall be based upon the following schedule as adjusted by the formula set out below)) or propane used in any motor vehicle. The annual license fee must be based upon the following schedule and formula:

VEHICLE TONNAGE (GVW)	FEE
0 - 6,000	\$ 45
6,001 - 10,000	\$ 45
10,001 - 18,000	\$ 80
18,001 - 28,000	\$110
28,001 - 36,000	\$150
36,001 and above	\$250

~~(2) To determine the ((actual annual license fee imposed by this section for a registration year, the appropriate dollar amount set out in the above schedule shall be multiplied by the motor vehicle fuel tax rate in cents per gallon as established by RCW 82.36.025))~~ annual license fee for a registration year, the appropriate dollar amount in the schedule is multiplied by the fuel tax rate per gallon effective on July 1st of the preceding calendar year and the product ((thereof shall be)) is divided by 12 cents.

~~(3) The department ((of licensing, in addition to the foregoing fee, shall charge a further fee of five dollars as a handling charge for each license issued.~~

~~The director of licensing shall be authorized to prorate the vehicle tonnage fee so that the annual license required by this section)), in addition to the resulting fee, must charge an additional fee of five dollars as a handling charge for each license issued.~~

(4) The vehicle tonnage fee must be prorated so the annual license will correspond with the staggered vehicle licensing system.

~~(5) A decal or other identifying device issued upon payment of ((these annual fees shall))~~ the annual fee must be displayed as prescribed by the department as authority to purchase this fuel.

(6) Persons selling or dispensing natural gas or propane may not sell or dispense this fuel for their own use or the use of others into tanks of vehicles powered by this fuel which do not display a valid decal or other identifying device ((as provided in this section)).

(7) Vehicles registered in jurisdictions outside the state of Washington are exempt from this section.

(8) Any person selling or dispensing natural gas or propane into the tank of a motor vehicle powered by this fuel, except as prescribed in this chapter, is subject to the penalty provisions of this chapter.

**Sec. 111.** RCW 82.38.080 and 2009 c 352 s 1 are each amended to read as follows:

(1) ~~((There is exempted from the tax imposed by this chapter, the use of fuel for:~~

~~(a) Street and highway construction and maintenance purposes in motor vehicles owned and operated by the state of Washington, or any county or municipality;~~

~~(b) Publicly owned firefighting equipment;~~

~~(c) Special mobile equipment as defined in RCW 46.04.552;~~

~~(d) Power pumping units or other power take off equipment of any motor vehicle which is accurately measured by metering devices that have been specifically approved by the department or which is established by any of the following formulae:~~

~~(i) Pumping propane, or fuel or heating oils or milk picked up from a farm or dairy farm storage tank by a power take off unit on a delivery truck, at a rate determined by the department: PROVIDED, That claimant when presenting his or her claim to the department in accordance with this chapter, shall provide to the claim, invoices of propane, or fuel or heating oil delivered, or such other appropriate information as may be required by the department to substantiate his or her claim;~~

~~(ii) Operating a power take off unit on a cement mixer truck or a load compactor on a garbage truck at the rate of twenty five percent of the total gallons of fuel used in such a truck; or~~

~~(iii) The department is authorized to establish by rule additional formulae for determining fuel usage when operating other types of equipment by means of power take off units when direct measurement of the fuel used is not feasible. The department is also authorized to adopt rules regarding the usage of on board computers for the production of records required by this chapter;~~

~~(e) Motor vehicles owned and operated by the United States government;~~

~~(f) Heating purposes;~~

~~(g) Moving a motor vehicle on a public highway between two pieces of private property when said moving is incidental to the primary use of the motor vehicle;~~

~~(h) Transportation services for persons with special transportation needs by a private, nonprofit transportation provider regulated under chapter 81.66 RCW;~~

~~(i) Vehicle refrigeration units, mixing units, or other equipment powered by separate motors from separate fuel tanks;~~

~~(j) The operation of a motor vehicle as a part of or incidental to logging operations upon a highway under federal jurisdiction within the boundaries of a federal area if the federal government requires a fee for the privilege of operating the motor vehicle upon the highway, the proceeds of which are reserved for constructing or maintaining roads in the federal area, or requires maintenance or construction work to be performed on the highway for the privilege of operating the motor vehicle on the highway; and~~

~~(k) Waste vegetable oil as defined under RCW 82.08.0205 if the oil is used to manufacture biodiesel.~~

(2) There is exempted from the tax imposed by this chapter the removal or entry of special fuel under the following circumstances and conditions:

(a) If it is the removal from a terminal or refinery of, or the entry or sale of, a special fuel if all of the following apply:

(i) The person otherwise liable for the tax is a licensee other than a dyed special fuel user or international fuel tax agreement licensee;

(ii) For a removal from a terminal, the terminal is a licensed terminal; and

(iii) The special fuel satisfies the dyeing and marking requirements of this chapter;

(b) If it is an entry or removal from a terminal or refinery of taxable special fuel transferred to a refinery or terminal and the persons involved, including the terminal operator, are licensed; and

(c)(i) If it is a special fuel that, under contract of sale, is shipped to a point outside this state by a supplier by means of any of the following:

(A) Facilities operated by the supplier;

(B) Delivery by the supplier to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, for shipment to the out-of-state point;

(C) Delivery by the supplier to a vessel clearing from port of this state for a port outside this state and actually exported from this state in the vessel.

(ii) For purposes of this subsection (2)(c):

(A) "Carrier" means a person or firm engaged in the business of transporting for compensation property owned by other persons, and includes both common and contract carriers; and

(B) "Forwarding agent" means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

(3)(a) Notwithstanding any provision of law to the contrary, every privately owned urban passenger transportation system and carriers as defined by chapters 81.68 and 81.70 RCW shall be exempt from the provisions of this chapter requiring the payment of special fuel taxes. For the purposes of this section "privately owned urban passenger transportation system" means every privately owned transportation system having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles or trackless trolleys, each having a seating capacity for over fifteen persons over prescribed routes in such a manner that the routes of such motor vehicles or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles or trackless trolleys subject to routing by the same transportation system, shall not extend for a distance exceeding twenty-five road miles beyond the corporate limits of the county in which the original starting points of such motor vehicles are located: PROVIDED, That no refunds or credits shall be granted on special fuel used by any privately owned urban transportation vehicle, or vehicle operated pursuant to chapters 81.68 and 81.70 RCW, on any trip where any portion of the trip is more than twenty-five road miles beyond the corporate limits of the county in which the trip originated.

(b) Every publicly owned and operated urban passenger transportation system is exempt from the provisions of this chapter that require the payment of special fuel taxes. For the purposes of this subsection, "publicly owned and operated urban passenger transportation systems" include public transportation benefit areas under chapter 36.57A RCW, metropolitan municipal corporations under chapter 36.56 RCW, city-owned transit systems under chapter 35.58 RCW, county public transportation authorities under chapter 36.57 RCW,

unincorporated transportation benefit areas under chapter 36.57 RCW, and regional transit authorities under chapter 81.112 RCW.) The following sales of special fuel are exempt from payment of the tax imposed by this chapter:

(a) Sales to the state of Washington, any county, or any municipality when the fuel is used for street and highway construction and maintenance purposes in motor vehicles owned and operated by the state, county, or municipality;

(b) Sales for use in publicly owned firefighting equipment;

(c) Sales to the United States government;

(d) Sales to a private, nonprofit transportation provider regulated under chapter 81.66 RCW when the fuel is for use in providing transportation services for persons with special transportation needs;

(e) Sales of waste vegetable oil as defined under RCW 82.08.0205, if the oil is used to manufacture biodiesel;

(f)(i) Sales to privately owned urban passenger transportation systems and carriers as defined in chapters 81.68 and 81.70 RCW. No exemption or refund may be granted for special fuel used by any privately owned urban transportation vehicle, or vehicle operated pursuant to chapters 81.68 and 81.70 RCW, on any trip where any portion of the trip is more than twenty-five road miles beyond the corporate limits of the county in which the trip originated.

(ii) For purposes of this subsection (1)(f), "privately owned urban passenger transportation system" means every privately owned transportation system having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles or trackless trolleys, each having a seating capacity for over fifteen persons over prescribed routes in such a manner that the routes of such motor vehicles or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles or trackless trolleys subject to routing by the same transportation system, do not extend for a distance exceeding twenty-five road miles beyond the corporate limits of the county in which the original starting points of such motor vehicles or trackless trolleys are located; and

(g)(i) Sales to publicly owned and operated urban passenger transportation systems.

(ii) For the purposes of this subsection (1)(g), "publicly owned and operated urban passenger transportation systems" include public transportation benefit areas under chapter 36.57A RCW, metropolitan municipal corporations under chapter 36.56 RCW, city owned transit systems under chapter 35.58 RCW, county public transportation authorities under chapter 36.57 RCW, unincorporated transportation benefit areas under chapter 36.57 RCW, and regional transit authorities under chapter 81.112 RCW.

(2) The following sales of motor vehicle fuel are exempt from payment of the tax imposed by this chapter:

(a) Sales to the armed forces of the United States or to the national guard when the fuel is used exclusively in ships or for export from this state;

(b) Sales to foreign diplomatic and consular missions, if the foreign government represented grants an equivalent exemption to missions and personnel of the United States performing similar services in the foreign country; and

(c) Sales of fuel used exclusively for racing that is not legally allowed on the public highways of this state.

**Sec. 112.** RCW 82.38.090 and 1998 c 176 s 61 are each amended to read as follows:

(1) It (~~shall be~~) is unlawful for any person to engage in business in this state as any of the following unless the person is the holder of (~~an unexpired~~) a license issued (~~to him or her~~) by the department authorizing the person to engage in that business:

- (a) (~~Special~~) Fuel supplier;
- (b) (~~Special~~) Fuel distributor;
- (c) (~~Special fuel exporter;~~
- ~~(d) Special fuel importer;~~
- ~~(e) Special~~) Fuel blender;
- ~~((f))~~ (d) Terminal operator;
- (e) Dyed special fuel user; or
- ~~((g))~~ (f) International fuel tax agreement licensee.

(2) A person engaged in more than one activity for which a license is required must have a separate license classification for each activity (~~(, but a special)~~); however, a fuel supplier is not required to obtain a separate license classification for ((any other activity for which a license is required)) fuel distributor or fuel blender.

(3) (~~Special~~) Fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight not exceeding twenty-six thousand pounds are not required to be licensed. (~~Special~~) Fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, or having three or more axles regardless of weight, or a combination of vehicles, when the combination exceeds twenty-six thousand pounds gross vehicle weight, must comply with the licensing and reporting requirements of this chapter. A copy of the license must be carried in each motor vehicle entering this state from another state or province.

**Sec. 113.** RCW 82.38.110 and 2002 c 352 s 26 are each amended to read as follows:

(1) Application for a license (~~issued under this chapter 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.~~

(2) Every application for a special fuel license, other than an application for a dyed special fuel user or international fuel tax agreement license, must contain the following information to the extent it applies to the applicant:

(a) Proof as the department shall 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;

(b) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(c) The qualification and business history of the applicant and any partner, officer, or director;

(d) 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;

~~(e) 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.~~

~~(3) An applicant for a license as a special fuel importer must list on the application each state, province, or country from which the applicant intends to import fuel and, if required by the state, province, or country listed, must be licensed or registered for special fuel tax purposes in that state, province, or country.~~

~~(4) An applicant for a license as a special fuel exporter must list on the application each state, province, or country to which the exporter intends to export special fuel received in this state by means of a transfer outside the bulk transfer terminal system and, if required by the state, province, or country listed, must be licensed or registered for special fuel tax purposes in that state, province, or country.~~

~~(5) An applicant for a license as a special fuel supplier must have a federal certificate of registry that is issued under the internal revenue code and authorizes the applicant to enter into federal tax free transactions on special fuel in the terminal transfer system.~~

~~(6) After receipt of an application for a license, the director shall conduct an investigation to determine whether the facts set forth are true. The director shall 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.~~

~~(7) 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.~~

~~(8) A special fuel license may not 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 may be waived:~~

~~(a) For special fuel distributors who only deliver special fuel into the fuel tanks of marine vessels; (b) for dyed special fuel users; (c) for persons issued licenses under the international fuel tax agreement; or (d) for licensed special fuel distributors who, upon determination by the department, have sufficient resources, assets, other financial instruments, or other means to adequately make payments on the estimated monthly motor vehicle fuel tax payments, penalties, and interest arising out of this chapter. The department shall adopt rules to administer this section.~~

~~(9) The department may require a licensee to post a bond if the licensee, 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.~~

~~(10) The total amount of the bond or bonds required of any licensee shall be equivalent to three times the estimated monthly fuel tax, determined in such manner as the department may deem proper: PROVIDED, That those licensees 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 one hundred thousand dollars.~~

~~(11) An application for a dyed special fuel user license must be made to the department. The application must be filed upon a form prescribed by the department and contain such information as the department deems necessary.~~

~~(12) An application for an international fuel tax agreement license must be made to the department. The application must be filed upon a form prescribed by the department and contain such information as the department may require. The department shall charge a fee of ten dollars per set of International Fuel Tax Agreement decals issued to each applicant or licensee. The department shall transmit the fee to the state treasurer for deposit in the motor vehicle fund)) must be made to the department. The application must be filed in a manner prescribed by the department and must contain information the department requires. For purposes of this section, the term "applicant" has the same meaning as "person" as provided in RCW 82.38.020.~~

(2) An application for a license other than an application for a dyed special fuel user or international fuel tax agreement license must contain the following information to the extent it applies to the applicant:

(a) Proof the department may require concerning the applicant's identity;

(b) The applicant's business structure and place of business, including proof the applicant is licensed to conduct business in this state;

(c) The employment history of the applicant and partner, officer, or director;

(d) A bank reference and whether the applicant or partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment;

(e) Whether the applicant or partner, officer, or director has been convicted of a crime or suffered a civil judgment directly related to the distribution and sale of fuel within the last ten years.

(3) An applicant must identify each state, province, or country the applicant intends to import fuel from by means other than bulk transfer and must maintain the appropriate license required of each state, province, or country.

(4) An applicant must identify each state, province, or country the applicant intends to export fuel to by means other than bulk transfer and must maintain the appropriate license required of each state, province, or country.

(5) An applicant for a fuel supplier or terminal operator license must have the appropriate federal certificate of registry issued by the internal revenue service for the activity in which the applicant is engaging.

(6) An applicant must submit a surety bond in an amount, form, and manner set by the department. In lieu of a bond, a licensed distributor may provide evidence to the department of sufficient assets to adequately meet fuel tax payments, penalties, interest, or other obligations arising out of this chapter.



(7) An application for a dyed special fuel user license must be made in a manner prescribed by the department.

(8) An application for an international fuel tax agreement license must be made in a manner prescribed by the department. A fee of ten dollars per set of international fuel tax agreement decals issued to each applicant or licensee must be charged.

(9) For the purpose of considering any application for a license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state, Canadian province, country, or the federal government to ascertain the veracity of the information on the application and the applicant's criminal, civil, and licensing history.

**Sec. 114.** RCW 82.38.120 and 1998 c 176 s 64 and 1998 c 115 s 4 are each reenacted and amended to read as follows:

~~((Upon receipt and approval of an application and bond, if required, the department shall issue a license to the applicant. However, the department may refuse to issue a license to any person:~~

~~(1) Who formerly held a license issued under chapter 82.36 or 82.42 RCW or this chapter 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)) (1) The department may refuse to issue to, or suspend or revoke a license of any licensee or applicant:~~

~~(a) Who formerly held a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW which has been suspended or revoked for cause;~~

~~(b) Who is a subterfuge for the real party in interest whose license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW has been revoked for cause;~~

~~(c) Who, as an individual licensee, or partner, officer, director, owner, or managing employee of a licensee, has had a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW denied, suspended, or revoked for cause;~~

~~((4)) (d) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, 82.42, or 46.87((, or 82.42)) RCW;~~

~~((5)) (e) Who formerly held as an individual, partner, 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, or aircraft fuel, which ((license, before the time of filing for application,)) has been suspended or revoked for cause;~~

~~((6)) (f) Who pled guilty to or was convicted as an individual, partner, officer, director, owner, or managing employee of a ((nonindividual)) licensee in this or any other state, Canadian province, or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the fuel distribution business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;~~

~~((7)) (g) Who misrepresented or concealed a material fact in obtaining a license or ((in reinstatement thereof)) reinstating a license;~~

~~((8))~~ (h) Who violated a statute or administrative rule regulating fuel taxation or distribution;

~~((9))~~ (i) Who failed to cooperate with the department's investigations by:

~~((a))~~ (i) Not furnishing papers or documents;

~~((b))~~ (ii) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

~~((c))~~ (iii) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

~~((4))~~ (j) Who failed to comply with an order issued by the director; or

~~((1))~~ (k) Upon other sufficient cause being shown.

(2) Before ~~((such))~~ a refusal under this section, the department ~~((shall))~~ must grant the applicant a hearing and ~~((shall))~~ must grant the applicant at least 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 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.~~

~~Each special fuel 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 license shall be transferable.))~~

**Sec. 115.** RCW 82.38.140 and 2007 c 515 s 27 are each amended to read as follows:

(1) Every ~~((licensee and every))~~ person importing, manufacturing, refining, transporting, blending, or storing ~~((special fuel in this state shall))~~ fuel must keep for a period of ~~((not less than))~~ 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))~~ fuel sold, delivered, or used by them. ~~((Such records shall))~~ Records must 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 in this chapter))~~ fuel tax;

(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 physical inventories of ~~(special fuel)~~ fuel and petroleum products on hand at each place of business at the end of each month;

(i) Stocks of raw gasoline, gasoline stock, diesel oil, kerosene, kerosene distillates, casing head gasoline and other petroleum products which may be used in the compounding, blending, or manufacturing of fuel.

(2)(a) All international fuel tax agreement licensees and dyed special fuel users authorized to use dyed special fuel on highways in vehicles licensed for highway operation ~~((shall))~~ must maintain detailed mileage records on an individual vehicle basis.

(b) ~~((Such))~~ Operating records ~~((shall))~~ must 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) The department may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering ~~((special))~~ fuel to submit periodic reports to the department regarding the disposition of the fuel. The reports must be on forms prescribed by the department and must contain such information as the department may require.

(4) Every person operating any conveyance ~~((for the purpose of hauling,))~~ transporting ~~((, or delivering special))~~ fuel in bulk ~~((shall have and))~~ must possess during the entire time ~~((the person is hauling special fuel,))~~ an invoice, bill of sale, or other statement showing the name, address, and license number of the seller or consigner, the destination, name, and address of the purchaser or consignee, license number, if applicable, and the number of gallons. The person ~~((hauling such special fuel shall))~~ transporting fuel must at the request of any law enforcement officer or authorized representative of the department, ~~((or other person authorized by law to inquire into, or investigate those types of matters, produce for inspection such invoice, bill of sale, or other statement and shall permit such official to inspect and gauge))~~ produce for inspection required records and must permit inspection of the contents of the vehicle.

**Sec. 116.** RCW 82.38.150 and 2008 c 181 s 506 are each amended to read as follows:

(1) For the purpose of determining the amount of liability for the tax ~~((herein imposed, and to periodically update license information, each licensee, other than a special fuel distributor, an international fuel tax agreement licensee, or a dyed special fuel user, shall file monthly tax reports with the department, on forms prescribed by the department.~~

~~((2) Dyed special fuel users whose estimated yearly tax liability is two hundred fifty dollars or less, shall file a report yearly, and dyed special fuel users whose estimated yearly tax liability is more than two hundred fifty dollars, shall file reports quarterly. Special fuel users licensed under the international fuel tax agreement shall file reports quarterly. Heating oil dealers subject to the pollution liability insurance agency fee and reporting requirements shall remit pollution liability insurance agency returns and any associated payment due to the department annually.~~

~~((3) 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 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. A licensee shall file a tax report on or before the twenty-fifth day of the next succeeding calendar month following the period to which it relates.

(4) ~~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.~~

(5) ~~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.~~

(6) ~~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.~~

(7)) imposed under this chapter, each licensee, other than an international fuel tax agreement licensee or a dyed special fuel user, must file monthly tax reports with the department.

(2) Dyed special fuel users whose estimated yearly tax liability is two hundred fifty dollars or less, must file a report yearly, and dyed special fuel users whose estimated yearly tax liability is more than two hundred fifty dollars, must file reports quarterly. International fuel tax agreement licensees must file reports quarterly. Heating oil dealers subject to the pollution liability insurance agency fee must file reports annually.

(3) A licensee, other than international fuel tax agreement licensee, must file a tax report on or before the twenty-fifth day of the calendar month following the reporting period to which it relates. A report must be filed even though no tax is due for the reporting period. Each report must contain a declaration that the statements contained therein are true and are made under penalties of perjury. The report must show information as the department may reasonably require for the proper administration and enforcement of this chapter.

(4) If the filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day is the filing date.

(5) The department in order to insure payment of the tax or to facilitate administration of this chapter, may require the filing of reports and tax remittances at intervals other than one month.

(6) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the department deems proper.

**Sec. 117.** RCW 82.38.160 and 2005 c 260 s 2 are each amended to read as follows:

(1) The tax (~~((imposed by this chapter shall))~~) must be computed by multiplying the tax rate per gallon (~~((provided in this chapter))~~) by the number of gallons of (~~((special))~~) fuel subject to the (~~((special))~~) fuel tax.

(2) A (~~((special))~~) fuel distributor (~~((shall))~~) must remit tax on (~~((special))~~) fuel purchased from a (~~((special fuel))~~) supplier, and due to the state for that reporting period, to the special fuel supplier. This provision does not apply to fuel imported by a distributor under RCW 82.38.035(3).

(3) At the election of the distributor, (~~((the))~~) payment of the (~~((special))~~) fuel tax owed on (~~((special))~~) fuel purchased from a supplier (~~((shall))~~) must be remitted to the supplier on terms agreed upon between the distributor and the supplier or no later than seven business days before the twenty-sixth day of the following month. This election (~~((shall be))~~) is subject to a condition that the distributor's remittances of all amounts of (~~((special))~~) fuel tax due to the supplier (~~((shall))~~) must be paid by electronic funds transfer. The distributor's election may be terminated by the supplier if the distributor does not make timely payments to the supplier as required by this section. (~~((This section shall not apply if the distributor is required by the supplier to pay cash or cash equivalent for special fuel purchases.))~~)

(4) Except as provided in subsection (5) of this section, the tax return (~~((shall))~~) must be accompanied by a remittance payable to the state treasurer covering the tax amount (~~((determined to be))~~) due for the reporting period.

(5) If the tax is paid by electronic funds transfer, the tax (~~((shall))~~) must be paid on or before the twenty-sixth calendar day of the month immediately following the reporting period. If the payment due date falls on a Saturday, Sunday, or legal holiday the next business day (~~((will be))~~) is the payment date. If the tax is paid by electronic funds transfer and the reporting period ends on a day other than the last day of a calendar month (~~((as provided in RCW 82.38.150))~~), the tax (~~((shall))~~) must be paid on or before the last state business day of the thirty-day period following the end of the reporting period.

(6) The tax (~~((shall))~~) must be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more.

**Sec. 118.** RCW 82.38.170 and 2002 c 183 s 4 are each amended to read as follows:

(1) If any (~~((licensee))~~) person fails to pay any taxes (~~((collected or))~~) due the state of Washington within the time prescribed by RCW 82.38.150 and 82.38.160, the (~~((licensee shall))~~) person must pay (~~((in addition to such tax))~~) a penalty of ten percent of the (~~((amount thereof))~~) tax due.

(2) If (~~((it be determined by the department that the tax reported by any licensee 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 licensee, whether or not he or she is licensed as such, fails, neglects, or refuses to file a special fuel tax report required under this chapter, the department may, on the basis of information available to it, determine the tax liability of the licensee 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) the tax reported by any licensee is deficient a penalty of ten percent of the deficiency must be assessed.~~

(3) If any licensee, whether or not licensed as such, fails, neglects, or refuses to file a required fuel tax report, the department must determine the tax liability and add the penalty provided in subsection (2) of this section to the liability. An assessment made by the department pursuant to this subsection or to subsection (2) of this section is presumed to be correct, and the burden is on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive.

~~(4) If any licensee establishes 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)((;)) and (2)((; and(3))) of this section.~~

~~(5) If any licensee files a false or fraudulent report with intent to evade the tax imposed by this chapter, there ((shall be)) is 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)) a penalty of twenty-five percent of the deficiency, in addition to all other penalties prescribed by law.~~

(6) If any person acts as a licensee without first securing the required license, all fuel tax liability incurred by that person becomes immediately due and payable. The department must determine the amount of the tax liability and must assess the person a penalty of one hundred percent of the tax in addition to the tax owed.

~~(7) Any ((special)) 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)) (8) 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)) the assessments.~~

~~((8))~~ (9) 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 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))~~ or failure to file a report, deficiencies, penalties, and interest must be assessed within five years from the twenty-fifth day of the next succeeding month following the reporting period for which the amount is determined or within five years after the return is filed, whichever period expires ((the)) later.

~~((9))~~ (10)(a) Any licensee against whom an assessment is made under the provisions of subsections (1) and (2) ~~((or (3)))~~ of this section may petition for a reassessment ~~((thereof))~~ within thirty days after service upon the licensee of ((notice thereof)) the assessment. If such petition is not filed within such thirty day period, the amount of the assessment becomes final ~~((at the expiration thereof)).~~

(b) If a petition for reassessment is filed within the thirty day period, the department ~~((shall))~~ must reconsider the assessment and, if the licensee has ~~((so requested in his or her petition, shall grant such licensee an oral hearing and give the licensee 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 licensee of notice thereof))~~ requested in the petition, must grant an informal hearing and give ten days' notice of the time and place. The department may continue the hearing as needed. The decision of the department upon a petition for reassessment becomes final thirty days after service upon the licensee.

(c) Every assessment made by the department ~~((shall))~~ becomes due and payable at the time it becomes final and if not timely paid to the department ~~((when due and payable, there shall be added thereto)),~~ a penalty of ten percent of the amount of the tax is added to the assessment.

~~((10))~~ (11) Any notice of assessment required by this section ~~((shall))~~ must be served ~~((personally or by certified or registered mail; if by mail, service shall be made by depositing such notice in the United States mail, postage prepaid addressed to the licensee at his or her address as the same appears))~~ by depositing such notice in the United States mail, postage prepaid addressed to the licensee at the address shown in the records of the department.

~~((11))~~ (12) Any licensee who has had ~~((the licensee's special))~~ a fuel license revoked ~~((shall))~~ must pay a one hundred dollar penalty prior to the issuance of a new license.

~~((12))~~ (13) 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))~~ is 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))~~ will hold such tonnage in its custody until a sale of the vehicle is made or the tonnage has expired.

~~((13))~~ Unless the use is exempt from the special fuel tax, or expressly authorized by the internal revenue code and this chapter, a person having dyed special fuel in the fuel supply tank of a motor vehicle that is licensed or required to be licensed is subject to a civil penalty of ten dollars for each gallon of dyed

special fuel placed into the supply tank of the motor vehicle, or one thousand dollars, whichever is greater. The civil penalty collected as a result of this subsection must be deposited in the motor vehicle fund. The penalties must be collected and administered under this chapter.

~~(14) A person who maintains dyed special fuel in bulk storage for an intended sale or use in violation of this chapter is subject to a civil penalty of ten dollars for each gallon of dyed special fuel, or one thousand dollars, whichever is greater, currently or previously maintained in bulk storage by the person. The civil penalty collected as a result of this subsection must be deposited in the motor vehicle fund. The penalties must be collected and administered under this chapter.~~

~~(15) For the purposes of enforcement of this section, the Washington state patrol or other commercial vehicle safety alliance certified officers may inspect, collect, and secure samples of special fuel used in the propulsion of a vehicle operated upon the highways of this state to detect the presence of dye or other chemical compounds.~~

~~(16) The Washington state patrol shall, by January 1, 1999, develop and implement procedures for collection, analysis, and storage of fuel samples collected under this chapter.~~

~~(17) RCW 43.05.110 does not apply to the civil penalties imposed under subsection (13) of this section.)~~

**Sec. 119.** RCW 82.38.180 and 2007 c 515 s 29 are each amended to read as follows:

(1) Any person who has purchased ((special)) fuel on which tax has been paid may file a claim with the department for a refund of the tax for:

~~((1) Taxes previously paid on special))~~ (a) Fuel used for purposes other than for the propulsion of motor vehicles upon the public highways in this state. However, a refund may not be made for motor vehicle fuel consumed by a motor vehicle required to be registered under chapter 46.16A RCW.

~~((2) Taxes previously paid on special))~~ (b) Fuel exported for use outside of this state. ((Special)) Fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state. ((Special)) Fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

~~((3))~~ (c) Tax, penalty, or interest erroneously or illegally collected or paid.

~~((4) Taxes previously paid on all special))~~ (d) Fuel which is lost or destroyed, while the licensee ((shall be)) is the owner thereof, through fire, lightning, flood, wind storm, or explosion.

~~((5) Taxes previously paid on all special))~~ (e) Fuel of five hundred gallons or more which is lost or destroyed while the licensee ((shall be)) is the owner thereof, through leakage or other casualty except evaporation, shrinkage, or unknown causes.

~~((6) Taxes previously paid on special fuel that is inadvertently mixed with dyed special fuel.))~~ (f) Fuel used in power pumping units or other power take-off equipment of any motor vehicle which is accurately measured by metering devices that have been specifically approved by the department or by a formula determined by the department.

(2) Any person who has purchased special fuel on which tax has been paid may file a claim with the department for a refund of tax for:



(a) Special fuel used for the operation of a motor vehicle as a part of or incidental to logging operations upon a highway under federal jurisdiction within the boundaries of a federal area if the federal government requires a fee for the privilege of operating the motor vehicle upon the highway, the proceeds of which are reserved for constructing or maintaining roads in the federal area, or requires maintenance or construction work to be performed on the highway for the privilege of operating the motor vehicle on the highway;

(b) Special fuel used by special mobile equipment as defined in RCW 46.04.552;

(c) Special fuel used in a motor vehicle for movement between two pieces of private property wherein the movement is incidental to the primary use of the vehicle; and

(d) Special fuel inadvertently mixed with dyed special fuel.

(3) Any person who has purchased motor vehicle fuel on which tax has been paid may file a claim with the department for a refund of tax for:

(a) Motor vehicle fuel used by a private, nonprofit transportation provider regulated under chapter 81.66 RCW to provide transportation services for persons with special transportation needs; and

(b) Motor vehicle fuel used by an urban passenger transportation system. For purposes of this subsection "urban passenger transportation system" means every transportation system, publicly or privately owned, having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles or trackless trolleys, each having a seating capacity of over fifteen persons, over prescribed routes in such a manner that the routes of such motor vehicles or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles or trackless trolleys subject to the routing by the same transportation system, do not extend for a distance exceeding fifteen road miles beyond the corporate limits of the city in which the original starting points of such motor vehicles or trackless trolleys are located. No refunds are authorized for fuel used on any trip where any portion of the trip is more than fifteen road miles beyond the corporate limits of the city in which the trip originated.

(4) Recovery for such loss or destruction under ((either)) subsections ((4), (5), or (6)) (1)(d) or (e) or (2)(d) of this section must be susceptible to positive proof thereby enabling the department to conduct such investigation and require such information as it may deem necessary. In the event that the department is not satisfied that the fuel was lost, destroyed, or contaminated as claimed because information or proof as required hereunder is not sufficient to substantiate the accuracy of the claim, it may deem such as sufficient cause to deny all right relating to the refund or credit for the excise tax paid on ((special)) fuel alleged to be lost or destroyed.

(5) No refund or claim for credit ((shall)) may be approved by the department unless the gallons of ((special)) fuel claimed as nontaxable satisfy the conditions specifically set forth in this section and the nontaxable event or use occurred during the period covered by the refund claim. Refunds or claims for credit ((shall)) are not allowed for anticipated nontaxable use or events.

**Sec. 120.** RCW 82.38.190 and 1998 c 176 s 74 are each amended to read as follows:

(1) Claims under RCW 82.38.180 (~~shall~~) must 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. The requirement to provide invoices may be waived for small refund amounts, as determined by the department. Claims for refund of special~~) must contain and be supported by such information and documentation as the department may require. Claims for refund of fuel tax must be for at least twenty dollars.

(2) Any amount determined to be refundable by the department under RCW 82.38.180 (~~shall~~) must first be credited on any amounts then due and payable from a 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 or her warrant for the certified amount to the person~~).

(3) No refund or credit (~~shall~~) may 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 (~~(1), (2), (4), and (5)~~), with the exception of the credits or refunds allowed under RCW 82.38.180(1)(c), and if not filed within this period the right to refund (~~shall be forever~~) is barred.

(b) Within five 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)~~) (1)(c). The department (~~shall~~) must refund any amount paid that has been verified by the department to be more than (~~ten~~) twenty dollars over the amount actually due for the reporting period. Payment credits (~~shall~~) may not be carried forward and applied to subsequent tax returns for a person licensed under this chapter.

(4) Within thirty days after disallowing any claim in whole or in part, the department (~~shall serve~~) must provide written notice of its action (~~on~~) to the claimant.

(5)(a) Interest (~~shall~~) must be paid upon any refundable amount or credit due under RCW 82.38.180(~~(3)~~) (1)(c) 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.

(b) The interest (~~shall~~) must be paid:

(~~(a)~~) (i) 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 or she 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)~~) (ii) 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.

(c) If the department determines that any overpayment has been made intentionally or by reason of carelessness, it (~~shall~~) may not allow any interest (~~thereon~~).

(6) The department (~~shall~~) must pay interest of one percent on any refund payable under RCW 82.38.180 (1)(~~(2), or (6) that~~) or (2), except as provided in subsection (5)(a) of this section, which is issued more than thirty state business days after the receipt of a claim properly filed and completed (~~in accordance with this section~~). After the end of the thirty business-day period, additional interest (~~shall~~) accrues at the rate of one percent on the amount payable for each thirty calendar-day period(~~, until the refund is issued~~).

~~((7) 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.))~~

**Sec. 121.** RCW 82.38.210 and 1998 c 176 s 75 are each amended to read as follows:

~~(If any licensee liable for the remittance of tax imposed by this chapter fails to pay the same, the amount thereof, including any interest, penalty, or addition to such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by such person, whether such property is employed by such person for personal or business use or is in the hands of a trustee, or receiver, or assignee for the benefit of creditors, from the date the taxes were due and payable, until the amount of the lien is paid or the property sold in payment thereof. The lien shall have priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law, and except that such lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the time the department has filed and recorded notice of such lien as hereinafter provided.~~

~~In order to avail itself of the lien hereby created, the department shall file with any county auditor a statement of claim and lien specifying the amount of delinquent taxes, penalties and interest claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by such person in the county. Any lien as provided in this section may also be filed in the office of the secretary of state. Filing in the office of the secretary of state shall be of no effect, however, until the lien or copy thereof shall have been filed with the county auditor in the county where the property is located. When a lien is filed in compliance herewith and with the secretary of state, such filing shall have the same effect as if the lien had been duly filed for record in the office of the auditor in each county of this state.))~~ (1) If a person liable for payment of tax fails to pay the amount including any interest, penalty, or addition, together with costs accrued, there will be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, belonging to or acquired, whether the property is employed by such person for personal or business use or is in the control of a trustee, receiver, or assignee. The lien is effective from the date

taxes were due and payable until the amount is satisfied. The lien has priority over any lien or encumbrance except liens of other taxes having priority by law.

(2) The department must file with any county auditor a statement of claim and lien specifying the amount of delinquent taxes, penalties, and interest owed.

**Sec. 122.** RCW 82.38.220 and 1998 c 176 s 76 are each amended to read as follows:

~~((In the event any licensee is delinquent in the payment of any obligation imposed under this chapter, the department may give notice of the amount of such delinquency by registered or certified mail to all persons having in their possession or under their control any credits or other personal property belonging to the licensee or owing any debts to the licensee, at the time of the receipt by them of such notice. Any person so notified shall neither transfer nor make other disposition of such credits, personal property, or debts until the department consents to a transfer or other disposition. All persons so notified must, within twenty days after receipt of the notice, advise the department of any and all such credits, personal property, or debts in their possession, under their control or owing by them, as the case may be, and shall immediately deliver such credits, personal property, or debts to the department or its duly authorized representative to be applied to the indebtedness involved.~~

~~Upon service, the notice and order to withhold and deliver constitutes a continuing lien on property of the taxpayer. The department shall include in the caption of the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver served under this section is the date of service of the notice.~~

~~If a person fails to answer the notice within the time prescribed by this section, it is lawful for the court, upon application of the department and after the time to answer the notice has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the department in the notice to withhold and deliver, together with costs.)) (1) If a person is delinquent in the payment of any obligation, the department may give notice of the amount of delinquency to persons having possession or control of credits, personal and real property belonging to the person, or owing debts to the person. Any person notified may not transfer or dispose of credits, personal and real property, or debts without the consent of the department. A person notified must, within twenty days after receipt of notice, advise the department of any credits, personal and real property, or debts in their possession, under their control or owing by them, and must immediately deliver the credits, personal and real property, or debts to the department.~~

(2) The notice and order to withhold and deliver constitutes a continuing lien on property of the person. The department must include in the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver is the date of mailing.

(3) If a person fails to timely answer the notice, a court may render judgment, plus costs by default against the person.

**Sec. 123.** RCW 82.38.230 and 2007 c 218 s 78 are each amended to read as follows:

~~((Whenever any licensee is delinquent in the payment of any obligation imposed hereunder, and such delinquency continues after notice and demand for~~

payment by the department, the department shall proceed to collect the amount due from the licensee in the following manner: The department shall seize any property subject to the lien of said excise tax, penalty, and interest and thereafter sell it at public auction to pay said obligation and any and all costs that may have been incurred on account of the seizure and sale. Notice of such intended sale and the time and place thereof shall be given to such delinquent licensee and to all persons appearing of record to have an interest in such property. The notice shall be given in writing at least ten days before the date set for the sale by enclosing it in an envelope addressed to the licensee at the licensee's address as the same appears in the records of the department and, in the case of any person appearing of record to have an interest in such property, addressed to such person at his or her last known residence or place of business, and depositing such envelope in the United States mail, postage prepaid. In addition, the notice shall be published for at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in such county, the notice shall be posted in three public places in the county for a period of ten days. The notice shall contain a description of the property to be sold, together with a statement of the amount due under this chapter, the name of the licensee and the further statement that unless such amount is paid on or before the time fixed in the notice the property will be sold in accordance with law.

The department shall then proceed to sell the property in accordance with the law and the notice, and shall deliver to the purchaser a bill of sale or deed which shall vest title in the purchaser. If upon any such sale the moneys received exceed the amount due to the state under this chapter from the delinquent licensee, the excess shall be returned to the licensee and the licensee's receipt obtained for the excess. If any person having an interest in or lien upon the property has filed with the department prior to such sale, notice of such interest or lien, the department shall withhold payment of any such excess to the licensee pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the licensee is not available, the department shall deposit such excess with the state treasurer as trustee for the licensee or the licensee's heirs, successors, or assigns: PROVIDED, That prior to making any seizure of property as provided for in this section, the department may first serve upon the licensee's bondsperson a notice of the delinquency, with a demand for the)) (1) If a person is delinquent in the payment of any obligation, and the delinquency continues after notice and demand for payment the department must collect the amount due. The department must seize any property subject to the lien of excise tax, penalty, and interest and sell it at public auction. Notice of sale and the time and place must be given to the person and to all persons appearing with an interest in the property. The notice must be in writing at least ten days before the date of sale. Notice must be published for at least ten days before the date of sale in a newspaper of general circulation published in the county the property will be sold. If there is no newspaper of general circulation in the county, the notice must be posted in three public places in the county for a period of ten days. The notice must contain a description of the property together with a statement of the amount due, the name of the person, and a statement that unless the amount is paid on or before the time in the notice the property will be sold.

(2) The department must sell the property and deliver to the purchaser a bill of sale or deed. If the moneys received exceed the amount due from the person, the excess must be returned to the person and a receipt obtained. If any person having an interest in or lien upon the property has filed notice with the department prior to the sale, the department must withhold payment of any excess to the person pending determination of the rights of the respective parties by a court of competent jurisdiction. If the receipt of the person is not available, the department must deposit the excess with the state treasurer as trustee for the person or their heirs, successors, or assigns. Prior to making any seizure of property, the department may first serve upon the person's bondsperson a notice of delinquency and, demand for payment of the amount due.

**Sec. 124.** RCW 82.38.235 and 2001 c 146 s 14 are each amended to read as follows:

~~((Whenever any assessment shall have become final in accordance with the provisions of this chapter, the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties plus interest and a filing fee under RCW 36.18.012(10). The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such 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 licensee mentioned in the warrant, the amount of the tax, penalties, interest and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant.))~~ When an assessment becomes final the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties, interest and a filing fee under RCW 36.18.012(10). The warrant is a lien upon title to, and interest in all real and personal property of the person against whom the warrant is issued. The warrant is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state.

**Sec. 125.** RCW 82.38.245 and 1997 c 183 s 9 are each amended to read as follows:

~~A ((special fuel licensee, who files or against whom is filed a petition in bankruptcy, shall, within ten days of the filing, notify the department of the proceedings in bankruptcy, including the identity and location of the court in which the proceedings are pending))~~ licensee who files a petition for bankruptcy, or against whom a petition for bankruptcy is filed, must notify the department within ten days of the filing, including the name and location of the court in which the petition was filed.

**Sec. 126.** RCW 82.38.260 and 1998 c 176 s 80 are each amended to read as follows:

~~(1) The department ((shall enforce the provisions of this chapter, and may prescribe, adopt, and enforce reasonable rules and regulations relating to the administration and enforcement thereof. The Washington state patrol and its officers shall aid the department in the enforcement of this chapter, and, for this purpose, are declared to be peace officers, and given police power and authority throughout the state to arrest on sight any person known to have committed a violation of the provisions of this chapter.~~

~~The department or its authorized representative is hereby empowered to examine the books, papers, records and equipment of any licensee or any person dealing in, transporting, or storing special fuel as defined in this chapter and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all taxes due hereunder are being properly reported and paid. The fact that such books, papers, records and equipment are not maintained in this state at the time of demand shall not cause the department to lose any right of such examination under this chapter when and where such records become available.~~

~~The department or its authorized representative is further empowered to investigate the disposition of special fuel by any person where the department has reason to believe that untaxed special fuel has been diverted to a use subject to the taxes imposed by this chapter without said taxes being paid in accordance with the requirements of this chapter.~~

~~For the purpose of enforcing the provisions of this chapter it shall be presumed that all special fuel delivered to service stations as well as all special fuel otherwise received into storage and dispensing equipment designed to fuel motor vehicles is delivered into the fuel supply tanks of motor vehicles and consumed in the propulsion of motor vehicles on the highways of this state, unless the contrary is established by satisfactory evidence.~~

~~The department shall, upon request from the officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces or the Dominion of Canada, forward to such officials any information which he or she may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any licensee if the other state or states furnish like information to this state.~~

~~Returns required by this chapter, exclusive of schedules, itemized statements and other supporting evidence annexed thereto, shall at all reasonable times be open to the public)) may prescribe, adopt, and enforce reasonable rules relating to administration and enforcement of this chapter.~~

(2) The department or its authorized representative may examine the books, papers, records, and equipment of any person distributing, transporting, storing, or using fuel to determine whether all taxes due or refundable are properly reported, paid, or claimed. If books, papers, records, and equipment are not maintained in this state at the time of demand, the department does not lose any right of examination.

(3) The department may require additional reports from any licensee with reference to any of the matters herein concerned. Such reports must be made and filed on forms prepared by the department.

(4) For the purpose of any investigation or proceeding, the director or designee may administer oaths and affirmations, subpoena witnesses, compel

their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(5) In the case of contumacy by or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction upon application by the director, may issue to that person an order requiring appearance before the director or designee to produce testimony of other evidence regarding the matter under investigation or in question.

(6) The department must, upon request from officials responsible for enforcement of fuel tax laws of any state, the District of Columbia, the United States, its territories and possessions, the provinces or the dominion of Canada, forward information relative to the receipt, storage, delivery, sale, use, or other disposition of fuel by any person, if the other furnishes like information.

(7) The department may enter into a fuel tax cooperative agreement with another state, the District of Columbia, the United States, its territories and possessions, or Canadian province for the administration, collection, and enforcement of their respective fuel taxes.

(8) For the purposes of administration, collection, and enforcement of taxes imposed under this chapter, pursuant to another agreement under chapter 82.41 RCW, chapter 82.41 RCW controls to the extent of any conflict.

(9) The remedies of the state in this chapter are cumulative and no action taken by the department may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter.

**Sec. 127.** RCW 82.38.270 and 2007 c 515 s 30 are each amended to read as follows:

(1) It is unlawful for a person (~~(or corporation)~~) to:

(a) Have dyed (~~(diesel)~~) special fuel in the fuel supply tank of a vehicle that is licensed or required to be licensed for highway use or maintain dyed (~~(diesel)~~) special fuel in bulk storage for highway use, unless the person (~~(or corporation)~~) maintains an uncanceled dyed (~~(diesel)~~) special fuel user license or is otherwise (~~(exempted by)~~) exempt under this chapter;

(b) Hold dyed special fuel for use, intended use, sale, or intended sale in a manner in violation of this chapter;

(c) Evade a tax or fee imposed under this chapter;

~~((e))~~ (d) File a false statement of a material fact (~~(on a special fuel license application or special fuel refund application)~~;

(d) Act as a special fuel importer, special fuel blender, or special fuel supplier unless the person holds an uncanceled special) regarding the administration and enforcement of this chapter or otherwise commit any fraud or make a false representation on a fuel tax license application, fuel tax refund application, fuel tax return, fuel tax record, or fuel tax refund claim;

(e) Act as a fuel licensee unless the person holds an uncanceled fuel license issued by the department authorizing the person to engage in that business;

~~((e))~~ (f) Knowingly assist another person to evade a tax or fee imposed by this chapter;

~~((f))~~ (g) Knowingly operate a conveyance for the purpose of hauling, transporting, or delivering (~~(special)~~) fuel in bulk and not possess an invoice, bill of sale, or other statement showing the name, address, and tax license number of



the seller or consignor, the destination, the name, address, and tax license number of the purchaser or consignee, and the number of gallons;

(h) Refuse to permit the department or its authorized representative to examine the person's books, papers, records, storage facilities, and equipment used in conjunction with the use, distribution, or sale of fuel;

(i) To display, or cause to permit to be displayed, or to have in possession, any fuel license knowing the same to be fictitious, or to have been suspended, canceled, revoked, or altered;

(j) To lend to, or knowingly permit the use of, by one not entitled thereto, any fuel license issued to the person lending it or permitting it to be used;

(k) To display or to represent as one's own any fuel license not issued to the person displaying the same;

(l) To use or to conspire with any governmental official, agent, or employee for the use of any requisition, purchase order, or any card or any authority to which the person is not specifically entitled by government regulations, for the purpose of obtaining any fuel or other inflammable petroleum products upon which the fuel tax has not been paid;

(m) To sell or dispense natural gas or propane for their own use or the use of others into tanks of vehicles powered by this fuel when the vehicle does not display a valid decal or other identifying device as provided in RCW 82.38.075.

(2)(a) A single violation of subsection (1)(a) and (b) of this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) Multiple violations of subsection (1)(a) and (b) of this section and violations of subsection (1)((~~b~~) through (~~f~~)) (c) through (g) of this section are a class C felony under chapter 9A.20 RCW.

(3) Violations of subsection (1)(h) through (m) of this section are a gross misdemeanor under chapter 9A.20 RCW.

(4) In addition to other penalties and remedies provided by law, the court (~~shall~~) must order a person or corporation found guilty of violating subsection (1)((~~b~~) through (~~f~~)) (c) through (g) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded(~~(, to the multimodal transportation account of the state)).~~)

~~((4))~~ (5) The tax imposed by this chapter is held in trust by the licensee until paid to the department, and a licensee who appropriates the tax to his or her own use or to any use other than the payment of the tax (~~(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 pay to the department the tax (~~(imposed by this chapter)~~) is personally liable to the state for the amount of the tax.

**Sec. 128.** RCW 82.38.280 and 2010 c 106 s 231 are each amended to read as follows:

(1) The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing (~~(special))~~ fuel, and no city, town, county, township or other subdivision or municipal corporation of the state may levy or collect any excise tax upon or

measured by the sale, receipt, distribution, or use of (~~special~~) fuel, except as provided in chapter 82.80 RCW and RCW 82.47.020.

(2) This section does not apply to any tax imposed by the state.

**Sec. 129.** RCW 82.38.290 and 1971 ex.s. c 175 s 30 are each amended to read as follows:

~~(All taxes, interest and penalties collected under this chapter shall be credited and deposited in the same manner as are motor vehicle fuel taxes collected under RCW 82.36.410.)~~ (1) Unless directed otherwise in this section, all taxes, fees, assessments, civil and criminal penalties, interest, and proceeds from sales of forfeited property collected under this chapter must be deposited into the motor vehicle fund.

(2) The penalty imposed in RCW 82.38.270(4)(b) must be deposited into the multimodal transportation account.

(3) One cent per gallon must be deducted from each motor vehicle fuel marine use refund claim and deposited into the coastal protection fund.

(4) Fifty percent of all fines and forfeitures imposed in any criminal proceeding by any court of this state for violations of the penal provisions of this chapter must be paid to the current expense fund of the county where collected and the remainder deposited into the motor vehicle fund. All fees, fines, forfeitures, and penalties collected or assessed by a district court must be remitted as provided in chapter 3.62 RCW.

**Sec. 130.** RCW 82.38.310 and 2007 c 515 s 31 are each amended to read as follows:

(1) The governor may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding (~~special~~) fuel taxes included in the price of fuel delivered to a retail station wholly owned and operated by a tribe, tribal enterprise, or tribal member licensed by the tribe to operate a retail station located on reservation or trust property. The agreement may provide mutually agreeable means to address any tribal immunities or any preemption of the (~~state special~~) fuel tax.

(2) The provisions of this section do not repeal existing state/tribal fuel tax agreements or consent decrees in existence on May 15, 2007. The state and the tribe may agree to substitute an agreement negotiated under this section for an existing agreement or consent decree, or to enter into an agreement using a methodology similar to the state/tribal fuel tax agreements in effect on May 15, 2007.

(3) If a new agreement is negotiated, the agreement must:

(a) Require that the tribe or the tribal retailer acquire all (~~special~~) fuel only from persons or companies operating lawfully in accordance with this chapter as a (~~special~~) fuel distributor, supplier, (~~importer,~~) or blender, or from a tribal distributor, supplier, (~~importer,~~) or blender lawfully doing business according to all applicable laws;

(b) Provide that the tribe will expend fuel tax proceeds or equivalent amounts on: Planning, construction, and maintenance of roads, bridges, and boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes;

(c) Include provisions for audits or other means of ensuring compliance to certify the number of gallons of (~~special~~) fuel purchased by the tribe for resale

at tribal retail stations, and the use of fuel tax proceeds or their equivalent for the purposes identified in (b) of this subsection. Compliance reports must be delivered to the director of the department of licensing.

(4) Information from the tribe or tribal retailers received by the state or open to state review under the terms of an agreement (~~((shall be))~~) are deemed personal information under RCW 42.56.230(~~((3))~~) (4)(b) and are exempt from public inspection and copying.

(5) The governor may delegate the power to negotiate fuel tax agreements to the department of licensing.

(6) The department of licensing (~~((shall))~~) must prepare and submit an annual report to the legislature on the status of existing agreements and any ongoing negotiations with tribes.

**Sec. 131.** RCW 82.38.320 and 2007 c 515 s 32 are each amended to read as follows:

(1) An international fuel tax agreement licensee who meets the qualifications in subsection (2) of this section may be given special authorization by the department to purchase special fuel delivered into bulk storage without payment of the (~~((special))~~) fuel tax at the time the fuel is purchased. The special authorization applies only to full truck-trailer loads filled at a terminal rack and delivered directly to the bulk storage facilities of the special authorization holder. The licensee (~~((shall))~~) must pay (~~((special))~~) fuel tax on the fuel at the time the licensee files their international fuel tax agreement tax return and accompanying schedule with the department. The accompanying schedule (~~((shall))~~) must be provided in a form and manner determined by the department and (~~((shall))~~) must contain information on purchases and usage of all nondyed special fuel purchased during the reporting period. In addition, by the fifteenth day of the month following the month in which fuel under the special authorization was purchased, the licensee must report to the department, the name of the seller and the number of gallons purchased for each purchase of such fuel, and any other information as the department may require.

(2) To receive or maintain special authorization under subsection (1) of this section, the following conditions regarding the international fuel tax agreement licensee must apply:

(a) During the period encompassing the four consecutive calendar quarters immediately preceding the fourth calendar quarter of the previous year, the number of gallons consumed outside the state of Washington as reported on the licensee's international fuel tax agreement tax returns must have been equal to at least twenty percent of the nondyed special fuel gallons, including fuel used on-road and off-road, purchased by the licensee in the state of Washington, as reported on the accompanying schedules required under subsection (1) of this section;

(b) The licensee must have been licensed under the provisions of the international fuel tax agreement during each of the four consecutive calendar quarters immediately preceding the fourth calendar quarter of the previous year; and

(c) The licensee has not violated the reporting requirements of this section.

(3) Only a licensed (~~((special))~~) fuel supplier or (~~((special))~~) fuel (~~((importer))~~) distributor may sell special fuel to a special authorization holder in the manner prescribed by this section.

(4) A ~~((special))~~ fuel supplier or ~~((importer))~~ distributor who sells ~~((special))~~ fuel under the special authorization provisions of this section is not liable for the ~~((special))~~ fuel tax on the fuel. The ~~((special))~~ fuel supplier or ~~((importer will))~~ distributor must report such sales, in a manner prescribed by the department, at the time the ~~((special))~~ fuel supplier or ~~((importer))~~ distributor submits the monthly tax report.

**Sec. 132.** RCW 82.38.360 and 2003 c 358 s 7 are each amended to read as follows:

(1) The following are subject to seizure and forfeiture:

(a) ~~((Special))~~ Fuel imported into this state by a person not licensed in this state in accordance with this chapter to import fuel;

(b) ~~((Special fuel that is))~~ Fuel blended or manufactured by a person not licensed in this state in accordance with this chapter to blend or manufacture fuel;

(c) All conveyances ~~((that are))~~ used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) and (b) of this subsection, except where the owner of the conveyance neither had knowledge of nor consented to the transportation of the ~~((special))~~ fuel by an unlicensed importer, blender, or manufacturer of fuel.

(2) Before seizing a common carrier conveyance, contract carrier conveyance, or a conveyance secured by a bona fide security interest where the secured party neither had knowledge of or consented to the unlawful act or omission, the state patrol or the department of licensing ~~((shall))~~ must give the common carrier, contract carrier, or secured party, or their representatives within twenty-four hours, a notice in writing served by mail or other means to cease transporting fuel for any person not licensed to import, blend, or manufacture fuel in this state.

(3) Property subject to forfeiture under this chapter may be seized by the state patrol upon process issued by a superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an administrative inspection; or

(b) The state patrol has probable cause to believe ~~((that))~~ the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

**Sec. 133.** RCW 82.38.365 and 2003 c 358 s 8 are each amended to read as follows:

In all cases of seizure of property made subject to forfeiture under this chapter, the state patrol ~~((shall))~~ must proceed as follows:

(1) Forfeiture is deemed to have commenced by the seizure.

(2) The state patrol ~~((shall))~~ must list and particularly describe in duplicate the conveyance seized. After the appropriate appeal period has expired, a seized conveyance must be sold at a public auction in accordance with chapter 43.19 RCW.

(3) The state patrol ~~((shall))~~ must list and particularly describe in duplicate the ~~((special))~~ fuel seized. The selling price of the fuel seized ~~((will))~~ must be the average terminal rack price for similar fuel, at the closest terminal rack on the day of sale, unless circumstance warrants that a different selling price is

appropriate. The method used to value the fuel must be documented. The fuel ~~((will))~~ must be sold at the earliest point in time, and the total price must include all appropriate state and federal taxes. The state patrol or the department may enter into contracts for the transportation, handling, storage, and sale of fuel subject to forfeiture. ~~((The money received must be deposited in the motor vehicle account, after deduction for expenses provided for in this section.))~~

(4) The state patrol ~~((shall))~~ must, within five days after the seizure of a conveyance or fuel, cause notice to be served on the owner of the property seized, if known, on the person in charge of the property, and on any other person having any known right or interest in the property, of the seizure and intended forfeiture. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. If service is by mail it must be by both certified mail with return receipt requested and regular mail. Service by mail is deemed complete upon mailing within the five-day period after the date of seizure.

(5) If no person notifies the state patrol in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the items seized are considered forfeited.

(6) If any person notifies the state patrol, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons must be given a reasonable opportunity to be heard as to the claim or right. The hearing must be before the director of licensing, or the director's designee. A hearing and any appeals must be in accordance with chapter 34.05 RCW. The burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The state patrol and the department ~~((shall))~~ must promptly return the conveyance seized, and money from the sale of fuel seized, to the claimant upon a determination that the claimant is the present lawful owner and is lawfully entitled to possession of the items seized.

**Sec. 134.** RCW 82.38.370 and 2003 c 358 s 9 are each amended to read as follows:

When property is forfeited under this chapter, the state patrol or the department may use the proceeds of the sale and all moneys forfeited for the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. Proper expenses of investigation include costs incurred by a law enforcement agency or a federal, state, or local agency. ~~((The balance of the proceeds must be deposited in the motor vehicle fund.))~~

**Sec. 135.** RCW 82.38.380 and 2003 c 358 s 11 are each amended to read as follows:

When the state patrol has good reason to believe that ~~((special))~~ fuel is being unlawfully imported, kept, sold, offered for sale, blended, or manufactured in violation of this chapter or rules adopted under it, the state patrol may make an affidavit of that fact, describing the place or thing to be searched, before a judge of any court in this state, and the judge ~~((shall))~~ must issue a search warrant directed to the state patrol commanding the officer diligently to search any place

or vehicle designated in the affidavit and search warrant, and to seize the fuel and conveyance so possessed and to hold them until disposed of by law, and to arrest the person in possession or control of them.

**Sec. 136.** RCW 82.38.385 and 2003 c 358 s 12 are each amended to read as follows:

The department and the state patrol (~~shall~~) must adopt rules necessary to implement RCW 82.38.360 through 82.38.380.

## PART II FUEL TAX CONSOLIDATION—NEW SECTIONS

**NEW SECTION. Sec. 201. BONDING REQUIREMENTS.** (1) A license may not be issued or continued in force unless a bond is provided to secure payment of all taxes, interest, and penalties. This requirement may be waived for:

- (a) Licensed dyed special fuel users;
- (b) International fuel tax agreement licensees; or
- (c) Licensed fuel distributors who, upon determination by the department, have sufficient resources, assets, other financial instruments, or other means to adequately make payments on monthly fuel tax payments, penalties, and interest.

(2) The department may require a licensee to post a bond if the department determines a bond is required to protect the interests of the state.

(3) The total amount of the bond or bonds is three times the estimated monthly fuel tax liability. The total bonding amount may never be less than five thousand dollars nor more than one hundred thousand dollars.

(4) In lieu of a bond, a licensee may deposit with the state treasurer, a like amount of money of the United States, or bonds or other obligations of the United States, the state, or any county of the state, of a market value not less than the amount of the required bond.

(5) The department may require a licensee to increase the bond amount or to deposit additional securities as described in this section if the security of the bond or the market value of the securities becomes impaired or inadequate.

(6) Any surety on a bond furnished by a licensee must be released and discharged from any liability accruing on such bond after the expiration of forty-five days from the date the surety provided written notification to the department. The provisions of this section do not relieve, release, or discharge the surety from any liability accrued or which will accrue before the expiration of the forty-five day period. The department must promptly notify the licensee who furnished the bond, and unless the licensee, on or before the expiration of the forty-five day period, files a new bond the department must cancel the license.

**NEW SECTION. Sec. 202. DATE OF MAILING DEEMED DATE OF FILING OR RECEIPT—TIMELY MAILING BARS PENALTIES AND TOLLS STATUTORY TIME LIMITATIONS.** An application, report, notice, payment, or claim for credit or refund properly addressed and deposited in the United States mail is deemed filed or received on the date shown by the post office cancellation mark on the envelope. No penalty for delinquency attaches, nor is the statutory period deemed to have elapsed in the case of credit or refund

claims, if it is established by competent evidence that the application, report, notice, payment, or claim for credit or refund was properly addressed and timely deposited in the United States mail, if a duplicate of the document or payment is filed.

**NEW SECTION. Sec. 203.** DISCONTINUANCE, SALE, OR TRANSFER OF BUSINESS—NOTICE—PAYMENT OF TAXES, INTEREST, PENALTIES. A licensee who ceases to engage in business must notify the department in writing at the time of cessation. The notice must give the date of cessation and the name and address of any purchaser or transferee. The licensee must file a report and pay all taxes, interest, and penalties owing.

**NEW SECTION. Sec. 204.** DYED SPECIAL FUEL—PENALTIES. (1) Unless the use is exempt from the special fuel tax, or expressly authorized by the federal internal revenue code and this chapter, a person having dyed special fuel in the fuel supply tank of a motor vehicle that is licensed or required to be licensed is subject to a civil penalty of ten dollars for each gallon of dyed special fuel placed into the supply tank of the motor vehicle, or one thousand dollars, whichever is greater. The penalties must be collected and administered under this chapter.

(2) A person who maintains dyed special fuel in bulk storage for an intended sale or use in violation of this chapter is subject to a civil penalty of ten dollars for each gallon of dyed special fuel, or one thousand dollars, whichever is greater, currently or previously maintained in bulk storage by the person. The penalties must be collected and administered under this chapter.

(3) For the purposes of enforcement of this section, the Washington state patrol or other commercial vehicle safety alliance-certified officers may inspect, collect, and secure samples of special fuel used in the propulsion of a vehicle operated upon the highways of this state to detect the presence of dye or other chemical compounds.

(4) RCW 43.05.110 does not apply to the civil penalties imposed under subsection (1) of this section.

**NEW SECTION. Sec. 205.** DEDUCTIONS—HANDLING LOSSES—REPORTS. Upon the taxable removal of motor vehicle fuel, the licensee who acquired or removed the motor vehicle fuel, other than a motor vehicle fuel distributor acting as an exporter, is entitled to a deduction from the tax liability on the gallonage of taxable motor vehicle fuel removed in order to account for handling losses, as follows: For a motor vehicle fuel supplier acting as a distributor, one-quarter of one percent; and for all other licensees, thirty one-hundredths of one percent. For those licensees required to file tax reports, the handling loss deduction must be reported on tax reports.

**NEW SECTION. Sec. 206.** INJUNCTIONS—WRITS. 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 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. 207.** REFUND TO AERONAUTICS ACCOUNT. At least once each fiscal year, the director must request the state treasurer to refund from the motor vehicle fund, to the aeronautics account created under RCW 82.42.090, an amount equal to 0.028 percent of the gross motor vehicle

fuel tax less an amount equal to aircraft fuel taxes transferred to that account as a result of nonhighway refunds claimed by motor fuel purchasers. The refund is considered compensation for unclaimed motor vehicle fuel that is used in aircraft for purposes taxable under RCW 82.42.020. The director must also remit from the motor vehicle fund the taxes required by RCW 82.12.0256(2)(d) for the unclaimed refunds, provided that the sum of the amount refunded and the amount remitted in accordance with RCW 82.12.0256(2)(d) does not exceed the unclaimed refunds.

**NEW SECTION. Sec. 208.** PAYMENT OF TAX BY A NONLICENSEE. Every person, other than a licensee, who acquires fuel upon which payment of tax is required must, if the tax has not been paid, comply with the provisions of this chapter, and pay tax at the rate provided in RCW 82.38.030. The person is subject to the same duties and penalties imposed upon licensees.

### PART III AIRCRAFT FUEL TAX—AMENDATORY PROVISIONS

**Sec. 301.** RCW 82.42.010 and 1983 c 49 s 1 are each amended to read as follows:

~~((For the purposes of this chapter:~~

~~(4))) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.~~

~~(1) "Air carrier" means any airline, air cargo carrier, air taxi, air commuter, or air charter operator, that provides routine air service to the general population for compensation or hire, and operates at least fifteen round trips per week between two or more points and publishes flight schedules which specify the times, days of the week, and points between which it operates. Where it is doubtful that an operation is for "compensation or hire," the test applied is whether the air service is merely incidental to the person's other business or is, in itself, a major enterprise for profit.~~

~~(2) "Department" means the department of licensing((:)).~~

~~((2)) (3) "Director" means the director of licensing((:)).~~

~~((3)) (4) "Person" means every natural person, firm, partnership, association, or private or public corporation((:)).~~

~~((4)) (5) "Aircraft" means every contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, operated or propelled by the use of aircraft fuel((:)).~~

~~((5)) (6) "Aircraft fuel" means gasoline and any other inflammable liquid, by whatever name such liquid is known or sold, the chief use of which is as fuel for the propulsion of aircraft, except gas or liquid, the chief use of which as determined by the director, is for purposes other than the propulsion of aircraft((:)).~~

~~((6)) (7) "Dealer" means any person engaged in the retail sale of aircraft fuel((:)).~~

~~((7)) (8) "Distributor" means any person engaged in the sale of aircraft fuel to any dealer and ~~((shall))~~ includes any dealer from whom the tax hereinafter imposed has not been collected((:)).~~

~~((8)) "Weighted average retail sales price of aircraft fuel" means the average retail sales price, excluding any federal excise tax, of the several grades of~~



aircraft fuel sold by dealers throughout the state (less any state excise taxes on the sale, distribution, or use thereof) upon which fuel the tax levied by this chapter has been collected, weighted to reflect the quantities sold at each price;

(9) "Fiscal half year" means a six-month period ending June 30th or December 31st;

~~(10))~~ (9) "Local service commuter" means an air taxi operator who operates at least five round-trips per week between two or more points; publishes flight schedules which specify the times, days of the week, and points between which it operates; and whose aircraft has a maximum capacity of sixty passengers or eighteen thousand pounds of useful load.

**Sec. 302.** RCW 82.42.020 and 2005 c 341 s 3 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 of eleven cents 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 and shall not apply to fuel for emergency medical air transport entities: 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)) levied upon every distributor of aircraft fuel, an excise tax at the rate of eleven cents on each gallon of aircraft fuel sold, delivered, or used in this state. There must be collected from every user of aircraft fuel either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020. The taxes imposed by this chapter must be collected and paid to the state but once in respect to any aircraft fuel.

**Sec. 303.** RCW 82.42.030 and 2005 c 341 s 4 are each amended to read as follows:

~~((+))~~ The provision of RCW 82.42.020 imposing the payment of an excise tax on each gallon of aircraft fuel sold, delivered or used in this state ~~((shall))~~ does not apply to:

~~(1) Aircraft fuel sold for export, (, nor to aircraft fuel used for the following purposes: (a) The operation of aircraft when such use is by any air carrier or supplemental air carrier operating under a certificate of public convenience and necessity under the provisions of the Federal Aviation Act of 1958, Public Law 85-726, as amended; (b) the operation of aircraft for testing or experimental purposes; (c) the operation of aircraft when such operation is for the training of crews in Washington state for purchasers of aircraft who are certified air carriers; and (d) the operation of aircraft in the operations of a local service commuter. PROVIDED, That the director's determination as to a particular activity for which aircraft fuel is used as being an exemption under this section, or otherwise, shall be final.~~

~~(2) To claim an exemption on account of sales by a licensed distributor of aircraft fuel for export, the purchaser shall obtain from the selling distributor, and such selling distributor 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 aircraft fuel in that state or foreign jurisdiction.~~

~~(3) For the purposes of this section, "air carrier" means an airline, air cargo carrier, air taxi, air commuter, or air charter operator, that provides routine air service to the general public for compensation or hire, and operates at least fifteen round trips per week between two or more points and publishes flight schedules which specify the times, days of the week, and points between which it operates. Where it is doubtful that an operation is for "compensation or hire," the test applied is whether the air service is merely incidental to the person's other business or is, in itself, a major enterprise for profit) and exported from this state;~~

~~(2) Aircraft fuel imported into the state in interstate or foreign commerce and intended to be sold while in interstate or foreign commerce;~~

~~(3) Aircraft fuel sold to an agency of the United States government;~~

~~(4) Aircraft fuel delivered directly into the aircraft fuel tanks of equipment operated by an air carrier or supplemental air carrier operating under a certificate of public convenience and necessity under the provisions of the federal aviation act of 1958, P.L. 85-726, as amended;~~

~~(5) Aircraft fuel delivered directly into the aircraft fuel tanks of equipment operated by a local service commuter;~~

~~(6) Aircraft fuel sold to emergency medical air transport entities;~~

~~(7) Aircraft fuel sold to a licensed aircraft fuel distributor;~~

~~(8) Aircraft fuel delivered into the bulk storage tank of a certified user;~~

~~(9) Aircraft fuel used in the operation of aircraft for testing or experimental purposes; and~~

~~(10) Aircraft fuel used in the operation of aircraft when such operation is for the training of crews in Washington state for purchasers of aircraft who are certified air carriers.~~

**Sec. 304.** RCW 82.42.040 and 2008 c 181 s 507 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. During a state of emergency declared under RCW 43.06.010(12), the director, on his or her own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the director deems proper.~~

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.)~~ (1) Application for a license must be made to the department. The application must be filed in a manner prescribed by the department and must contain information the department requires.

(2) For purposes of this section, the term "applicant" has the same meaning as provided for "person" in RCW 82.42.010.

(3) An application for a license must contain the following information to the extent it applies to the applicant:

(a) Proof, as the department may require, concerning the applicant's identity;

(b) The applicant's business structure and place of business, including proof the applicant is licensed to conduct business in this state;

(c) The employment history of the applicant and any partner, officer, or director of the applicant;

(d) A bank reference and whether the applicant or any partner, officer, or director of the applicant has ever been adjudged bankrupt or has an unsatisfied judgment;

(e) Whether the applicant has been adjudged guilty of a crime or suffered a civil judgment directly related to the distribution and sale of fuel within the last ten years;

(f) Each state, province, or country that the applicant intends to import fuel from by means other than bulk transfer. An applicant must also show proof that the applicant has maintained the appropriate license required of each state, province, or country; and

(g) Each state, province, or country that the applicant intends to export fuel to by means other than bulk transfer. An applicant must also show proof that the applicant has maintained the appropriate license required of each state, province, or country.

(4) An applicant must submit a surety bond in an amount, form, and manner set by the department. In lieu of a bond, an applicant may provide evidence to the department of sufficient assets to adequately meet tax payments, penalties, interest, or other obligations arising out of this chapter.

(5) For the purposes of considering any application for a license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state, province, country, or the federal government to ascertain the veracity of the information on the application and the applicant's criminal, civil, and licensing history.

(6) 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. 305.** RCW 82.42.090 and 1995 c 170 s 1 are each amended to read as follows:

All (~~moneys collected by the director from the aircraft fuel excise tax as provided in RCW 82.42.020 shall be transmitted to the state treasurer and shall be credited to the aeronautics account hereby created in the transportation fund of the state treasury. Moneys collected from the consumer or user of aircraft fuel from either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020 shall be transmitted to the state treasurer and credited to~~) taxes, interest, and penalties collected under this chapter must be deposited into the aeronautics account. All taxes, interest, and penalties collected from the consumer or user of aircraft fuel from either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020 must be deposited into the state general fund.

**Sec. 306.** RCW 82.42.110 and 1982 1st ex.s. c 25 s 9 are each amended to read as follows:

Every person other than a distributor who acquires any aircraft fuel within this state upon which payment of tax is required under the provisions of this chapter, or imports such aircraft fuel into this state and sells, delivers, or in any manner uses it in this state (~~(shall)~~), if the tax has not been paid, (~~(be)~~) is subject to the provisions of (~~(RCW 82.42.040 provided for)~~) this chapter provided for aircraft fuel distributors and (~~(shall)~~) must pay a tax at the rate computed under RCW (~~(82.42.025)~~) 82.42.020 for each gallon thereof so sold, delivered, or used in the manner provided for distributors. The proceeds of the tax imposed by this section (~~(shall)~~) must be distributed in the manner provided for the distribution of the aircraft fuel tax in RCW 82.42.090. For failure to comply with the terms of this chapter, such person (~~(shall be)~~) is subject to the same penalties imposed upon distributors. The director (~~(shall)~~) must pursue against such persons the same procedure and remedies for audits, adjustments, collection, and enforcement of this chapter as is provided with respect to distributors. Nothing herein (~~(shall)~~) must be construed as classifying such persons as distributors.

**Sec. 307.** RCW 82.42.125 and 1997 c 183 s 11 are each amended to read as follows:

~~((An aircraft fuel licensee, who files or against whom is filed a petition in bankruptcy, shall, within ten days of the filing, notify the department of the proceedings in bankruptcy, including the identity and location of the court in which the proceedings are pending.))~~ A licensee who files a bankruptcy petition, or against whom a petition for bankruptcy is filed, must notify the department of the filing within ten days of the filing. The notice must include the name and location of the court in which the petition was filed.

#### PART IV AIRCRAFT FUEL—NEW SECTIONS

##### NEW SECTION. **Sec. 401.** ADMINISTRATION AND ENFORCEMENT.

(1) The department may prescribe, adopt, and enforce reasonable rules relating to administration and enforcement of this chapter.

(2) The department or its authorized representative is empowered to examine the books, papers, records, and equipment of any person distributing, transporting, storing, or using aircraft fuel and to investigate the disposition any person makes of aircraft fuel to determine whether all taxes due or refundable are properly reported, paid, or claimed. If books, papers, records, and equipment are not maintained in this state at the time of demand the department does not lose any right of examination.

(3) The director may, from time to time, require additional reports from any licensee with reference to any of the matters herein concerned. Such reports must be made and filed on forms prepared by the director.

(4) For the purpose of any investigation or proceeding, the director or designee may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

(5) In the case of contumacy by or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction upon application by the director, may issue to that person an order requiring appearance before the director or designee to produce testimony of other evidence regarding the matter under investigation or in question.

(6) The department must, upon request from officials responsible for enforcement of aircraft fuel tax laws of any state, the District of Columbia, the United States, its territories and possessions, the provinces or the dominion of Canada, forward information relative to the receipt, storage, delivery, sale, use, or other disposition of aircraft fuel by any person if the other furnishes like information.

(7) The department may enter into an aircraft fuel tax cooperative agreement with another state, the District of Columbia, the United States, its territories and possessions, or Canadian Province for the administration, collection, and enforcement of their respective fuel taxes.

(8) The foregoing remedies of the state in this chapter are cumulative and no action taken by the department may be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter.

**NEW SECTION. Sec. 402. ASSESSMENTS—WARRANT—LIEN—FILING FEE—WRITS OF EXECUTION AND GARNISHMENT.** When an assessment becomes final the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties, interest and a filing fee under RCW 36.18.012(10). The warrant is a lien upon title to, and interest in all real and personal property of the person against whom the warrant is issued. The warrant is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state.

**NEW SECTION. Sec. 403. BONDING REQUIREMENTS.** (1) A license may not be issued or continued in force unless a bond is provided to secure payment of all taxes, interest, and penalties. This requirement may be waived for licensees properly bonded under the provisions of chapter 82.38 RCW or licensed aircraft fuel distributors who, upon determination by the department, have sufficient resources, assets, other financial instruments, or other means to adequately make payments on monthly aircraft fuel tax payments, penalties, and interest.

(2) The department may require a licensee to post a bond if the department determines a bond is required to protect the interests of the state.

(3) The total amount of the bond or bonds is three times the estimated monthly aircraft fuel tax liability. The total bonding amount may never be less than five thousand dollars nor more than one hundred thousand dollars.

(4) In lieu of a bond, a licensee may deposit with the state treasurer, a like amount of money of the United States or bonds or other obligations of the United States, the state, or any county of the state, of a market value not less than the amount of the required bond.

(5) The department may require a licensee to increase the bond amount or to deposit additional securities as described in this section if the security of the bond or the market value of the securities becomes impaired or inadequate.

(6) Any surety on a bond furnished by a licensee must be released and discharged from any liability accruing on such bond after the expiration of forty-five days from the date the surety provided written notification to the department. This subsection does not relieve, release, or discharge the surety from any liability accrued or which will accrue before the expiration of the forty-five day period. The department must promptly notify the licensee who furnished the bond, and unless the licensee, on or before the expiration of the forty-five day period, files a new bond the department must cancel the license.

**NEW SECTION. Sec. 404. CIVIL AND STATUTORY PENALTIES AND INTEREST—DEFICIENCY ASSESSMENTS.** (1) If any licensee fails to pay any taxes due the state of Washington within the time prescribed in this chapter, the licensee must pay a penalty of ten percent of the tax due.

(2) If the tax reported by any licensee is deficient a penalty of ten percent of the deficiency must be assessed.

(3) If any licensee, whether or not licensed as such, fails, neglects, or refuses to file a required fuel tax report, the department must determine the tax liability and add the penalty provided in subsection (2) of this section to the liability. An assessment made by the department pursuant to this subsection or to subsection (2) of this section is presumed to be correct, and the burden is on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive.

(4) If any licensee establishes by a fair preponderance of evidence that 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) and (2) of this section.

(5) If any licensee files a false or fraudulent report with intent to evade the tax imposed by this chapter, a penalty of twenty-five percent of the deficiency must be added to the amount of deficiency, which is in addition to all other penalties prescribed by law.

(6) If any person acts as a licensee without first securing the required license, all fuel tax liability incurred by that person becomes immediately due and payable. The department must determine the amount of the tax liability and must assess the person along with a penalty of one hundred percent of the tax.

(7) Any fuel tax, penalties, and interest payable under this chapter 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. The department may waive interest when it determines the cost of processing the collection exceeds the amount of interest due.

(8) 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 the assessments.

(9) Except in the case of a fraudulent report or failure to file a report, deficiencies, penalties, and interest must be assessed within five years from the twenty-fifth day of the next succeeding month following the reporting period for which the amount is determined or within five years after the return is filed, whichever period expires later.

(10)(a) Any licensee against whom an assessment is made under the provisions of subsection (2) or (3) of this section may petition for a reassessment within thirty days after service upon the licensee of the assessment. If such petition is not filed within such thirty-day period, the amount of the assessment becomes final.

(b) If a petition for reassessment is filed within the thirty-day period, the department must reconsider the assessment and, if the licensee has requested in the petition, must grant an informal hearing and give ten days' notice of the time and place. The department may continue the hearing as needed. The decision of the department upon a petition for reassessment becomes final thirty days after service upon the licensee.

(11) Every assessment made by the department becomes due and payable at the time it becomes final and if not timely paid to the department a penalty of ten percent of the amount of the tax must be added to the assessment.

(12) Any notice of assessment required by this section must be served by depositing such notice in the United States mail, postage prepaid addressed to the licensee at the address shown in the records of the department.

(13) Any licensee who has had a fuel license revoked must pay a one hundred dollar penalty prior to the issuance of a new license.

**NEW SECTION. Sec. 405.** COMPUTATION AND PAYMENT OF TAX—REMITTANCE—ELECTRONIC FUNDS TRANSFER. (1) The tax must be computed by multiplying the tax rate per gallon by the number of gallons of fuel subject to the fuel tax.

(2) An aircraft fuel distributor is liable for and must pay the tax imposed under RCW 82.42.020 to the department on or before the twenty-fifth day of the month immediately following the reporting period. The tax report required in section 413 of this act must accompany the remittance.

(3) If the tax is paid by electronic funds transfer, the tax must be paid on or before the twenty-sixth calendar day of the month immediately following the reporting period. If the payment due date falls on a Saturday, Sunday, or legal holiday, payment is due on the state business day immediately preceding the due date.

(4) The tax must be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more.

**NEW SECTION. Sec. 406.** DATE OF MAILING DEEMED DATE OF FILING OR RECEIPT—TIMELY MAILING BARS PENALTIES AND TOLLS STATUTORY TIME LIMITATIONS. An application, report, notice, payment, or claim for credit or refund properly addressed and deposited in the United States mail is deemed filed or received on the date shown by the post office cancellation mark on the envelope. No penalty for delinquency attaches, nor is the statutory period deemed to have elapsed in the case of credit or refund claims, if it is established by competent evidence that the application, report, notice, payment, or claim for credit or refund was properly addressed and timely deposited in the United States mail, if a duplicate of the document or payment is filed.

**NEW SECTION. Sec. 407.** DELINQUENCY. (1) If a person is delinquent in the payment of any obligation, the department may give notice of the amount of delinquency to persons having possession or control of credits, personal and



real property belonging to the person, or owing debts to the person. Any person notified may not transfer or dispose of credits, personal and real property, or debts without the consent of the department. A person notified must, within twenty days after receipt of notice, advise the department of any credits, personal and real property, or debts in their possession, under their control or owing by them, and must immediately deliver the credits, personal and real property, or debts to the department.

(2) The notice and order to withhold and deliver constitutes a continuing lien on property of the person. The department must include in the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver is the date of mailing.

(3) If a person fails to timely answer the notice, a court may render a judgment, plus costs by default against the person.

**NEW SECTION. Sec. 408. DELINQUENCY—SEIZURE AND SALE OF PROPERTY.** (1) If a person is delinquent in the payment of any obligation and the delinquency continues after notice and demand for payment the department must collect the amount due. The department must seize any property subject to the lien of tax, penalty, and interest and sell it at public auction. Notice of sale and the time and place must be given to the person and to all persons appearing with an interest in the property. The notice must be in writing at least ten days before the date of sale. Notice must be published for at least ten days before the date of sale in a newspaper of general circulation published in the county the property will be sold. If there is no newspaper of general circulation in the county, the notice must be posted in three public places in the county for a period of ten days. The notice must contain a description of the property together with a statement of the amount due, the name of the person and a statement that unless the amount is paid on or before the time in the notice the property will be sold.

(2) The department must sell the property and deliver to the purchaser a bill of sale or deed. If the moneys received exceed the amount due from the person, the excess must be returned to the person and a receipt obtained. If any person having an interest in or lien upon the property has filed notice with the department prior to the sale, the department must withhold payment of any excess to the person pending determination of the rights of the respective parties by a court of competent jurisdiction. If the receipt of the person is not available, the department must deposit the excess with the state treasurer as trustee for the person or their heirs, successors, or assigns. Prior to making any seizure of property, the department may first serve upon the person's bondsperson a notice of delinquency and demand for payment of the amount due.

**NEW SECTION. Sec. 409. DISCONTINUANCE, SALE, OR TRANSFER OF BUSINESS—NOTICE—PAYMENT OF TAXES, INTEREST, PENALTIES.** A licensee who ceases to engage in business must notify the department in writing at the time of cessation. The notice must give the date of cessation and the name and address of any purchaser or transferee. The licensee must file a report and pay all taxes, interest, and penalties owing.

**NEW SECTION. Sec. 410. INJUNCTIONS—WRITS.** 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 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. 411. DENIAL—SUSPENSION—REVOCATION.**

(1) The department may refuse to issue to, or suspend or revoke a license of any licensee or applicant:

(a) Who formerly held a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW which has been suspended or revoked for cause;

(b) Who is a subterfuge for the real party in interest whose license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW has been revoked for cause;

(c) Who, as an individual licensee, or partner, officer, director, owner, or managing employee of a licensee, has had a license issued under chapter 82.36, 82.38, 82.42, or 46.87 RCW denied, suspended, or revoked for cause;

(d) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, 82.42, or 46.87 RCW;

(e) Who formerly held as an individual, partner, officer, director, owner, managing employee of a 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, has been suspended or revoked for cause;

(f) Who pled guilty to or was convicted as an individual, partner, officer, director, owner, or managing employee of a licensee in this or any other state, Canadian province, or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the fuel distribution business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(g) Who misrepresented or concealed a material fact in obtaining a license or reinstating a license;

(h) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(i) Who failed to cooperate with the department's investigations by:

(i) Not furnishing papers or documents;

(ii) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(iii) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(j) Who failed to comply with an order issued by the director; or

(k) Upon other sufficient cause being shown.

(2) Before such refusal, suspension, or revocation the department must grant the applicant a hearing and must grant the applicant at least twenty days' written notice of the time and place thereof.

**NEW SECTION. Sec. 412. PAYMENT OF TAX BY A NONLICENSEE.**

Every person, other than a licensee, who acquires fuel upon which payment of tax is required, if the tax has not been paid, must comply with the provisions of this chapter, and pay tax at the rate provided in RCW 82.42.020. The person is subject to the same duties and penalties imposed upon licensees.

**NEW SECTION. Sec. 413. PERIODIC TAX REPORTS.** (1) For the purpose of determining the amount of liability for the tax imposed under this

chapter, each aircraft fuel distributor must file monthly tax reports with the department.

(2) Tax reports must be filed on or before the twenty-fifth day of the calendar month following the reporting period to which it relates. A report must be filed even though no tax is due for the reporting period. Each report must contain a declaration that the statements contained therein are true and are made under penalties of perjury. The report must show information as the department may reasonably require for the proper administration and enforcement of this chapter.

(3) If the filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day is the filing date.

(4) The department in order to insure payment of the tax or to facilitate administration of this chapter may require the filing of reports and tax remittances at intervals other than one month.

(5) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the department deems proper.

**NEW SECTION. Sec. 414. FUEL RECORDS.** (1) Every person importing, manufacturing, refining, transporting, blending, or storing aircraft fuel must keep for a period of 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 aircraft fuel purchased or received and all aircraft fuel sold, delivered, or used by them.

(2) Records must show:

- (a) The date of 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 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 tax;

(g) The name, address, and aircraft fuel license number of the purchaser if the fuel tax is not collected on the sale or delivery;

(h) The physical inventories of aircraft fuel and petroleum products on hand at each place of business at the end of each month;

(i) Stocks of raw gasoline, gasoline stock, diesel oil, kerosene, kerosene distillates, casing head gasoline, and other petroleum products which may be used in the compounding, blending, or manufacturing of aircraft fuel.

(3) The department may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering aircraft fuel to submit periodic reports to the department regarding the disposition of the aircraft fuel. The reports must be on forms prescribed by the department and must contain information as the department may require.

(4) Every person operating any conveyance transporting fuel in bulk must possess during the entire time an invoice, bill of sale, or other statement showing the name, address, and license number of the seller or consigner, the destination, name, and address of the purchaser or consignee, license number, if applicable,

and the number of gallons. The person transporting fuel must at the request of any law enforcement officer or authorized representative of the department, produce for inspection required records and must permit inspection of the contents of the vehicle.

**NEW SECTION. Sec. 415.** SUITS FOR RECOVERY OF TAXES ILLEGALLY OR ERRONEOUSLY COLLECTED. (1) No suit or proceeding may be maintained in any court for the recovery of any amount alleged to have been overpaid under RCW 82.42.020 unless a claim for refund or credit has been duly filed pursuant to section 416 of this act.

(2) Within ninety days after the mailing of the notice of the department's action upon a claim filed pursuant to section 416 of this act, the claimant may bring an action against the department on the grounds set forth in the claim in a court of competent jurisdiction in Thurston county for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed. Failure to bring action within the time specified constitutes a waiver of any demand against the state on account of the alleged overpayments.

(3) If the department fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the department of its intention on the claim, consider the claim disallowed and bring an action against the department, on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(4) If judgment is rendered for the plaintiff, the amount of the judgment must first be credited on any aircraft fuel tax due and payable from the plaintiff. The balance of the judgment must be refunded to the plaintiff.

(5) In any judgment, interest must be allowed at the rate of twelve percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant, but not more than thirty days, the date to be determined by the department.

**NEW SECTION. Sec. 416.** CLAIM OF REFUND OR CREDIT. (1) Claims for refund or credit for aircraft fuel taxes paid under this chapter must be filed with the department on forms prescribed by the department and must contain and be supported by such information and documentation as the department may require. Claims for refund of aircraft fuel taxes must be for at least twenty dollars.

(2) Any amount determined to be refundable by the department must first be credited on any amounts then due and payable from a person to whom the refund is due.

(3) No refund or credit may 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 allowed and if not filed within this period the right to refund is barred; or

(b) Within five 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 allowed for aircraft fuel tax licensees.

(4) The department must refund any amount paid that has been verified by the department to be more than twenty dollars over the amount actually due for the reporting period.

(5) Payment credits may not be carried forward and applied to subsequent tax returns for a person licensed under this chapter.

(6) Within thirty days after disallowing any refund claim in whole or in part, the department must provide written notice of its action to the claimant.

(7)(a) Interest must be paid upon any refundable amount or credit due 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.

(b) The interest must be paid:

(i) In the case of a refund, to the last day of the calendar month following the date upon which the claim is approved by the department; and

(ii) 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.

(c) If the department determines that any overpayment has been made intentionally or by reason of carelessness, interest is not allowed.

(8) The department must pay interest of one percent on any refund payable that is issued more than thirty state business days after the receipt of a claim properly filed and completed. After the end of the thirty business day period, additional interest accrues at the rate of one percent on the amount payable for each thirty calendar day period.

**NEW SECTION. Sec. 417. REFUNDS.** Any person who has purchased aircraft fuel on which tax has been paid may file a claim with the department for a refund of the tax for:

(1) Aircraft fuel used in aircraft that both operate from a private, nonstate-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;

(2) Aircraft fuel used in the operation of aircraft for testing or experimental purposes; and

(3) Aircraft fuel used in the operation of aircraft when the operation is for the training of crews in Washington state for purchasers of aircraft who are certified air carriers.

**NEW SECTION. Sec. 418. REMEDIES CUMULATIVE.** The remedies of the state in this chapter are cumulative and no action taken by the department may be construed to be an election to pursue any remedy to the exclusion of another.

**NEW SECTION. Sec. 419. TAX LIEN.** (1) If a person liable for payment of tax fails to pay the amount including any interest, penalty, or addition, together with costs accrued, there must be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, belonging to or acquired, whether the property is employed by such person for personal or business use or is in the control of a trustee, receiver, or assignee. The lien is effective from the date taxes were due and payable until the amount is satisfied.

The lien has priority over any lien or encumbrance except liens of other taxes having priority by law.

(2) The department must file with any county auditor a statement of claim and lien specifying the amount of delinquent taxes, penalties, and interest owed.

**NEW SECTION. Sec. 420. VIOLATIONS—PENALTIES.** (1) It is unlawful for a person to:

(a) Evade a tax or fee imposed under this chapter;

(b) Knowingly assist another person to evade a tax or fee imposed by this chapter;

(c) File a false statement of a material fact or otherwise commit any fraud or make a false representation on an aircraft fuel tax license application, aircraft fuel tax refund application, aircraft fuel tax return, aircraft fuel tax record, or aircraft fuel tax refund claim;

(d) Act as an aircraft fuel distributor unless the person holds a license issued by the department authorizing the person to engage in that business;

(e) Knowingly operate a conveyance for the purpose of hauling, transporting, or delivering aircraft fuel in bulk and not possess an invoice, bill of sale, or other statement showing the name, address, and tax license number of the seller or consignor, the destination, the name, address, and tax license number of the purchaser or consignee, and the number of gallons;

(f) Refuse to permit the department or its authorized representative to examine the person's books, papers, records, storage facilities, and equipment used in conjunction with the use, distribution, or sale of aircraft fuel;

(g) To display, or cause to permit to be displayed, or to have in possession, an aircraft fuel license knowing the same to be fictitious or to have been suspended, canceled, revoked, or altered;

(h) To lend to, or knowingly permit the use of, by one not entitled thereto, any aircraft fuel license issued to the person lending it or permitting it to be used;

(i) To display or to represent as one's own any aircraft fuel license not issued to the person displaying the same; and

(j) To use or to conspire with any governmental official, agent, or employee for the use of any requisition, purchase order, or any card or any authority to which he or she is not specifically entitled by government regulations, for the purpose of obtaining any aircraft fuel upon which the state tax has not been paid.

(2)(a) A single violation of subsection (1)(a) and (b) of this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) Multiple violations of subsection (1)(a) and (b) of this section are a class C felony under chapter 9A.20 RCW.

(3) Violations of (1)(c) through (j) of this section are a gross misdemeanor under chapter 9A.20 RCW.

(4) In addition to other penalties and remedies provided by law, the court must order a person or corporation found guilty of violating subsection (1)(a) through (b) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded.

(5) The tax imposed by this chapter is held in trust by the licensee until paid to the department, and a licensee who appropriates the tax to his or her own use

or to any use other than the payment of the tax 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 pay to the department the tax is personally liable to the state for the amount of the tax.

## PART V REPEALED PROVISIONS

NEW SECTION. Sec. 501. The following acts or parts of acts are each repealed:

(1) RCW 82.36.010 (Definitions) and 2007 c 515 s 1, 2001 c 270 s 1, & 1998 c 176 s 6;

(2) RCW 82.36.020 (Tax levied and imposed—Rate to be computed—Incidence—Distribution) and 2007 c 515 s 2, 2001 c 270 s 2, 2000 c 103 s 13, 1998 c 176 s 7, 1983 1st ex.s. c 49 s 26, 1982 1st ex.s. c 6 s 1, 1977 ex.s. c 317 s 2, & 1974 ex.s. c 28 s 1;

(3) RCW 82.36.022 (Tax imposed—Intent) and 2007 c 515 s 20;

(4) RCW 82.36.025 (Motor vehicle fuel tax rate—Expiration of subsection) and 2007 c 515 s 3, 2005 c 314 s 101, & 2003 c 361 s 401;

(5) RCW 82.36.026 (Tax liability—General) and 2007 c 515 s 4, 2001 c 270 s 3, & 1998 c 176 s 8;

(6) RCW 82.36.027 (Tax liability of terminal operator) and 2007 c 515 s 6 & 1998 c 176 s 9;

(7) RCW 82.36.028 (Tax liability—Reciprocity agreements) and 2007 c 515 s 5;

(8) RCW 82.36.029 (Deductions—Handling losses—Reports) and 1998 c 176 s 10;

(9) RCW 82.36.031 (Periodic tax reports—Forms--Filing—Time extensions during state of emergency) and 2008 c 181 s 505, 2007 c 515 s 8, & 1998 c 176 s 11;

(10) RCW 82.36.032 (Penalty for filing fraudulent tax report) and 1998 c 176 s 13 & 1987 c 174 s 7;

(11) RCW 82.36.035 (Computation and payment of tax—Remittance—Electronic funds transfer) and 2005 c 260 s 1 & 1998 c 176 s 12;

(12) RCW 82.36.040 (Payment of tax—Penalty for delinquency) and 1991 c 339 s 2, 1989 c 378 s 24, 1987 c 174 s 4, 1977 c 28 s 1, & 1961 c 15 s 82.36.040;

(13) RCW 82.36.044 (Credit for worthless accounts receivable—Report—Adjustment) and 1998 c 176 s 15;

(14) RCW 82.36.045 (Licensees, persons acting as licensees—Tax reports—Deficiencies, failure to file, fraudulent filings, misappropriation, or conversion—Penalties, liability—Mitigation—Reassessment petition, hearing—Notice) and 2007 c 515 s 9, 1998 c 176 s 16, 1996 c 104 s 2, & 1991 c 339 s 1;

(15) RCW 82.36.047 (Assessments—Warrant—Lien—Filing fee—Writs of execution and garnishment) and 2001 c 146 s 13, 1998 c 176 s 17, & 1991 c 339 s 4;

(16) RCW 82.36.050 (Date of mailing deemed date of filing or receipt—Timely mailing bars penalties and tolls statutory time limitations) and 1961 c 15 s 82.36.050;

(17) RCW 82.36.060 (Application for license—Federal certificate of registry—Investigation—Fee—Penalty for false statement—Bond or security—Cancellation) and 2007 c 515 s 10, 2001 c 270 s 5, 1998 c 176 s 18, 1996 c 104 s 3, 1994 c 262 s 19, 1973 c 96 s 1, & 1961 c 15 s 82.36.060;

(18) RCW 82.36.070 (Issuance of license—Display—Refusal of issuance—Inspection of records) and 1998 c 176 s 19, 1998 c 115 s 2, 1996 c 104 s 4, 1994 c 262 s 20, 1973 c 96 s 2, 1965 ex.s. c 79 s 3, & 1961 c 15 s 82.36.070;

(19) RCW 82.36.075 (Reports by persons other than licensees—Department requirements—Forms) and 1998 c 176 s 29;

(20) RCW 82.36.080 (Penalty for acting without license—Separate licenses for separate activities—Default assessment) and 2007 c 515 s 11, 1998 c 176 s 20, & 1961 c 15 s 82.36.080;

(21) RCW 82.36.090 (Discontinuance, sale, or transfer of business—Notice—Payment of taxes, interest, penalties—Overpayment refunds) and 1998 c 176 s 21, 1967 c 153 s 2, 1965 ex.s. c 79 s 4, & 1961 c 15 s 82.36.090;

(22) RCW 82.36.095 (Bankruptcy proceedings—Notice) and 1997 c 183 s 7;

(23) RCW 82.36.100 (Tax required of persons not classed as licensees—Duties—Procedure—Distribution of proceeds—Penalties—Enforcement) and 1998 c 176 s 22, 1983 1st ex.s. c 49 s 28, 1977 ex.s. c 317 s 3, 1967 ex.s. c 83 s 3, 1961 ex.s. c 7 s 2, & 1961 c 15 s 82.36.100;

(24) RCW 82.36.110 (Delinquency—Lien of tax—Notice) and 1993 c 54 s 3 & 1961 c 15 s 82.36.110;

(25) RCW 82.36.120 (Delinquency—Notice to debtors—Transfer or disposition of property, credits, or debts prohibited—Lien—Answer) and 1998 c 176 s 23, 1994 c 262 s 21, 1991 c 339 s 3, & 1961 c 15 s 82.36.120;

(26) RCW 82.36.130 (Delinquency—Tax warrant) and 2000 c 103 s 14;

(27) RCW 82.36.140 (State may pursue remedy against licensee or bond) and 1998 c 176 s 25 & 1961 c 15 s 82.36.140;

(28) RCW 82.36.150 (Records to be kept by licensees—Inventory—Statement) and 1998 c 176 s 26, 1965 ex.s. c 79 s 5, & 1961 c 15 s 82.36.150;

(29) RCW 82.36.160 (Records to be preserved by licensees) and 2007 c 515 s 12, 1998 c 176 s 27, 1996 c 104 s 5, & 1961 c 15 s 82.36.160;

(30) RCW 82.36.170 (Additional reports—Filing) and 1998 c 176 s 28 & 1961 c 15 s 82.36.170;

(31) RCW 82.36.180 (Examinations and investigations) and 2007 c 515 s 13, 1998 c 176 s 30, 1967 ex.s. c 89 s 6, 1965 ex.s. c 79 s 6, & 1961 c 15 s 82.36.180;

(32) RCW 82.36.190 (Suspension, revocation, cancellation of licenses—Notice) and 1998 c 176 s 31, 1990 c 250 s 80, & 1961 c 15 s 82.36.190;

(33) RCW 82.36.200 (Carriers of motor vehicle fuel—Examination of records, stocks, etc.) and 1998 c 176 s 32, 1965 ex.s. c 79 s 7, & 1961 c 15 s 82.36.200;

(34) RCW 82.36.210 (Carriers of motor vehicle fuel—Invoice, bill of sale, etc., required—Inspections) and 1998 c 176 s 33, 1965 ex.s. c 79 s 8, 1961 ex.s. c 21 s 30, & 1961 c 15 s 82.36.210;

(35) RCW 82.36.230 (Exemptions—Imports, exports, federal sales—Invoice—Certificate—Reporting) and 1998 c 176 s 34, 1993 c 54 s 4, 1989 c



193 s 1, 1971 ex.s. c 156 s 2, 1967 c 153 s 3, 1965 ex.s. c 79 s 9, & 1961 c 15 s 82.36.230;

(36) RCW 82.36.240 (Sales to state or political subdivisions not exempt) and 1961 c 15 s 82.36.240;

(37) RCW 82.36.245 (Exemption—Sales to foreign diplomatic and consular missions) and 1989 c 193 s 2;

(38) RCW 82.36.247 (Exemption—Racing fuel) and 2007 c 515 s 14;

(39) RCW 82.36.250 (Nongovernmental use of fuels, etc., acquired from United States government—Tax—Unlawful to procure or use) and 1961 c 15 s 82.36.250;

(40) RCW 82.36.260 (Extension of time for filing exportation certificates or claiming exemptions) and 1965 ex.s. c 79 s 11 & 1961 c 15 s 82.36.260;

(41) RCW 82.36.270 (Refund permit) and 1977 c 28 s 2, 1973 c 96 s 3, 1967 c 153 s 4, & 1961 c 15 s 82.36.270;

(42) RCW 82.36.275 (Refunds for urban transportation systems) and 1969 ex.s. c 281 s 27, 1967 c 86 s 1, 1965 c 135 s 1, 1963 c 187 s 1, 1961 c 117 s 1, & 1961 c 15 s 82.36.275;

(43) RCW 82.36.280 (Refunds for nonhighway use of fuel) and 2010 c 161 s 906, 1998 c 176 s 36, 1993 c 141 s 1, 1985 c 371 s 5, 1980 c 131 s 5, 1972 ex.s. c 138 s 1, 1971 ex.s. c 36 s 1, 1969 ex.s. c 281 s 23, & 1961 c 15 s 82.36.280;

(44) RCW 82.36.285 (Refunds for transit services to persons with special transportation needs by nonprofit transportation providers) and 1996 c 244 s 5 & 1983 c 108 s 3;

(45) RCW 82.36.290 (Refunds for use in manufacturing, cleaning, dyeing) and 1961 c 15 s 82.36.290;

(46) RCW 82.36.300 (Refunds on exported fuel) and 1998 c 176 s 37, 1963 ex.s. c 22 s 21, & 1961 c 15 s 82.36.300;

(47) RCW 82.36.310 (Claim of refund) and 1998 c 176 s 38, 1998 c 115 s 3, 1995 c 318 s 3, 1965 ex.s. c 79 s 13, & 1961 c 15 s 82.36.310;

(48) RCW 82.36.320 (Information may be required) and 2007 c 515 s 15 & 1961 c 15 s 82.36.320;

(49) RCW 82.36.330 (Payment of refunds—Interest—Penalty) and 2003 c 53 s 401, 1998 c 176 s 39, 1971 ex.s. c 180 s 9, 1965 ex.s. c 79 s 14, & 1961 c 15 s 82.36.330;

(50) RCW 82.36.335 (Credits on tax in lieu of collection and refund) and 1998 c 176 s 40, 1997 c 183 s 8, & 1961 c 15 s 82.36.335;

(51) RCW 82.36.340 (Examination of books and records) and 2007 c 515 s 16 & 1961 c 15 s 82.36.340;

(52) RCW 82.36.350 (Fraudulent invoices—Penalty) and 1998 c 176 s 41 & 1961 c 15 s 82.36.350;

(53) RCW 82.36.370 (Refunds for fuel lost or destroyed through fire, flood, leakage, etc.) and 2007 c 515 s 17, 1998 c 176 s 42, 1967 c 153 s 5, 1965 ex.s. c 79 s 15, & 1961 c 15 s 82.36.370;

(54) RCW 82.36.375 (Time limitation on erroneous payment credits or refunds and notices of additional tax) and 1998 c 176 s 44 & 1965 ex.s. c 79 s 16;

(55) RCW 82.36.380 (Violations—Penalties) and 2007 c 515 s 18, 2003 c 358 s 13, 2000 2nd sp.s. c 4 s 9, 1995 c 287 s 2, & 1961 c 15 s 82.36.380;

(56) RCW 82.36.390 (Diversion of export fuel—Penalty) and 1998 c 176 s 45, 1996 c 104 s 6, & 1961 c 15 s 82.36.390;

(57) RCW 82.36.400 (Other offenses—Penalties) and 2011 c 96 s 57, 2003 c 53 s 402, 1998 c 176 s 46, 1971 ex.s. c 156 s 3, 1967 c 153 s 6, & 1961 c 15 s 82.36.400;

(58) RCW 82.36.410 (Revenue to motor vehicle fund) and 1973 c 95 s 5 & 1961 c 15 s 82.36.410;

(59) RCW 82.36.415 (Refund to aeronautics account) and 1987 c 220 s 4;

(60) RCW 82.36.420 (Disposition of fees, fines, penalties) and 1987 c 202 s 245, 1969 ex.s. c 199 s 40, & 1961 c 15 s 82.36.420;

(61) RCW 82.36.430 (Enforcement) and 1961 c 15 s 82.36.430;

(62) RCW 82.36.435 (Enforcement and administration—Rule-making authority) and 1981 c 342 s 5;

(63) RCW 82.36.440 (State preempts tax field) and 2010 c 106 s 230, 2003 c 350 s 5, 1991 c 173 s 4, 1990 c 42 s 204, 1979 ex.s. c 181 s 5, & 1961 c 15 s 82.36.440;

(64) RCW 82.36.450 (Agreement with tribe for fuel taxes) and 2007 c 515 s 19 & 1995 c 320 s 2;

(65) RCW 82.36.460 (Motor vehicle fuel tax cooperative agreement) and 1998 c 176 s 49;

(66) RCW 82.36.470 (Fuel tax evasion—Seizure and forfeiture) and 2003 c 358 s 1;

(67) RCW 82.36.475 (Fuel tax evasion—Forfeiture procedure) and 2003 c 358 s 2;

(68) RCW 82.36.480 (Fuel tax evasion—Forfeited property) and 2003 c 358 s 3;

(69) RCW 82.36.485 (Fuel tax evasion—Return of seized property) and 2003 c 358 s 4;

(70) RCW 82.36.490 (Fuel tax evasion—Search and seizure) and 2003 c 358 s 5;

(71) RCW 82.36.495 (Fuel tax evasion—Rules) and 2003 c 358 s 6;

(72) RCW 82.36.800 (Rules—1998 c 176) and 1998 c 176 s 87;

(73) RCW 82.36.900 (Findings—1998 c 176) and 1998 c 176 s 1;

(74) RCW 82.36.901 (Effective date—1998 c 176) and 1998 c 176 s 91;

(75) RCW 82.38.045 (Liability of terminal operator for remittance) and 2005 c 314 s 108 & 1998 c 176 s 54;

(76) RCW 82.38.047 (Liability of terminal operator for taxes when documentation incorrectly indicates internal revenue service compliance) and 2003 c 361 s 406 & 1998 c 176 s 55;

(77) RCW 82.38.130 (Revocation, suspension, cancellation, and surrender of license—Notice—Bond release, discharge—New or additional bond or surety) and 2007 c 515 s 26, 1998 c 176 s 65, 1994 c 262 s 24, 1979 c 40 s 9, 1977 c 26 s 2, & 1971 ex.s. c 175 s 14;

(78) RCW 82.38.240 (Delinquency—Collection by civil action—Certificate) and 1998 c 176 s 79 & 1971 ex.s. c 175 s 25;

(79) RCW 82.38.250 (Remedies cumulative) and 1971 ex.s. c 175 s 26;

(80) RCW 82.38.265 (Administration, collection, and enforcement of taxes pursuant to chapter 82.41 RCW) and 1982 c 161 s 14;

(81) RCW 82.38.350 (Fuel tax cooperative agreement) and 1998 c 176 s 88;

(82) RCW 82.41.060 (Credits—Refunds) and 1982 c 161 s 6;

(83) RCW 82.42.050 (Failure of distributor to file report or statement—Determination by director of amount sold, delivered or used—Basis for tax assessment—Penalty—Records public) and 1969 ex.s. c 254 s 4 & 1967 ex.s. c 10 s 5;

(84) RCW 82.42.060 (Payment of tax—Penalty for delinquency—Enforcement of collection—Provisions of RCW 82.36.040, 82.36.070, 82.36.110 through 82.36.140 made applicable) and 1997 c 183 s 12, 1996 c 104 s 15, 1969 ex.s. c 254 s 5, 1969 c 139 s 4, & 1967 ex.s. c 10 s 6;

(85) RCW 82.42.070 (Imports, exports, sales to United States government exempted—Procedure—Sales to state or political subdivisions not exempt—Refund procedures) and 1982 1st ex.s. c 25 s 6, 1971 ex.s. c 156 s 4, & 1967 ex.s. c 10 s 7;

(86) RCW 82.42.080 (Violations—Penalty) and 1996 c 104 s 16, 1982 1st ex.s. c 25 s 7, & 1967 ex.s. c 10 s 8; and

(87) RCW 82.42.120 (Mitigation of assessments) and 1991 c 339 s 8.

## PART VI

### CROSS REFERENCE AND TECHNICAL CORRECTIONS

**Sec. 601.** RCW 19.112.110 and 2009 c 132 s 2 are each amended to read as follows:

(1) ~~Special fuel licensees under chapter 82.38 RCW, ((other than international fuel tax agreement licensees, dyed special fuel users, and special fuel distributors, shall))~~ as determined by the department of licensing, must provide evidence to the department of licensing that at least two percent of the total annual diesel fuel sold in Washington is biodiesel or renewable diesel fuel, following the earlier of: (a) November 30, 2008; or (b) when a determination is made by the director, published in the Washington State Register, that feedstock grown in Washington state can satisfy a two-percent requirement.

(2) ~~Special fuel licensees under chapter 82.38 RCW, ((other than international fuel tax agreement licensees, dyed special fuel users, and special fuel distributors, shall))~~ as determined by the department of licensing, must provide evidence to the department of licensing that at least five percent of total annual diesel fuel sold in Washington is biodiesel or renewable diesel fuel, when the director determines, and publishes this determination in the Washington State Register, that both in-state oil seed crushing capacity and feedstock grown in Washington state can satisfy a three-percent requirement.

(3) The requirements of subsections (1) and (2) of this section ~~((shall))~~ may take effect no sooner than one hundred eighty days after the determination has been published in the Washington State Register.

(4) The director and the director of licensing ~~((shall))~~ must each adopt rules, in coordination with each other, for enforcing and carrying out the purposes of this section.

**Sec. 602.** RCW 19.112.120 and 2007 c 309 s 2 are each amended to read as follows:

(1) By December 1, 2008, motor vehicle fuel licensees under chapter ~~((82.36))~~ 82.38 RCW, ~~((other than motor vehicle fuel distributors))~~ as determined by the department of licensing, ((shall)) must provide evidence to the

department of licensing that at least two percent of total gasoline sold in Washington, measured on a quarterly basis, is denatured ethanol.

(2) If the director of ecology determines that ethanol content greater than two percent of the total gasoline sold in Washington will not jeopardize continued attainment of the federal clean air act's national ambient air quality standard for ozone pollution in Washington and the director of agriculture determines and publishes this determination in the Washington State Register that sufficient raw materials are available within Washington to support economical production of ethanol at higher levels, the director of agriculture may require by rule that licensees provide evidence to the department of licensing that denatured ethanol comprises between two percent and at least ten percent of total gasoline sold in Washington, measured on a quarterly basis.

(3) The requirements of subsections (1) and (2) of this section may take effect no sooner than one hundred eighty days after the determination has been published in the Washington State Register.

(4) The director and the director of licensing must each adopt rules, in coordination with each other, for enforcing and carrying out the purposes of this section.

(5) Nothing in this section is intended to prohibit the production, sale, or use of motor fuel for use in federally designated flexibly fueled vehicles capable of using E85 motor fuel. Nothing in this section is intended to limit the use of high octane gasoline not blended with ethanol for use in aircraft.

**Sec. 603.** RCW 35A.81.010 and 1983 c 3 s 73 are each amended to read as follows:

Motor vehicles owned and operated by any code city (~~shall be~~) are exempt from the provisions of chapter 81.80 RCW, except where specifically otherwise provided. Urban passenger transportation systems (~~shall~~) must receive a refund of the amount of the motor vehicle fuel tax paid on each gallon of motor vehicle fuel used in such systems to the extent authorized by chapter (~~82.36~~) 82.38 RCW. Notwithstanding any provision of the law to the contrary, every urban passenger transportation system as defined in RCW 82.38.080 (~~shall be~~) are exempt from the provisions of chapter 82.38 RCW which requires the payment of use fuel taxes.

**Sec. 604.** RCW 36.70A.340 and 2011 c 120 s 2 are each amended to read as follows:

Upon receipt from the board of a finding that a state agency, county, or city is in noncompliance under RCW 36.70A.330, or as a result of failure to meet the requirements of RCW 36.70A.210, the governor may either:

(1) Notify and direct the director of the office of financial management to revise allotments in appropriation levels;

(2) Notify and direct the state treasurer to withhold the portion of revenues to which the county or city is entitled under one or more of the following: The motor vehicle fuel tax, as provided in chapter (~~82.36~~) 82.38 RCW; the transportation improvement account, as provided in RCW 47.26.084; the rural arterial trust account, as provided in RCW 36.79.150; the sales and use tax, as provided in chapter 82.14 RCW; the liquor profit tax, as provided in RCW 66.08.190; and the liquor excise tax, as provided in RCW 82.08.170; or

(3) File a notice of noncompliance with the secretary of state and the county or city, which (~~shall~~) temporarily rescinds the county or city's authority to collect the real estate excise tax under RCW 82.46.030 until the governor files a notice rescinding the notice of noncompliance.

**Sec. 605.** RCW 43.06.400 and 2011 1st sp.s. c 20 s 201 are each amended to read as follows:

(1) Beginning in January 1984, and in January of every fourth year thereafter, the department of revenue must submit to the legislature prior to the regular session a listing of the amount of reduction for the current and next biennium in the revenues of the state or the revenues of local government collected by the state as a result of tax exemptions. The listing must include an estimate of the revenue lost from the tax exemption, the purpose of the tax exemption, the persons, organizations, or parts of the population which benefit from the tax exemption, and whether or not the tax exemption conflicts with another state program. The listing must include but not be limited to the following revenue sources:

- (a) Real and personal property tax exemptions under Title 84 RCW;
- (b) Business and occupation tax exemptions, deductions, and credits under chapter 82.04 RCW;
- (c) Retail sales and use tax exemptions under chapters 82.08, 82.12, and 82.14 RCW;
- (d) Public utility tax exemptions and deductions under chapter 82.16 RCW;
- (e) Food fish and shellfish tax exemptions under chapter 82.27 RCW;
- (f) Leasehold excise tax exemptions under chapter 82.29A RCW;
- (g) Motor vehicle and special fuel tax exemptions and refunds under chapter(~~s 82.36 and~~) 82.38 RCW;
- (h) Aircraft fuel tax exemptions under chapter 82.42 RCW;
- (i) Motor vehicle excise tax exclusions under chapter 82.44 RCW; and
- (j) Insurance premiums tax exemptions under chapter 48.14 RCW.

(2) The department of revenue must prepare the listing required by this section with the assistance of any other agencies or departments as may be required.

(3) The department of revenue must present the listing to the ways and means committees of each house in public hearings.

(4) Beginning in January 1984, and every four years thereafter the governor is requested to review the report from the department of revenue and may submit recommendations to the legislature with respect to the repeal or modification of any tax exemption. The ways and means committees of each house and the appropriate standing committee of each house must hold public hearings and take appropriate action on the recommendations submitted by the governor.

(5) As used in this section, "tax exemption" means an exemption, exclusion, or deduction from the base of a tax; a credit against a tax; a deferral of a tax; or a preferential tax rate.

(6) For purposes of the listing due in January 2012, the department of revenue does not have to prepare or update the listing with respect to any tax exemption that would not be likely to increase state revenue if the exemption was repealed or otherwise eliminated.

**Sec. 606.** RCW 46.01.040 and 2011 c 171 s 10 are each amended to read as follows:

The department is vested with all powers, functions, and duties with respect to and including the following:

(1) The ~~((motor vehicle fuel excise tax as provided in chapter 82.36))~~ fuel tax and aircraft fuel tax as provided in chapters 82.38 and 82.42 RCW;

~~((The special fuel tax as provided in chapter 82.38 RCW;~~

~~3))~~ The motor vehicle excise tax as provided in chapter 82.44 RCW;

~~((4))~~ (3) The travel trailers and campers excise tax as provided in chapter 82.50 RCW;

~~((5))~~ (4) All general powers and duties relating to motor vehicles as provided in chapter 46.08 RCW;

~~((6))~~ (5) Certificates of title and registration certificates as provided in chapters 46.12 and 46.16A RCW;

~~((7))~~ (6) The registration of motor vehicles as provided in chapter 46.16A RCW;

~~((8))~~ (7) Dealers' licenses as provided in chapter 46.70 RCW;

~~((9))~~ (8) The licensing of motor vehicle transporters as provided in chapter 46.76 RCW;

~~((10))~~ (9) The licensing of vehicle wreckers as provided in chapter 46.80 RCW;

~~((11))~~ (10) The administration of the laws relating to reciprocal or proportional registration of motor vehicles as provided in chapter 46.85 RCW;

~~((12))~~ (11) The licensing of passenger vehicles for hire as provided in chapter 46.72 RCW;

~~((13))~~ (12) Drivers' licenses as provided in chapter 46.20 RCW;

~~((14))~~ (13) Commercial driver training schools as provided in chapter 46.82 RCW;

~~((15))~~ (14) Financial responsibility as provided in chapter 46.29 RCW;

~~((16))~~ (15) Accident reporting as provided in chapter 46.52 RCW;

~~((17))~~ (16) Disposition of revenues as provided in chapter 46.68 RCW;

and

~~((18))~~ (17) The administration of all other laws relating to motor vehicles vested in the director of licenses on June 30, 1965.

**Sec. 607.** RCW 46.09.310 and 2010 c 161 s 213 are each amended to read as follows:

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

(1) "Advisory committee" means the nonhighway and off-road vehicle activities advisory committee established in RCW 46.09.340.

(2) "Board" means the recreation and conservation funding board established in RCW 79A.25.110.

(3) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling off-road vehicles at wholesale or retail in this state.

(4) "Highway," for the purpose of this chapter only, means the entire width between the boundary lines of every roadway publicly maintained by the state department of transportation or any county or city with funding from the motor vehicle fund. A highway is generally capable of travel by a conventional two-

wheel drive passenger automobile during most of the year and in use by such vehicles.

(5) "Nonhighway road" means any road owned or managed by a public agency or any private road for which the owner has granted an easement for public use for which appropriations from the motor vehicle fund were not used for (a) original construction or reconstruction in the last twenty-five years; or (b) maintenance in the last four years.

(6) "Nonhighway road recreation facilities" means recreational facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonhighway road recreational users.

(7) "Nonhighway road recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonhighway road recreational purposes, including, but not limited to, hunting, fishing, camping, sightseeing, wildlife viewing, picnicking, driving for pleasure, kayaking/canoeing, and gathering berries, firewood, mushrooms, and other natural products.

(8) "Nonhighway vehicle" means any motorized vehicle including an ORV when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain.

Nonhighway vehicle does not include:

(a) Any vehicle designed primarily for travel on, over, or in the water;

(b) Snowmobiles or any military vehicles; or

(c) Any vehicle eligible for a motor vehicle fuel tax exemption or rebate under chapter (~~82.36~~) 82.38 RCW while an exemption or rebate is claimed. This exemption includes but is not limited to farm, construction, and logging vehicles.

(9) "Nonmotorized recreational facilities" means recreational trails and facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonmotorized recreational users.

(10) "Nonmotorized recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonmotorized recreational purposes including, but not limited to, walking, hiking, backpacking, climbing, cross-country skiing, snowshoeing, mountain biking, horseback riding, and pack animal activities.

(11) "Organized competitive event" means any competition, advertised in advance through written notice to organized clubs or published in local newspapers, sponsored by recognized clubs, and conducted at a predetermined time and place.

(12) "ORV recreation facilities" include, but are not limited to, ORV trails, trailheads, campgrounds, ORV sports parks, and ORV use areas, designated for ORV use by the managing authority that are intended primarily for ORV recreational users.

(13) "ORV recreational user" means a person whose purpose for consuming fuel on nonhighway roads or off-road is primarily for ORV recreational purposes, including but not limited to riding an all-terrain vehicle, motorcycling, or driving a four-wheel drive vehicle or dune buggy.

(14) "ORV sports park" means a facility designed to accommodate competitive ORV recreational uses including, but not limited to, motocross

racing, four-wheel drive competitions, and flat track racing. Use of ORV sports parks can be competitive or noncompetitive in nature.

(15) "ORV trail" means a multiple-use corridor designated by the managing authority and maintained for recreational use by motorized vehicles.

**Sec. 608.** RCW 46.09.520 and 2010 1st sp.s. c 37 s 936 and 2010 c 161 s 222 are each reenacted and amended to read as follows:

(1) From time to time, but at least once each year, the state treasurer (~~shall~~) must refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter (~~82.36~~) 82.38 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for refunds and costs of collection as provided in RCW 46.68.090.

(2) The treasurer (~~shall~~) must place these funds in the general fund as follows:

(a) Thirty-six percent (~~shall~~) must be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities, and information programs and maintenance of nonhighway roads;

(b) Three and one-half percent (~~shall~~) must be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and the maintenance of nonhighway roads;

(c) Two percent (~~shall~~) must be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities; and

(d) Fifty-eight and one-half percent (~~shall~~) must be credited to the nonhighway and off-road vehicle activities program account to be administered by the board for planning, acquisition, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and for education, information, and law enforcement programs. The funds under this subsection (~~shall~~) must be expended in accordance with the following limitations:

(i) Not more than thirty percent may be expended for education, information, and law enforcement programs under this chapter;

(ii) Not less than seventy percent may be expended for ORV, nonmotorized, and nonhighway road recreation facilities. Except as provided in (d)(iii) of this subsection, of this amount:

(A) Not less than thirty percent, together with the funds the board receives under RCW 46.68.045, may be expended for ORV recreation facilities;



(B) Not less than thirty percent may be expended for nonmotorized recreation facilities. Funds expended under this subsection (2)(d)(ii)(B) (~~shall be~~) are known as ira spring outdoor recreation facilities funds; and

(C) Not less than thirty percent may be expended for nonhighway road recreation facilities;

(iii) The board may waive the minimum percentage cited in (d)(ii) of this subsection due to insufficient requests for funds or projects that score low in the board's project evaluation. Funds remaining after such a waiver must be allocated in accordance with board policy.

(3) On a yearly basis an agency may not, except as provided in RCW 46.68.045, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.

(4) During the 2009-2011 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the NOVA account to the department of natural resources to install consistent off-road vehicle signage at department-managed recreation sites, and to implement the recreation opportunities on department-managed lands in the Reiter block and Ahtanum state forest, and to the state parks and recreation commission. The legislature finds that the appropriation of funds from the NOVA account during the 2009-2011 fiscal biennium for maintenance and operation of state parks or to improve accessibility for boaters and off-road vehicle users at state parks will benefit boaters and off-road vehicle users and others who use nonhighway and nonmotorized recreational facilities. The appropriations under this subsection are not required to follow the specific distribution specified in subsection (2) of this section.

**Sec. 609.** RCW 46.87.080 and 2011 c 171 s 97 are each amended to read as follows:

(1) Upon making satisfactory application and payment of applicable fees and taxes for proportional registration under this chapter, the department (~~shall~~) must issue a cab card and validation tab for each vehicle, and to vehicles of Washington-based fleets, two distinctive apportionable license plates for each motor vehicle. License plates (~~shall~~) must be displayed on vehicles as required by RCW 46.16A.200(5). The number and plate (~~shall~~) must be of a design, size, and color determined by the department. The plates (~~shall~~) must be treated with reflectorized material and clearly marked with the words "WASHINGTON" and "APPORTIONED," both words to appear in full and without abbreviation.

(2) The cab card serves as the certificate of registration for a proportionally registered vehicle. The face of the cab card (~~shall~~) must contain the name and address of the registrant as contained in the records of the department, the license plate number assigned to the vehicle by the base jurisdiction, the vehicle identification number, and such other description of the vehicle and data as the department may require. The cab card (~~shall~~) must be signed by the registrant, or a designated person if the registrant is a business firm, and (~~shall~~) must at all times be carried in or on the vehicle to which it was issued.

(3) The apportioned license plates are not transferrable from vehicle to vehicle unless otherwise determined by rule and (~~shall~~) may be used only on the vehicle to which they are assigned by the department for as long as they are

legible or until such time as the department requires them to be removed and returned to the department.

(4) Distinctive validation tab(s) of a design, size, and color determined by the department (~~(shall)~~) must be affixed to the apportioned license plate(s) as prescribed by the department to indicate the month, if necessary, and year for which the vehicle is registered.

(5) Renewals (~~(shall be)~~) are effected by the issuance and display of such tab(s) after making satisfactory application and payment of applicable fees and taxes.

(6) Fleet vehicles so registered and identified (~~(shall be)~~) are deemed to be fully licensed and registered in this state for any type of movement or operation. However, in those instances in which a grant of authority is required for interstate or intrastate movement or operation, no such vehicle may be operated in interstate or intrastate commerce in this state unless the owner has been granted interstate operating authority in the case of interstate operations or intrastate operating authority by the Washington utility and transportation commission in the case of intrastate operations and unless the vehicle is being operated in conformity with that authority.

(7) The department may issue temporary authorization permits (TAPs) to qualifying operators for the operation of vehicles pending issuance of license identification. A fee of one dollar plus a one dollar filing fee (~~(shall)~~) must be collected for each permit issued. The permit fee (~~(shall)~~) must be deposited in the motor vehicle fund, and the filing fee (~~(shall)~~) must be deposited in the highway safety fund. The department may adopt rules for use and issuance of the permits.

(8) The department may refuse to issue any license or permit authorized by subsection (1) or (7) of this section to any person: (a) Who formerly held any type of license or permit issued by the department pursuant to chapter 46.16A, 46.85, 46.87, (~~(82.36,)~~) or 82.38 RCW that has been revoked for cause, which cause has not been removed; or (b) who is a subterfuge for the real party in interest whose license or permit issued by the department pursuant to chapter 46.16A, 46.85, 46.87, (~~(82.36,)~~) or 82.38 RCW and has been revoked for cause, which cause has not been removed; or (c) who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a license or permit issued by the department pursuant to chapter 46.16A, 46.85, 46.87, (~~(82.36,)~~) or 82.38 RCW which has been revoked for cause, which cause has not been removed; or (d) who has an unsatisfied debt to the state assessed under either chapter 46.16A, 46.85, 46.87, (~~(82.36,)~~) 82.38, or 82.44 RCW.

(9) The department may revoke the license or permit authorized by subsection (1) or (7) of this section issued to any person for any of the grounds constituting cause for denial of licenses or permits set forth in subsection (8) of this section.

(10) Before such refusal or revocation under subsection (8) or (9) of this section, the department (~~(shall)~~) must grant the applicant a hearing and at least ten days written notice of the time and place of the hearing.

**Sec. 610.** RCW 47.02.070 and 1965 ex.s. c 167 s 7 are each amended to read as follows:

Bonds issued under the provisions of this chapter ~~((shall))~~ must distinctly state that they are not a general obligation of the state but are payable in the manner provided in this chapter from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter ~~((82.36 and chapter 82.40))~~ 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of this chapter and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of this chapter.

**Sec. 611.** RCW 47.02.160 and 1995 c 274 s 5 are each amended to read as follows:

Bonds issued under the authority of RCW 47.02.120 through 47.02.190 ~~((shall))~~ must distinctly state that they are a general obligation of the state of Washington, ~~((shall))~~ must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and ~~((shall))~~ must contain an unconditional promise to pay such principal and interest as the same ~~((shall))~~ becomes due. The principal and interest on the bonds ~~((shall))~~ must be first payable in the manner provided in RCW 47.02.120 through 47.02.190 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter ~~((s 82.36 and))~~ 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.02.120 through 47.02.190, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.02.120 through 47.02.190.

**Sec. 612.** RCW 47.10.040 and 1961 c 13 s 47.10.040 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.10.010 through 47.10.140 ~~((shall))~~ must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.010 through 47.10.140 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter ~~((82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250, and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949; and chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949))~~ 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.010 through 47.10.140, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.010 through 47.10.140 when due.

**Sec. 613.** RCW 47.10.180 and 1961 c 13 s 47.10.180 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.10.150 through 47.10.270 ~~((shall))~~ must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.150 through 47.10.270 from the proceeds of all state excise taxes on motor vehicle fuels imposed by

chapter (~~(82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250, and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949; and chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949))~~ 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.150 through 47.10.270 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.150 through 47.10.270 when due.

**Sec. 614.** RCW 47.10.310 and 1961 c 13 s 47.10.310 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.10.280 through 47.10.400 (~~(shall)~~) must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.280 through 47.10.400 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter (~~(82.36 RCW, and RCW 82.36.020, 82.36.230, 82.36.250 and 82.36.400; and chapter 82.40 RCW and RCW 82.40.020))~~ 82.38 RCW. The proceeds of such excise taxes are pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.280 through 47.10.400. The legislature agrees to continue to impose the same excise taxes on motor fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.280 through 47.10.400 when due.

**Sec. 615.** RCW 47.10.440 and 1961 c 13 s 47.10.440 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.10.410 through 47.10.500 (~~(shall)~~) must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.410 through 47.10.500 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter (~~(82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250, and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by chapter 220, Laws of 1949, and chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949))~~ 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.410 through 47.10.500 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.410 through 47.10.500.

**Sec. 616.** RCW 47.10.714 and 1961 c 13 s 47.10.714 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.10.700 through 47.10.724 (~~(shall)~~) must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.700 through 47.10.724 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter (~~(82.36 RCW and RCW 82.36.020, 82.36.230, 82.36.250 and 82.36.400, as derived from chapter 58, Laws of 1933, as amended, and as last amended by~~

~~chapter 220, Laws of 1949; and chapter 82.40 RCW and RCW 82.40.020, as derived from chapter 127, Laws of 1941, as amended, and as last amended by chapter 220, Laws of 1949))~~ 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.700 through 47.10.724, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.700 through 47.10.724.

**Sec. 617.** RCW 47.10.729 and 1965 c 121 s 4 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.10.726 through 47.10.738 (~~(shall)~~) must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.726 through 47.10.738 from the proceeds of all state excise taxes on motor vehicle fuels imposed by chapter (~~82.36 RCW and chapter 82.40~~) 82.38 RCW. The proceeds of such excise taxes are pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.726 through 47.10.738. The legislature agrees to continue to impose the same excise taxes on motor fuels in amounts sufficient to pay the principal and interest on all bonds issued under the provisions of RCW 47.10.726 through 47.10.738 when due.

**Sec. 618.** RCW 47.10.756 and 1967 ex.s. c 7 s 8 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.10.751 through 47.10.760 (~~(shall)~~) must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.751 through 47.10.760 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter (~~82.36 RCW and chapter 82.40~~) 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.751 through 47.10.760, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.751 through 47.10.760.

**Sec. 619.** RCW 47.10.766 and 1967 ex.s. c 7 s 18 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.10.761 through 47.10.771 (~~(shall)~~) must distinctly state that they are not a general obligation of the state, but are payable in the manner provided in RCW 47.10.761 through 47.10.771 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter (~~82.36 RCW and chapter 82.40~~) 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.761 through 47.10.771, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.761 through 47.10.771.

**Sec. 620.** RCW 47.10.793 and 1995 c 274 s 6 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.10.790 (~~shall~~) must distinctly state that they are a general obligation of the state of Washington, (~~shall~~) must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and (~~shall~~) must contain an unconditional promise to pay such principal and interest as the same (~~shall~~) becomes due. The principal of and interest on such bonds (~~shall~~) must be first payable in the manner provided in RCW 47.10.790 through 47.10.798 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter(~~s 82.36 and~~) 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.10.790 through 47.10.798, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.10.790 through 47.10.798.

**Sec. 621.** RCW 47.10.804 and 1995 c 274 s 7 are each amended to read as follows:

Bonds issued under RCW 47.10.801 (~~shall~~) must distinctly state that they are a general obligation of the state of Washington, (~~shall~~) must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and (~~shall~~) must contain an unconditional promise to pay such principal and interest as the same (~~shall~~) becomes due. The principal of and interest on such bonds (~~shall~~) must be first payable in the manner provided in RCW 47.10.801 through 47.10.809 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter(~~s 82.36 and~~) 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under RCW 47.10.801 through 47.10.809, and the legislature hereby agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under RCW 47.10.801 through 47.10.809.

**Sec. 622.** RCW 47.10.815 and 1995 c 274 s 8 are each amended to read as follows:

Bonds issued under the authority of RCW 47.10.812 through 47.10.817 (~~shall~~) must distinctly state that they are a general obligation of the state of Washington, (~~shall~~) must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and (~~shall~~) must contain an unconditional promise to pay such principal and interest as the same (~~shall~~) becomes due. The principal and interest on the bonds (~~shall~~) must be first payable in the manner provided in RCW 47.10.812 through 47.10.817 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter(~~s 82.36 and~~) 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.812 through 47.10.817, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.812 through 47.10.817.

**Sec. 623.** RCW 47.10.822 and 1995 c 274 s 9 are each amended to read as follows:

Bonds issued under the authority of RCW 47.10.819 through 47.10.824 ~~((shall))~~ must distinctly state that they are a general obligation of the state of Washington, ~~((shall))~~ must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and ~~((shall))~~ must contain an unconditional promise to pay such principal and interest as the same ~~((shall))~~ becomes due. The principal and interest on the bonds ~~((shall))~~ must be first payable in the manner provided in RCW 47.10.819 through 47.10.824 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter ~~((s 82.36 and))~~ 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.819 through 47.10.824, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.819 through 47.10.824.

**Sec. 624.** RCW 47.10.838 and 1995 2nd sp.s. c 15 s 5 are each amended to read as follows:

(1) Bonds issued under the authority of RCW 47.10.834 through 47.10.841 ~~((shall))~~ must distinctly state that they are a general obligation of the state of Washington, ~~((shall))~~ must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and ~~((shall))~~ must contain an unconditional promise to pay such principal and interest as the same ~~((shall))~~ becomes due.

(2) The principal and interest on the bonds issued for the purposes enumerated in RCW 47.10.836 ~~((shall))~~ must be first payable in the manner provided in RCW 47.10.834 through 47.10.841 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter ~~((s 82.36 and))~~ 82.38 RCW. Proceeds of those excise taxes are pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.834 through 47.10.841, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.834 through 47.10.841.

**Sec. 625.** RCW 47.10.846 and 1998 c 321 s 19 are each amended to read as follows:

Bonds issued under the authority of RCW 47.10.843 through 47.10.848 ~~((shall))~~ must distinctly state that they are a general obligation of the state of Washington, ~~((shall))~~ must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and ~~((shall))~~ must contain an unconditional promise to pay such principal and interest as the same ~~((shall))~~ becomes due. The principal and interest on the bonds ~~((shall))~~ must be first payable in the manner provided in RCW 47.10.843 through 47.10.848 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter ~~((s 82.36 and))~~ 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.843 through 47.10.848, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.843 through 47.10.848.

**Sec. 626.** RCW 47.10.864 and 2003 c 147 s 4 are each amended to read as follows:

Bonds issued under the authority of RCW 47.10.861 through 47.10.866 ~~((shall))~~ must distinctly state that they are a general obligation of the state of Washington, ~~((shall))~~ must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and ~~((shall))~~ must contain an unconditional promise to pay such principal and interest as the same ~~((shall))~~ becomes due. The principal and interest on the bonds ~~((shall))~~ must be first payable in the manner provided in RCW 47.10.861 through 47.10.866 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter~~((s 82.36 and))~~ 82.38 RCW. Proceeds of these excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.861 through 47.10.866, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.861 through 47.10.866.

**Sec. 627.** RCW 47.10.876 and 2005 c 315 s 4 are each amended to read as follows:

Bonds issued under the authority of RCW 47.10.873 through 47.10.878 ~~((shall))~~ must distinctly state that they are a general obligation of the state of Washington, ~~((shall))~~ must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and ~~((shall))~~ must contain an unconditional promise to pay such principal and interest as the same ~~((shall))~~ becomes due. The principal and interest on the bonds ~~((shall))~~ must be first payable in the manner provided in RCW 47.10.873 through 47.10.878 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter~~((s 82.36 and))~~ 82.38 RCW. Proceeds of these excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of RCW 47.10.873 through 47.10.878, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of RCW 47.10.873 through 47.10.878.

**Sec. 628.** RCW 47.10.883 and 2009 c 498 s 12 are each amended to read as follows:

Bonds issued under the authority of this section and RCW 47.10.879, 47.10.884, and 47.10.885 ~~((shall))~~ must distinctly state that they are a general obligation of the state of Washington, ~~((shall))~~ must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and ~~((shall))~~ must contain an unconditional promise to pay such principal and interest as the same ~~((shall))~~ becomes due. The principal of and interest on the bonds ~~((shall))~~ must be first payable in the manner provided in this section and RCW 47.10.879, 47.10.884, and 47.10.885 from toll revenue and then from proceeds of excise taxes on motor vehicle and special fuels to the extent toll revenue is not available for that purpose. Toll revenue and the state excise taxes on motor vehicle and special fuels imposed by chapter~~((s 82.36 and))~~ 82.38 RCW are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of this section and RCW 47.10.879, 47.10.884, and 47.10.885, and the legislature agrees to continue to impose these toll charges on



the state route number 520 corridor, and on any other eligible toll facility designated by the legislature and on which the imposition of tolls is authorized by the legislature in respect of the bonds, and excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of this section and RCW 47.10.879, 47.10.884, and 47.10.885.

**Sec. 629.** RCW 47.26.404 and 1973 1st ex.s. c 169 s 3 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.26.400 through 47.26.407 ~~((shall))~~ must distinctly state that they are a general obligation of the state of Washington, ~~((shall))~~ must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon and ~~((shall))~~ must contain an unconditional promise to pay such principal and interest as the same ~~((shall))~~ becomes due. The principal of and interest on such bonds ~~((shall))~~ must be first payable in the manner provided in RCW 47.26.400 through 47.26.407 from the proceeds of state excise taxes on motor vehicle fuels imposed by chapter ~~((82.36 RCW and chapter 82.40 RCW))~~ 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.26.400 through 47.26.407, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.26.400 through 47.26.407.

**Sec. 630.** RCW 47.26.424 and 1995 c 274 s 11 are each amended to read as follows:

The first authorization bonds, series II bonds, and series III bonds ~~((shall))~~ must distinctly state that they are a general obligation of the state of Washington, ~~((shall))~~ must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and ~~((shall))~~ must contain an unconditional promise to pay such principal and interest as the same ~~((shall))~~ becomes due. The principal and interest on such bonds ~~((shall))~~ must be first payable in the manner provided in RCW 47.26.420 through 47.26.427, 47.26.425, and 47.26.4254 from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapter ~~((s 82.36 and))~~ 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any such bonds and the interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all such bonds.

**Sec. 631.** RCW 47.26.4252 and 2011 c 120 s 12 are each amended to read as follows:

Any funds required to repay the authorization of series II bonds authorized by RCW 47.26.420, as reenacted by section 3, chapter 5, Laws of 1979, or the interest thereon when due, ~~((shall))~~ must first be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapter ~~((s 82.36 and))~~ 82.38 RCW and which is distributed to the transportation improvement account in the motor vehicle fund pursuant to RCW 46.68.090(2)(e), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420, as

reenacted by section 3, chapter 5, Laws of 1979. If the moneys distributed to the transportation improvement account shall ever be insufficient to repay the first authorization bonds together with interest thereon, and the series II bonds or the interest thereon when due, the amount required to make such payments on such bonds or interest thereon ((shall)) must next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090. Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues which are distributable to the state, counties, cities, and towns, ((shall)) must be repaid from the first moneys distributed to the transportation improvement account not required for redemption of the first authorization bonds or series II and series III bonds or interest on those bond issues.

**Sec. 632.** RCW 47.26.4254 and 2011 c 120 s 13 are each amended to read as follows:

(1) Any funds required to repay series III bonds authorized by RCW 47.26.420, or the interest thereon, when due ((shall)) must first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels imposed by chapter((s 82.36 and)) 82.38 RCW and that is distributed to the transportation improvement account in the motor vehicle fund pursuant to RCW 46.68.090(2)(e), subject, however, to the prior lien of the first authorization of bonds authorized by RCW 47.26.420. If the moneys so distributed to the transportation improvement account, after first being applied to administrative expenses of the transportation improvement board and to the requirements of bond retirement and payment of interest on first authorization bonds and series II bonds as provided in RCW 47.26.425 and 47.26.4252, are insufficient to meet the requirements for bond retirement or interest on any series III bonds, the amount required to make such payments on series III bonds or interest thereon ((shall)) must next be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090, subject, however, to subsection (2) of this section.

(2) To the extent that moneys so distributed to the transportation improvement account are insufficient to meet the requirements for bond retirement or interest on any series III bonds, sixty percent of the amount required to make such payments when due ((shall)) must first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the state. The remaining forty percent ((shall)) must first be taken from that portion of the motor vehicle fund that results from the imposition of excise taxes on motor vehicle and special fuels and that is distributed to the cities and towns pursuant to RCW 46.68.090(2)(g) and to the counties pursuant to RCW 46.68.090(2)(h). Of the counties', cities', and towns' share of any additional amounts required in each fiscal year, the percentage thereof to be taken from the counties' distributive share and from the cities' and towns' distributive share ((shall)) must correspond to the percentage of funds authorized for specific county projects and for specific city and town projects, respectively, from the proceeds of series III bonds, for the period through the first eleven months of the prior fiscal year as determined by

the chair of the transportation improvement board and reported to the state finance committee and the state treasurer not later than the first working day of June.

(3) Any payments on such bonds or interest thereon taken from motor vehicle or special fuel tax revenues that are distributable to the state, counties, cities, and towns ~~((shall))~~ must be repaid from the first moneys distributed to the transportation improvement account not required for redemption of the first authorization bonds, series II bonds, or series III bonds or interest on these bonds.

**Sec. 633.** RCW 47.26.504 and 1995 c 274 s 14 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.26.500 through 47.26.507 ~~((shall))~~ must distinctly state that they are a general obligation of the state of Washington, ~~((shall))~~ must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and ~~((shall))~~ must contain an unconditional promise to pay such principal and interest as the same ~~((shall))~~ becomes due. The principal and interest on such bonds ~~((shall))~~ must be first payable in the manner provided in RCW 47.26.500 through 47.26.507 from the proceeds of state excise taxes on motor vehicle and special fuels imposed by chapter ~~((s 82.36 and))~~ 82.38 RCW. The proceeds of such excise taxes are hereby pledged to the payment of any such bonds and the interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all such bonds.

**Sec. 634.** RCW 47.56.771 and 1999 c 269 s 14 are each amended to read as follows:

(1) The refunding bonds authorized under RCW 47.56.770 ~~((shall))~~ must be general obligation bonds of the state of Washington and ~~((shall))~~ must be issued in a total principal amount not to exceed fifteen million dollars. The exact amount of refunding bonds to be issued ~~((shall))~~ must be determined by the state finance committee after calculating the amount of money deposited with the trustee for the bonds to be refunded which can be used to redeem or defease outstanding toll bridge authority, ferry, and Hood Canal bridge revenue bonds after the setting aside of sufficient money from that fund to pay the first interest installment on the refunding bonds. The refunding bonds ~~((shall))~~ must be serial in form maturing at such time, in such amounts, having such denomination or denominations, redemption privileges, and having such terms and conditions as determined by the state finance committee. The last maturity date of the refunding bonds ~~((shall))~~ may not be later than January 1, 2002.

(2) The refunding bonds ~~((shall))~~ must be signed by the governor and the state treasurer under the seal of the state, which signatures ~~((shall))~~ must be made manually or in printed facsimile. The bonds ~~((shall))~~ must be registered in the name of the owner in accordance with chapter 39.46 RCW. The refunding bonds ~~((shall))~~ must distinctly state that they are a general obligation of the state of Washington, ~~((shall))~~ must pledge the full faith and credit of the state, and ~~((shall))~~ must contain an unconditional promise to pay the principal thereof and the interest thereon when due. The refunding bonds ~~((shall))~~ must be fully negotiable instruments.

(3) The principal and interest on the refunding bonds (~~(shall)~~ must be first payable in the manner provided in this section from the proceeds of state excise taxes on (~~motor vehicle and special~~) fuels imposed by chapter(~~s 82.36 and~~) 82.38 RCW.

(4) The principal of and interest on the refunding bonds (~~(shall)~~ must be paid first from the state excise taxes on motor vehicle and special fuels deposited in the ferry bond retirement fund. There is hereby pledged the proceeds of state excise taxes on motor vehicle and special fuels imposed under chapter(~~s 82.36 and~~) 82.38 RCW to pay the refunding bonds and interest thereon, and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on the refunding bonds. Not less than fifteen days prior to the date any interest or principal and interest payments are due, the state finance committee (~~(shall)~~ must certify to the state treasurer such amount of additional money as may be required for debt service, and the treasurer (~~(shall)~~ must thereupon transfer from the motor vehicle fund such amount from the proceeds of such excise taxes into the ferry bond retirement fund. Any proceeds of such excise taxes required for these purposes (~~(shall)~~ must first be taken from that portion of the motor vehicle fund which results from the imposition of the excise taxes on motor vehicle and special fuels and which is distributed to the Puget Sound capital construction account. If the proceeds from excise taxes distributed to the state are ever insufficient to meet the required payments on principal or interest on the refunding bonds when due, the amount required to make the payments on the principal or interest (~~(shall)~~ must next be taken from that portion of the motor vehicle fund which results from the imposition of excise taxes on motor vehicle and special fuels and which is distributed to the state, counties, cities, and towns pursuant to RCW 46.68.090. Any payments of the principal or interest taken from the motor vehicle or special fuel tax revenues which are distributable to the counties, cities, and towns (~~(shall)~~ must be repaid from the first money distributed to the state not required for redemption of the refunding bonds or interest thereon. The legislature covenants that it (~~(shall)~~ will at all times provide sufficient revenues from the imposition of such excise taxes to pay the principal and interest due on the refunding bonds.

**Sec. 635.** RCW 47.60.580 and 1995 c 274 s 18 are each amended to read as follows:

Bonds issued under the provisions of RCW 47.60.560 (~~(shall)~~ must distinctly state that they are a general obligation of the state of Washington, (~~(shall)~~ must pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and (~~(shall)~~ must contain an unconditional promise to pay such principal and interest as the same (~~(shall)~~ becomes due. The principal of and interest on such bonds (~~(shall)~~ must be first payable in the manner provided in RCW 47.60.560 through 47.60.640 from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapter(~~s 82.36 and~~) 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the provisions of RCW 47.60.560 through 47.60.640 and the legislature hereby agrees to continue to impose the same excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the provisions of RCW 47.60.560 through 47.60.640.

**Sec. 636.** RCW 79A.25.010 and 2007 c 241 s 40 are each amended to read as follows:

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

(1) "Marine recreation land" means any land with or without improvements which (a) provides access to, or in whole or in part borders on, fresh or salt water suitable for recreational use by watercraft, or (b) may be used to create, add to, or make more usable, bodies of water, waterways, or land, for recreational use by watercraft.

(2) "Public body" means any county, city, town, port district, park and recreation district, metropolitan park district, or other municipal corporation which is authorized to acquire or improve public outdoor recreation land, and ~~((shall))~~ also means Indian tribes now or hereafter recognized as such by the federal government for participation in the land and water conservation program.

(3) "Tax on marine fuel" means motor vehicle fuel tax which is (a) tax on fuel used in, or sold or distributed for use in, any watercraft, (b) refundable pursuant to chapter ~~((82.36))~~ 82.38 RCW, and (c) paid to the director of licensing with respect to taxable sales, distributions, or uses occurring on or after December 3, 1964.

(4) "Watercraft" means any boat, vessel, or other craft used for navigation on or through water.

(5) "Board" means the recreation and conservation funding board.

(6) "Director" means the director of the recreation and conservation office.

(7) "Office," "recreation and conservation office," or "the office of recreation and conservation" means the state agency responsible for administration of programs and activities of the recreation and conservation funding board, the salmon recovery funding board, the invasive species council, and such other duties or boards, councils, or advisory groups as are or may be established or directed for administrative placement in the agency.

(8) "Council" means the Washington invasive species council created in RCW 79A.25.310.

**Sec. 637.** RCW 79A.25.040 and 2010 c 23 s 2 are each amended to read as follows:

There is created the marine fuel tax refund account in the state treasury. The director of licensing ~~((shall))~~ must request the state treasurer to refund monthly from the motor vehicle fund an amount equal to one percent of the motor vehicle fuel tax moneys collected during that period. The state treasurer ~~((shall))~~ must refund such amounts and place them in the marine fuel tax refund account to be held for those entitled thereto pursuant to chapter ~~((82.36))~~ 82.38 RCW and RCW 79A.25.050, except that the treasurer may not refund and place in the marine fuel tax refund account more than the greater of the following amounts: (1) An amount equal to two percent of all moneys paid to the treasurer as motor vehicle fuel tax for such period, (2) an amount necessary to meet all approved claims for refund of tax on marine fuel for such period.

**Sec. 638.** RCW 79A.25.050 and 1965 c 5 s 5 are each amended to read as follows:

Claims submitted pursuant to chapter ~~((82.36))~~ 82.38 RCW for refund of tax on marine fuel which has been placed in the marine fuel tax refund account ~~((shall))~~ must, if approved, be paid from that account.

**Sec. 639.** RCW 82.04.4285 and 1998 c 176 s 3 are each amended to read as follows:

In computing tax there may be deducted from the measure of tax so much of the sale price of ~~((motor vehicle))~~ fuel as constitutes the amount of tax imposed by the state under chapter ~~((s 82.36 and))~~ 82.38 RCW or the United States government, under 26 U.S.C., Subtitle D, chapters 31 and 32, upon the sale thereof.

**Sec. 640.** RCW 82.08.0255 and 2011 1st sp.s. c 16 s 4 are each amended to read as follows:

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

(a) The fuel is purchased for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW ~~((82.36.275 or 82.38.080(3)))~~ 82.38.080(1) (f) and (g) or 82.38.180(3)(b); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW ~~((82.36.285 or 82.38.080(1)(h)))~~ 82.38.080(1)(d) or 82.38.180(3)(a); or

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

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

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

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

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

**Sec. 641.** RCW 82.80.010 and 2003 c 350 s 1 are each amended to read as follows:

(1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW ~~((82.36.010 and))~~ 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030.

(2) Subject to the conditions of this section, any county may levy, by approval of its legislative body and a majority of the registered voters of the county voting on the proposition at a general or special election, additional excise taxes equal to ten percent of the statewide motor vehicle fuel tax rate under RCW ~~((82.36.025))~~ 82.38.030 on each gallon of motor vehicle fuel as

defined in RCW (~~(82.36.010)~~) 82.38.020 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the county. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition (~~(shall)~~) must state the tax rate that is proposed. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapter(~~s 82.36 and~~) 82.38 RCW. The proposed tax (~~(shall)~~) may not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section (~~(shall)~~) must be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of a county to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a county (~~(shall)~~) must contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer (~~(shall)~~) must distribute monthly to the levying county and cities contained therein the proceeds of the additional excise taxes collected under this section, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b) and under the conditions and limitations provided in RCW 82.80.080.

(8) The proceeds of the additional excise taxes levied under this section (~~(shall)~~) must be used strictly for transportation purposes in accordance with RCW 82.80.070.

(9) A county may not levy the tax under this section if they are levying the tax in RCW 82.80.110 or if they are a member of a regional transportation investment district levying the tax in RCW 82.80.120.

**Sec. 642.** RCW 82.80.110 and 2003 c 350 s 2 are each amended to read as follows:

(1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW (~~(82.36.010 and)~~) 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030.

(2) For purposes of dedication to a regional transportation investment district plan under chapter 36.120 RCW, subject to the conditions of this section, a county may levy additional excise taxes equal to ten percent of the statewide motor vehicle fuel tax rate under RCW (~~(82.36.025)~~) 82.38.030 on each gallon of motor vehicle fuel as defined in RCW (~~(82.36.010)~~) 82.38.020 and on each gallon of special fuel as defined in RCW (~~(82.38.020)~~) 82.32.020 sold within the boundaries of the county. The additional excise tax is subject to the approval of the county's legislative body and a majority of the registered voters of the county voting on the proposition at a general or special election. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition must state that the revenues from the tax will be used for a regional transportation investment district plan. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapter(~~s 82.36 and~~) 82.38 RCW. The proposed tax may not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section will be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of a county to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a county (~~shall~~) must contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer (~~shall~~) must distribute monthly to the county levying the tax as part of a regional transportation investment plan, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b).

(8) The proceeds of the additional taxes levied by a county in this section, to be used as a part of a regional transportation investment plan, must be used in accordance with chapter 36.120 RCW, but only for those areas that are considered "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.



(9) A county may not levy the tax under this section if they are a member of a regional transportation investment district that is levying the tax in RCW 82.80.120 or the county is levying the tax in RCW 82.80.010.

**Sec. 643.** RCW 82.80.120 and 2010 c 106 s 233 are each amended to read as follows:

(1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW (~~(82.36.010 and)~~) 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030;

(c) "District" means a regional transportation investment district under chapter 36.120 RCW.

(2) A regional transportation investment district under chapter 36.120 RCW, subject to the conditions of this section, may levy additional excise taxes equal to ten percent of the statewide motor vehicle fuel tax rate under RCW (~~(82.36.025)~~) 82.38.030 on each gallon of motor vehicle fuel as defined in RCW (~~(82.36.010)~~) 82.38.020 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the district. The additional excise tax is subject to the approval of a majority of the voters within the district boundaries. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the district's fuel excise tax. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapter(~~s 82.36 and~~) 82.38 RCW. The proposed tax may not be levied less than one month from the date the election results are certified. The commencement date for the levy of any tax under this section will be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of the district to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a district must contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer must distribute monthly to the district levying the tax as part of the regional transportation investment district plan, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b).

(8) The proceeds of the additional taxes levied by a district in this section, to be used as a part of a regional transportation investment district plan, must be

used in accordance with chapter 36.120 RCW, but only for those areas that are considered "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(9) A district may only levy the tax under this section if the district is comprised of boundaries identical to the boundaries of a county or counties. A district may not levy the tax in this section if a member county is levying the tax in RCW 82.80.010 or 82.80.110.

**Sec. 644.** RCW 46.68.080 and 2010 c 161 s 1128 are each amended to read as follows:

(1) Vehicle license fees collected under RCW 46.17.350 and 46.17.355 and fuel taxes collected under RCW (~~(82.36.025(1) and~~) 82.38.030(1) and directly or indirectly paid by the residents of those counties composed entirely of islands and which have neither a fixed physical connection with the mainland nor any state highways on any of the islands of which they are composed, (~~shall~~) must be paid into the motor vehicle fund of the state of Washington and (~~shall~~) must monthly, as they accrue, and after deducting therefrom the expenses of issuing such licenses and the cost of collecting such (~~vehicle~~) fuel tax, be paid to the county treasurer of each such county to be by him or her disbursed as hereinafter provided.

(2) One-half of the vehicle license fees collected under RCW 46.17.350 and 46.17.355 and one-half of the fuel taxes collected under RCW (~~(82.36.025(1) and~~) 82.38.030(1) and directly or indirectly paid by the residents of those counties composed entirely of islands and which have either a fixed physical connection with the mainland or state highways on any of the islands of which they are composed, (~~shall~~) must be paid into the motor vehicle fund of the state of Washington and (~~shall~~) must monthly, as they accrue, and after deducting therefrom the expenses of issuing such licenses and the cost of collecting such (~~motor vehicle~~) fuel tax, be paid to the county treasurer of each such county to be by him or her disbursed as hereinafter provided.

(3) All funds paid to the county treasurer of the counties of either class referred to in subsections (1) and (2) of this section, (~~shall be~~) must be distributed and credited by (~~such~~) the county treasurer (~~(distributed and credited)~~) to the several road districts of each such county and paid to the city treasurer of each incorporated city and town within each such county, in the direct proportion that the assessed valuation of each such road district and incorporated city and town (~~shall~~) bears to the total assessed valuation of each such county.

(4) The amount of motor vehicle fuel tax paid by the residents of those counties composed entirely of islands (~~shall~~) must, for the purposes of this section, be that percentage of the total amount of motor vehicle fuel tax collected in the state that the vehicle license fees paid by the residents of counties composed entirely of islands bears to the total vehicle license fees paid by the residents of the state.

(5)(a) An amount of fuel taxes (~~shall~~) must be deposited into the Puget Sound ferry operations account. This amount (~~shall~~) must equal the difference between the total amount of fuel taxes collected in the state under RCW (~~(82.36.020 and~~) 82.38.030 less the total amount of fuel taxes collected in the state under RCW (~~(82.36.020(1) and~~) 82.38.030(1) and be multiplied by a fraction. The fraction (~~shall~~) must equal the amount of vehicle license fees

collected under RCW 46.17.350 and 46.17.355 from counties described in subsection (1) of this section divided by the total amount of vehicle license fees collected in the state under RCW 46.17.350 and 46.17.355.

(b) An additional amount of fuel taxes (~~(shall)~~ must be deposited into the Puget Sound ferry operations account. This amount (~~(shall)~~ must equal the difference between the total amount of fuel taxes collected in the state under RCW (~~(82.36.020 and)~~ 82.38.030 less the total amount of fuel taxes collected in the state under RCW (~~(82.36.020(1) and)~~ 82.38.030(1) and be multiplied by a fraction. The fraction (~~(shall)~~ must equal the amount of vehicle license fees collected under RCW 46.17.350 and 46.17.355 from counties described in subsection (2) of this section divided by the total amount of vehicle license fees collected in the state under RCW 46.17.350 and 46.17.355, and this (~~(shall)~~ must be multiplied by one-half.

**Sec. 645.** RCW 46.68.090 and 2011 c 120 s 4 are each amended to read as follows:

(1) All moneys that have accrued or may accrue to the motor vehicle fund from the motor vehicle fuel tax and special fuel tax (~~(shall)~~ must be first expended for purposes enumerated in (a) and (b) of this subsection. The remaining net tax amount (~~(shall)~~ must be distributed monthly by the state treasurer in accordance with subsections (2) through (7) of this section.

(a) For payment of refunds of motor vehicle fuel tax and special fuel tax that has been paid and is refundable as provided by law;

(b) For payment of amounts to be expended pursuant to appropriations for the administrative expenses of the offices of state treasurer, state auditor, and the department of licensing of the state of Washington in the administration of the motor vehicle fuel tax and the special fuel tax, which sums (~~(shall)~~ must be distributed monthly.

(2) All of the remaining net tax amount collected under RCW (~~(82.36.025(1) and)~~ 82.38.030(1) (~~(shall)~~ must be distributed as set forth in (a) through (j) of this section.

(a) For distribution to the motor vehicle fund an amount equal to 44.387 percent to be expended for highway purposes of the state as defined in RCW 46.68.130;

(b)(i) For distribution to the special category C account, hereby created in the motor vehicle fund, an amount equal to 3.2609 percent to be expended for special category C projects. Special category C projects are category C projects that, due to high cost only, will require bond financing to complete construction.

(ii) The following criteria, listed in order of priority, (~~(shall)~~ must be used in determining which special category C projects have the highest priority:

((+)) (A) Accident experience;

((+)) (B) Fatal accident experience;

((+)) (C) Capacity to move people and goods safely and at reasonable speeds without undue congestion; and

((+)) (D) Continuity of development of the highway transportation network.

(iii) Moneys deposited in the special category C account in the motor vehicle fund may be used for payment of debt service on bonds the proceeds of which are used to finance special category C projects under this subsection (2)(b);

(c) For distribution to the Puget Sound ferry operations account in the motor vehicle fund an amount equal to 2.3283 percent;

(d) For distribution to the Puget Sound capital construction account in the motor vehicle fund an amount equal to 2.3726 percent;

(e) For distribution to the transportation improvement account in the motor vehicle fund an amount equal to 7.5597 percent;

(f) For distribution to the transportation improvement account in the motor vehicle fund an amount equal to 5.6739 percent and expended in accordance with RCW 47.26.086;

(g) For distribution to the cities and towns from the motor vehicle fund an amount equal to 10.6961 percent in accordance with RCW 46.68.110;

(h) For distribution to the counties from the motor vehicle fund an amount equal to 19.2287 percent: (i) Out of which there ~~((shall))~~ must be distributed from time to time, as directed by the department of transportation, those sums as may be necessary to carry out the provisions of RCW 47.56.725; and (ii) less any amounts appropriated to the county road administration board to implement the provisions of RCW 47.56.725(4), with the balance of such county share to be distributed monthly as the same accrues for distribution in accordance with RCW 46.68.120;

(i) For distribution to the county arterial preservation account, hereby created in the motor vehicle fund an amount equal to 1.9565 percent. These funds ~~((shall))~~ must be distributed by the county road administration board to counties in proportions corresponding to the number of paved arterial lane miles in the unincorporated area of each county and ~~((shall))~~ must be used for improvements to sustain the structural, safety, and operational integrity of county arterials. The county road administration board ~~((shall))~~ must adopt reasonable rules and develop policies to implement this program and to assure that a pavement management system is used;

(j) For distribution to the rural arterial trust account in the motor vehicle fund an amount equal to 2.5363 percent and expended in accordance with RCW 36.79.020.

(3) The remaining net tax amount collected under RCW ~~((82.36.025(2) and))~~ 82.38.030(2) ~~((shall))~~ must be distributed to the transportation 2003 account (nickel account).

(4) The remaining net tax amount collected under RCW ~~((82.36.025(3) and))~~ 82.38.030(3) ~~((shall))~~ must be distributed as follows:

(a) 8.3333 percent ~~((shall))~~ must be distributed to the incorporated cities and towns of the state in accordance with RCW 46.68.110;

(b) 8.3333 percent ~~((shall))~~ must be distributed to counties of the state in accordance with RCW 46.68.120; and

(c) The remainder ~~((shall))~~ must be distributed to the transportation partnership account created in RCW 46.68.290.

(5) The remaining net tax amount collected under RCW ~~((82.36.025(4) and))~~ 82.38.030(4) ~~((shall))~~ must be distributed as follows:

(a) 8.3333 percent ~~((shall))~~ must be distributed to the incorporated cities and towns of the state in accordance with RCW 46.68.110;

(b) 8.3333 percent ~~((shall))~~ must be distributed to counties of the state in accordance with RCW 46.68.120; and

(c) The remainder (~~(shall)~~) must be distributed to the transportation partnership account created in RCW 46.68.290.

(6) The remaining net tax amount collected under (~~RCW 82.36.025 (5) and (6) and~~) 82.38.030 (5) and (6) (~~(shall)~~) must be distributed to the transportation partnership account created in RCW 46.68.290.

(7) Nothing in this section or in RCW 46.68.130 may be construed so as to violate any terms or conditions contained in any highway construction bond issues now or hereafter authorized by statute and whose payment is by such statute pledged to be paid from any excise taxes on motor vehicle fuel and special fuels.

**Sec. 646.** RCW 82.12.0256 and 2011 1st sp.s. c 16 s 5 are each amended to read as follows:

The provisions of this chapter (~~(shall)~~) do not apply in respect to the use of:

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

(2) Motor vehicle and special fuel if:

(a) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW (~~(82.36.275 or 82.38.080(3))~~) 82.38.080(1) (f) and (g) or 82.38.180(3)(b); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW (~~(82.36.285 or 82.38.080(4)(h))~~) 82.38.080(1)(d) or 82.38.180(3)(a); or

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

(d) The fuel is taxable under chapter (~~(82.36 or)~~) 82.38 RCW(~~(= PROVIDED, That)~~). However, the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained (~~(shall)~~) is not (~~(be)~~) exempt under this subsection (2)(d)(~~(7)~~) and the director of licensing (~~(shall)~~) must deduct from the amount of such tax to be refunded the amount of tax due under this chapter and remit the same each month to the department of revenue; or

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

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

NEW SECTION. Sec. 647. RCW 82.38.800, 82.38.900, 82.38.910, 82.38.920, 82.38.930, 82.38.940, 82.38.941 are each decodified.

NEW SECTION. Sec. 648. Part II of this act is to be codified as new sections in chapter 82.38 RCW.

NEW SECTION. Sec. 649. Part IV of this act is to be codified as new sections in chapter 82.42 RCW.

NEW SECTION. Sec. 650. This act takes effect July 1, 2015.

Passed by the House April 22, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 226

[Substitute House Bill 1941]

## TOLLS—CIVIL PENALTIES—ADJUDICATION PROCESS

AN ACT Relating to the adjudication of tolls and accompanying civil penalties; and amending RCW 46.63.160.

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

**Sec. 1.** RCW 46.63.160 and 2011 c 367 s 705 are each amended to read as follows:

(1) This section applies only to civil penalties for nonpayment of tolls detected through use of photo toll systems.

(2) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(3) A notice of civil penalty may be issued by the department of transportation when a toll is assessed through use of a photo toll system and the toll is not paid by the toll payment due date, which is eighty days from the date the vehicle uses the toll facility and incurs the toll charge.

(4) Any registered owner or renter of a vehicle traveling upon a toll facility operated under chapter 47.56 or 47.46 RCW is subject to a civil penalty governed by the administrative procedures set forth in this section when the vehicle incurs a toll charge and the toll is not paid by the toll payment due date, which is eighty days from the date the vehicle uses the toll facility and incurs the toll charge.

(5)(a) Consistent with chapter 34.05 RCW, the department of transportation shall develop an administrative adjudication process to review appeals of civil penalties issued by the department of transportation for toll nonpayment detected through the use of a photo toll system under this section. The department of transportation shall submit to the transportation committees of the legislature an annual report on the number of times adjudicators reduce or dismiss the civil penalty as provided in (b) of this subsection and the total amount of the civil penalties dismissed. The report must be submitted by December 1st of each year.

(b) During the adjudication process, the alleged violator must have an opportunity to explain mitigating circumstances. Hospitalization, a divorce decree or legal separation agreement resulting in a transfer of the vehicle, an active duty member of the military or national guard covered by the federal service members civil relief act, 50 U.S.C. Sec. 501 et seq., or state service members' civil relief act, chapter 38.42 RCW, eviction, homelessness, the death of the alleged violator or of an immediate family member, or if the alleged violator did not receive a toll charge bill or notice of civil penalty are valid mitigating circumstances. All of these reasons that constitute mitigating circumstances must occur within a reasonable time of the alleged toll violation. In response to these circumstances, the adjudicator may reduce or dismiss the civil penalty.

(6) The use of a photo toll system is subject to the following requirements:

(a) Photo toll systems may take photographs, digital photographs, microphotographs, videotapes, or other recorded images of the vehicle and vehicle license plate only.

(b) A notice of civil penalty must include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, videotape, or other recorded images produced by a photo toll system, stating the facts supporting the notice of civil penalty. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding established under subsection (5) of this section. The photographs, digital photographs, microphotographs, videotape, or other recorded images evidencing the toll nonpayment civil penalty must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the civil penalty.

(c) Notwithstanding any other provision of law, all photographs, digital photographs, microphotographs, videotape, other recorded images, or other records identifying a specific instance of travel prepared under this ~~((chapter))~~ section are for the exclusive use of the tolling agency for toll collection and enforcement purposes and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a civil penalty under this ~~((chapter))~~ section. No photograph, digital photograph, microphotograph, videotape, other recorded image, or other record identifying a specific instance of travel may be used for any purpose other than toll collection or enforcement of civil penalties under this section. Records identifying a specific instance of travel by a specific person or vehicle must be retained only as required to ensure payment and enforcement of tolls and to comply with state records retention policies.

(d) All locations where a photo toll system is used must be clearly marked by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where tolls are assessed and enforced by a photo toll system.

(e) Within existing resources, the department of transportation shall conduct education and outreach efforts at least six months prior to activating an all-electronic photo toll system. Methods of outreach shall include a department presence at community meetings in the vicinity of a toll facility, signage, and information published in local media. Information provided shall include notice of when all electronic photo tolling shall begin and methods of payment. Additionally, the department shall provide quarterly reporting on education and outreach efforts and other data related to the issuance of civil penalties.

(f) The envelope containing a toll charge bill or related notice issued pursuant to RCW 47.46.105 or 47.56.795, or a notice of civil penalty issued under this section, must prominently indicate that the contents are time sensitive and related to a toll violation.

(7) Civil penalties for toll nonpayment detected through the use of photo toll systems must be issued to the registered owner of the vehicle identified by the photo toll system, but are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120.

(8) The civil penalty for toll nonpayment detected through the use of a photo toll system is forty dollars plus the photo toll and associated fees.

(9) Except as provided otherwise in this subsection, all civil penalties, including the photo toll and associated fees, collected under this section must be deposited into the toll facility account of the facility on which the toll was assessed. However, through June 30, 2013, civil penalties deposited into the Tacoma Narrows toll bridge account created under RCW 47.56.165 that are in excess of amounts necessary to support the toll adjudication process applicable

to toll collection on the Tacoma Narrows bridge must first be allocated toward repayment of operating loans and reserve payments provided to the account from the motor vehicle account under section 1005(15), chapter 518, Laws of 2007. Additionally, all civil penalties, resulting from nonpayment of tolls on the state route number 520 corridor, shall be deposited into the state route number 520 civil penalties account created under section 4, chapter 248, Laws of 2010 but only if chapter 248, Laws of 2010 is enacted by June 30, 2010.

(10) If the registered owner of the vehicle is a rental car business, the department of transportation shall, before a toll bill is issued, provide a written notice to the rental car business that a toll bill may be issued to the rental car business if the rental car business does not, within thirty days of the mailing of the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the toll was assessed; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the toll was assessed because the vehicle was stolen at the time the toll was assessed. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable toll and fee.

Timely mailing of this statement to the issuing agency relieves a rental car business of any liability under this section for the payment of the toll.

(11) Consistent with chapter 34.05 RCW, the department of transportation shall develop rules to implement this section.

(12) For the purposes of this section, "photo toll system" means the system defined in RCW 47.56.010 and 47.46.020.

Passed by the House April 23, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 227

[Engrossed Substitute House Bill 1968]

### BEFORE AND AFTER-SCHOOL PROGRAMS—LICENSING

AN ACT Relating to licensing standards for before and after-school programs; amending RCW 43.215.210; and creating a new section.

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

**Sec. 1.** RCW 43.215.210 and 2006 c 265 s 302 are each amended to read as follows:

The chief of the Washington state patrol, through the director of fire protection, shall have the power and it shall be his or her duty:

(1) In consultation with the director and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt recognized minimum standard requirements pertaining to each category of agency established pursuant to this chapter necessary to protect all persons residing therein from fire hazards;



(2) To adopt licensing minimum standard requirements to allow children who attend classes in a school building during school hours to remain in the same building to participate in before-school or after-school programs and to allow participation in such before-school and after-school programs by children who attend other schools and are transported to attend such before-school and after-school programs;

(3) To make or cause to be made such inspections and investigations of agencies as he or she deems necessary;

~~((3))~~ (4) To make a periodic review of requirements under RCW 43.215.200(5) and to adopt necessary changes after consultation as required in subsection (1) of this section;

~~((4))~~ (5) To issue to applicants for licenses under this chapter who comply with the requirements, a certificate of compliance, a copy of which shall be presented to the department before a license shall be issued, except that an initial license may be issued as provided in RCW 43.215.280.

**NEW SECTION. Sec. 2.** The chief of the Washington state patrol, through the director of fire protection, shall have the power and it shall be his or her duty to adopt licensing minimum standard requirements for before-school and after-school programs in existing buildings approved by the state fire marshal.

Passed by the House April 22, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 228

[Engrossed Substitute Senate Bill 5082]

### EXCHANGE FACILITATORS—REQUIREMENTS

AN ACT Relating to exchange facilitator requirements; and amending RCW 19.310.010, 19.310.040, 19.310.050, 19.310.080, 19.310.100, 19.310.110, and 19.310.120.

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

**Sec. 1.** RCW 19.310.010 and 2009 c 70 s 2 are each amended to read as follows:

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

(1) A person or entity "affiliated" with a specific person or entity, means a person or entity who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person or entity specified.

(2) "Client" means the taxpayer with whom the exchange facilitator enters into an agreement as described in subsection ~~((3))~~ (4)(a)(i) of this section.

(3) "Covered dishonest act" means a crime involving fraud, embezzlement, misappropriation of funds, robbery, or other theft of property.

(4)(a) "Exchange facilitator" means a person who:

(i)(A) Facilitates, for a fee, an exchange of like-kind property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer's relinquished property located in this state and transfer a replacement property to the taxpayer

as a qualified intermediary, as defined under treasury regulation section 1.1031(k)-1(g)(4); (B) enters into an agreement with a taxpayer to take title to a property in this state as an exchange accommodation titleholder, as defined in internal revenue service revenue procedure 2000-37; or (C) enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3); or

(i) Maintains an office in this state for the purpose of soliciting business as an exchange facilitator.

(b) "Exchange facilitator" does not include:

(i) A taxpayer or a disqualified person, as defined under treasury regulation section 1.1031(k)-1(k), seeking to qualify for the nonrecognition provisions of section 1031 of the internal revenue code of 1986, as amended;

(ii) A financial institution that is (A) acting as a depository for exchange funds and is not facilitating an exchange or (B) acting solely as a qualified escrow holder or qualified trustee, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), and is not facilitating an exchange;

(iii) A title insurance company, underwritten title company, or escrow company that is acting solely as a qualified escrow holder or qualified trustee, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), and is not facilitating an exchange;

(iv) A person that advertises for and teaches seminars or classes, or otherwise makes a presentation, to attorneys, accountants, real estate professionals, tax professionals, or other professionals, when the primary purpose is to teach the professionals about tax-deferred exchanges or to train them to act as exchange facilitators;

(v) A qualified intermediary, as defined under treasury regulation section 1.1031(k)-1(g)(4), who holds exchange funds from the disposition of relinquished property located outside of this state; or

(vi) An affiliated entity that is used by the exchange facilitator to facilitate exchanges or to take title to property in this state as an exchange accommodation titleholder.

(c) For the purposes of this subsection, "fee" means compensation of any nature, direct or indirect, monetary or in kind, that is received by a person or related person, as defined in section 267(b) or 707(b) of the internal revenue code, for any services relating to or incidental to the exchange of like-kind property.

~~((4))~~ (5) "Financial institution" means a state chartered or federally chartered bank, credit union, savings and loan association, savings bank, or trust company (~~chartered under the laws of this state or the United States~~) whose accounts are insured by the full faith and credit of the United States, the federal deposit insurance corporation, the national credit union share insurance fund, or other similar or successor programs.

~~((5))~~ (6) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, or any other form of a legal entity, and includes the agents and employees of that person.

~~((6))~~ (7) "Prudent investor standard" means the standard for investment as described under RCW 11.100.020.

**Sec. 2.** RCW 19.310.040 and 2012 c 34 s 2 are each amended to read as follows:

(1) A person who engages in business as an exchange facilitator must:

(a)(i) Maintain a fidelity bond or bonds in an amount of not less than one million dollars executed by an insurer authorized to do business in this state for the benefit of a client of the exchange facilitator that suffers a direct financial loss as a result of the exchange facilitator's covered dishonest act. Such fidelity bond must cover the acts of employees of an exchange facilitator and owners of a nonpublicly traded exchange facilitator; or

(ii) Deposit all exchange funds in a qualified escrow account or qualified trust, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), with a financial institution. ~~((The qualified escrow account or qualified trust must provide that))~~ If an exchange facilitator deposits exchange funds in a qualified escrow account or qualified trust:

(A) A withdrawal ((from that escrow account or trust)) of exchange funds requires the exchange facilitator and the client to independently authenticate a record, as defined under RCW 62A.9A-102, of the transaction; and

~~((b))~~ (B) The client of the exchange facilitator must receive independently from the depository financial institution, by any commercially reasonable means, a current statement for verification of the deposited exchange funds; and

(b) Disclose on the company web site and contractual agreement the following statement in large, bold, or otherwise conspicuous typeface calculated to draw the eye: "Washington state law, RCW 19.310.040, requires an exchange facilitator to either maintain a fidelity bond in an amount of not less than one million dollars that protects clients against losses caused by criminal acts of the exchange facilitator, or to hold all client funds in a qualified escrow account or qualified trust that requires your consent for withdrawals. All exchange funds must be deposited in a separately identified account using your taxpayer identification number. You must receive written notification of how your exchange funds have been deposited. Your exchange facilitator is required to provide you with written directions of how to independently verify the deposit of the exchange funds. Exchange facilitation services are not regulated by any agency of the state of Washington or of the United States government. It is your responsibility to determine that your exchange funds will be held in a safe manner." If recommending other products or services, the exchange facilitator must disclose to the client that the exchange facilitator may receive a financial benefit, such as a commission or referral fee, as a result of such recommendation. The exchange facilitator must not recommend or suggest to a client the use of services of another organization or business entity in which the exchange facilitator has a direct or indirect interest without full disclosure of such interest at the time of recommendation or suggestion.

(2) An exchange facilitator must provide evidence to each client that the requirements of this section are satisfied before entering into an exchange agreement.

(3) Upon request of a current (3) or prospective client, or the attorney general under chapter 19.86 RCW, the exchange facilitator must offer evidence proving that the requirements of this section are satisfied at the time of the request.

**Sec. 3.** RCW 19.310.050 and 2009 c 70 s 6 are each amended to read as follows:

(1) A person who claims to have sustained damages by reason of the fraudulent act or covered dishonest act((s)) of an exchange facilitator or an exchange facilitator's employee may file a claim on the fidelity bond (~~or approved alternative described in RCW 19.310.040 to recover the damages~~).

(2) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law.

**Sec. 4.** RCW 19.310.080 and 2009 c 70 s 9 are each amended to read as follows:

(1) A person who engages in business as an exchange facilitator shall act as a custodian for all exchange funds, including money, property, other consideration, or instruments received by the exchange facilitator from, or on behalf of, the client, except funds received as the exchange facilitator's compensation. The exchange facilitator shall hold the exchange funds in a manner that provides liquidity and preserves both principal and any earned interest, and if invested, shall invest those exchange funds in investments that meet a prudent investor standard and satisfy investment goals of liquidity and preservation of principal and any earned interest. For purposes of this section, a violation of the prudent investor standard includes, but is not limited to, a transaction in which:

(a) Exchange funds are knowingly commingled by the exchange facilitator with the operating accounts of the exchange facilitator, except that the exchange facilitator's fee may be deposited as part of the exchange transaction into the same account as that containing exchange funds, in which event the exchange facilitator must promptly withdraw the fee;

(b) Exchange funds are loaned or otherwise transferred to any person or entity, other than a financial institution, that is affiliated with or related to the exchange facilitator, except that this subsection (1)(b) does not apply to the transfer of funds from an exchange facilitator to an exchange accommodation titleholder in accordance with an exchange contract;

(c) Exchange funds are invested in a manner that does not provide sufficient liquidity to meet the exchange facilitator's contractual obligations to its clients, unless insufficient liquidity occurs as the result of: (i) Events beyond the prediction or control of the exchange facilitator including, but not limited to, failure of a financial institution; or (ii) an investment specifically requested by the client; or

(d) Exchange funds are invested in a manner that does not preserve the principal of the exchange funds, unless loss of principal occurs as the result of: (i) Events beyond the prediction or control of the exchange facilitator; or (ii) an investment specifically requested by the client.

(2) Exchange funds are not subject to execution or attachment on any claim against the exchange facilitator.

**Sec. 5.** RCW 19.310.100 and 2009 c 70 s 11 are each amended to read as follows:

A person who engages in business as an exchange facilitator shall not, with respect to a like-kind exchange transaction(~~(, knowingly or with criminal negligence)~~):

(1) Make a false, deceptive, or misleading material representation, directly or indirectly, concerning a like-kind transaction;

(2) Make a false, deceptive, or misleading material representation, directly or indirectly, in advertising or by any other means, concerning a like-kind transaction;

(3) Engage in any unfair or deceptive practice toward any person;

(4) Obtain property by fraud or misrepresentation;

(5) Fail to account for any moneys or property belonging to others that may be in the possession or under the control of the exchange facilitator;

(6) Commingle funds held for a client in any account that holds the exchange facilitator's own funds, except as provided in RCW 19.310.080(1)(a);

(7) Loan or otherwise transfer exchange funds to any person or entity, other than a financial institution, that is affiliated with or related to the exchange facilitator, except for the transfer of funds from an exchange facilitator to an exchange accommodation title holder in accordance with an exchange contract;

(8) Keep, or cause to be kept, any money in any bank, credit union, or other financial institution under a name designating the money as belonging to the client of any exchange facilitator, unless that money belongs to that client and was entrusted to the exchange facilitator by that client;

(9) Fail to fulfill its contractual duties to the client to deliver property or funds to the taxpayer in a material way unless such a failure is due to ~~(circumstances beyond the control of the exchange facilitator)~~: (a) Events beyond the prediction or control of the exchange facilitator; or (b) an investment specifically requested by the client;

(10) Commit, including commission by its owners, officers, directors, employees, agents, or independent contractors, any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property;

(11) Fail to make disclosures required by any applicable state law; or

(12) Make any false statement or omission of material fact in connection with any reports filed by an exchange facilitator or in connection with any investigation conducted by the department of financial institutions.

**Sec. 6.** RCW 19.310.110 and 2009 c 70 s 12 are each amended to read as follows:

(1) An exchange facilitator must deposit all client funds in(~~(~~

~~(a) For accounts with a value of five hundred thousand dollars or more,)~~ a separately identified account, as defined in treasury regulation section 1.468B-6(c)(ii), for the particular client or client's matter, and the client must receive all the earnings credited to the separately identified account(~~(~~

~~(b) For accounts with a value less than five hundred thousand dollars, (i) a pooled interest bearing trust account if the client agrees to pooling in writing; or (ii) if the client does not agree to pooling, in a separately identified account, as defined in treasury regulation section 1.468B-6(c)(ii)).~~

(2) An exchange facilitator must provide the client with written notification of how the exchange proceeds have been invested or deposited.

**Sec. 7.** RCW 19.310.120 and 2012 c 34 s 4 are each amended to read as follows:

(1) Failure to fulfill the requirements under RCW 19.310.040 constitutes prima facie evidence that the exchange facilitator intended to defraud a client who suffered a subsequent loss of the asset entrusted to the exchange facilitator.

(2) A person who engages in business as an exchange facilitator and who knowingly violates RCW 19.310.100 (1) through ~~((8))~~ (9) or fails to comply with the requirements under RCW 19.310.040 is guilty of a class B felony under chapter 9A.20 RCW. However, an exchange facilitator is not guilty of a class B felony for failure to comply with the requirements under RCW 19.310.040 if: (a) Failure to comply is due to the cancellation or amendment of the fidelity bond by the bond issuer; and (b) the exchange facilitator:

(i) Within thirty days, takes all reasonable steps to comply with the requirements under RCW 19.310.040; and

(ii) Deposits any new exchange funds into a qualified escrow account or qualified trust until a fidelity bond is obtained that meets the requirements under RCW 19.310.040(1)(a)(i).

Passed by the Senate April 22, 2013.

Passed by the House April 12, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

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## CHAPTER 229

[Senate Bill 5092]

### NURSES—CONTINUING COMPETENCY REQUIREMENTS—EXEMPTION

AN ACT Relating to providing an exemption from continuing competency requirements for registered nurses who seek advanced nursing degrees; and amending RCW 18.79.110.

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

**Sec. 1.** RCW 18.79.110 and 1994 sp.s. c 9 s 411 are each amended to read as follows:

(1) The commission shall keep a record of all of its proceedings and make such reports to the governor as may be required. The commission shall define by rules what constitutes specialized and advanced levels of nursing practice as recognized by the medical and nursing profession. The commission may adopt rules or issue advisory opinions in response to questions put to it by professional health associations, nursing practitioners, and consumers in this state concerning the authority of various categories of nursing practitioners to perform particular acts.

(2) The commission shall approve curricula and shall establish criteria for minimum standards for schools preparing persons for licensing as registered nurses, advanced registered nurse practitioners, and licensed practical nurses under this chapter. The commission shall approve such schools of nursing as meet the requirements of this chapter and the commission, and the commission shall approve establishment of basic nursing education programs and shall establish criteria as to the need for and the size of a program and the type of program and the geographical location. The commission shall establish criteria for proof of reasonable currency of knowledge and skill as a basis for safe practice after three years' inactive or lapsed status. The commission shall establish criteria for licensing by endorsement. The commission shall determine examination requirements for applicants for licensing as registered nurses, advanced registered nurse practitioners, and licensed practical nurses under this chapter, and shall certify to the secretary for licensing duly qualified applicants.

(3) The commission shall adopt rules on continuing competency. The rules must include exemptions from the continuing competency requirements for registered nurses seeking advanced nursing degrees. Nothing in this subsection prohibits the commission from providing additional exemptions for any person credentialed under this chapter who is enrolled in an advanced education program.

(4) The commission shall adopt such rules under chapter 34.05 RCW as are necessary to fulfill the purposes of this chapter.

(5) The commission is the successor in interest of the board of nursing and the board of practical nursing. All contracts, undertakings, agreements, rules, regulations, decisions, orders, and policies of the former board of nursing or the board of practical nursing continue in full force and effect under the commission until the commission amends or rescinds those rules, regulations, decisions, orders, or policies.

(6) The members of the commission are immune from suit in an action, civil or criminal, based on its disciplinary proceedings or other official acts performed in good faith as members of the commission.

(7) Whenever the workload of the commission requires, the commission may request that the secretary appoint pro tempore members of the commission. When serving, pro tempore members of the commission have all of the powers, duties, and immunities, and are entitled to all of the emoluments, including travel expenses, of regularly appointed members of the commission.

Passed by the Senate April 23, 2013.

Passed by the House April 17, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 230

[Engrossed Substitute Senate Bill 5153]

### REGIONAL SUPPORT NETWORKS—TRANSFERS

AN ACT Relating to strengthening families by allowing transfers between regional support networks to be closer to relatives or other strong personal supports; and adding a new section to chapter 71.24 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 71.24 RCW to read as follows:

The regional support networks shall jointly develop a uniform transfer agreement to govern the transfer of clients between regional support networks. By September 1, 2013, the regional support networks shall submit the uniform transfer agreement to the department. By December 1, 2013, the department shall establish guidelines to implement the uniform transfer agreement and may modify the uniform transfer agreement as necessary to avoid impacts on state administrative systems.

Passed by the Senate April 22, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 14, 2013.  
Filed in Office of Secretary of State May 14, 2013.

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## CHAPTER 231

[Substitute Senate Bill 5180]

### HIGHER EDUCATION—STUDENTS WITH DISABILITIES

AN ACT Relating to improving access to higher education for students with disabilities; creating new sections; and providing an expiration date.

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

**NEW SECTION. Sec. 1.** The legislature finds that postsecondary education helps individuals to become productive and contributing members of society, and that individuals with disabilities are equally benefited by obtaining postsecondary education. The legislature also finds that students with disabilities face a disproportionate number of challenges when transitioning to postsecondary education, and that people who have disabilities are less than half as likely to have a baccalaureate degree compared to people who do not have a disability. The legislature finds it is incumbent upon the state to address these challenges in order to provide all students in Washington state with an equal opportunity to pursue a successful future.

In calling together a diverse group of experts from throughout the state, the legislature intends to develop recommendations that will directly increase the success rate for students with disabilities who are transitioning from secondary to postsecondary education, which are distinctively different parts of the educational system.

**NEW SECTION. Sec. 2.** (1) A legislative task force on improving access to higher education for students with disabilities is established.

(2) The task force must collaborate to carry out the following goals:

(a) Make the transition from K-12 education to higher education more seamless and successful;

(b) Select a statewide method of sharing best practices between and among K-12 education institutions and postsecondary education institutions;

(c) Review documentation of disabilities at postsecondary education institutions, including developing resources for how school districts, in collaboration with students and their families, can get disability documentation applicable for postsecondary education institutions completed before a student's high school graduation; and

(d) Create a plan for how school districts and postsecondary education institutions can improve outreach to students and their families regarding available options in higher education.

(3) The task force must consist of not more than twenty-nine members and must include the following members:

(a) Seven members appointed by the governor as follows:

(i) Four private citizens with experience advocating and providing services for students with disabilities, at least one of whom must currently be or who in the past was a parent of a student with a disability, at least one of whom must be a current student at a postsecondary education institution in Washington, and at



least one of whom must have experience advocating for veterans with disabilities; and

(ii) Three representatives from nonprofit organizations focused on advocating for citizens with disabilities or providing services for citizens with disabilities, or both;

(b) Eight members appointed by the office of the superintendent of public instruction as follows:

(i) Two representatives from the office of the superintendent of public instruction;

(ii) Two representatives from educational service districts; and

(iii) Four representatives from local school districts that have high concentrations of students with disabilities enrolled in the district;

(c) Four members appointed by the state board for community and technical colleges as follows:

(i) One representative from the state board for community and technical colleges; and

(ii) Three representatives from public community or technical colleges;

(d) Four members appointed by the council of presidents, including one representative from the council and three representatives from a regional university as defined in RCW 28B.10.016;

(e) One member appointed by the superintendent of the state school for the blind, from the state school for the blind;

(f) One member appointed by the secretary of the department of social and health services, from the department of social and health services;

(g) One member appointed by the executive secretary of the governor's committee on disability issues and employment, from the governor's committee on disability issues and employment;

(h) One member appointed by the chair of the developmental disabilities council, from the developmental disabilities council;

(i) One member appointed by the superintendent of the state school for the deaf, from the state school for the deaf; and

(j) One member appointed by the workforce training and education coordinating board, from the workforce training and education coordinating board.

(4) The purpose of the task force is to make recommendations to the legislature and to coordinate and implement the goals in subsection (2) of this section.

(5)(a) When making the recommendations regarding subsection (2)(a) of this section, the task force must consider:

(i) How to ensure students' interests, goals, and strengths guide the transition planning process;

(ii) How to enable collaboration and communication between and among schools, institutions of higher education, and relevant state agencies to provide an effective transition;

(iii) How assessment and disability documentation that is acceptable to postsecondary institutions should best be determined and obtained;

(iv) How to identify the types of supports and accommodations that students will need in postsecondary environments;

(v) How students can plan their high school coursework to sufficiently prepare for the higher education environment; and

(vi) If a statewide database of student disability accommodation equipment, software, and resources owned by school districts and postsecondary education institutions should be created to assist students' educational transitions and, if created, what public entity is best suited to be responsible for the creation, maintenance, and the scope of that database.

(b) When making recommendations regarding subsection (2)(c) of this section, the task force is encouraged to consider:

(i) What should constitute a proper and complete documentation of a disability;

(ii) How recently the documentation must have been completed; and

(iii) Which testing information, if any, must be included in the documentation.

(6) The student achievement council must provide staff support to the task force within existing funds. The task force is encouraged to use technology to expand access and limit costs.

(7) The task force shall report its recommendations for each goal to the legislature by December 1, 2013, and annually each December 1st thereafter until expiration of the task force.

(8) This section expires January 1, 2016.

Passed by the Senate March 4, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 232

[Substitute Senate Bill 5182]

### MOTOR VEHICLES—OWNER INFORMATION—DISCLOSURE

AN ACT Relating to the disclosure of vehicle owner information; reenacting and amending RCW 46.12.635; and providing an effective date.

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

**Sec. 1.** RCW 46.12.635 and 2005 c 340 s 2 and 2005 c 274 s 304 are each reenacted and amended to read as follows:

(1) Notwithstanding the provisions of chapter 42.56 RCW, the name or address of an individual vehicle owner shall not be released by the department, county auditor, or agency or firm authorized by the department except under the following circumstances:

(a) The requesting party is a business entity that requests the information for use in the course of business;

(b) The request is a written request that is signed by the person requesting disclosure that contains the full legal name and address of the requesting party, that specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the party promises that the party will use the information only for the purpose stated in the request for the information; and that the party does not intend to use, or facilitate the use of, the information for the purpose of

making any unsolicited business contact with a person named in the disclosed information. The term "unsolicited business contact" means a contact that is intended to result in, or promote, the sale of any goods or services to a person named in the disclosed information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.

(2) Where both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests for disclosure from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

(3) The disclosing entity shall retain the request for disclosure for three years.

(4)(a) Whenever the disclosing entity grants a request for information under this section by an attorney or private investigator, the disclosing entity shall provide notice to the vehicle owner, to whom the information applies, that the request has been granted. ~~((The notice also shall contain the name and address of the requesting party-))~~ The notice must only include: (i) That the disclosing entity has disclosed the vehicle owner's name and address pursuant to a request made under this section; (ii) the date that the disclosure was made; and (iii) that the vehicle owner has five days from receipt of the notice to contact the disclosing entity to determine the occupation of the requesting party.

(b) Except as provided in (c) of this subsection, the only information about the requesting party that the disclosing entity may disclose in response to a request made by a vehicle owner under (a) of this subsection is whether the requesting party was an attorney or private investigator. The request by the vehicle owner must be submitted to the disclosing entity within five days of receipt of the original notice.

(c) In the case of a vehicle owner who submits to the disclosing entity a copy of a valid court order restricting another person from contacting the vehicle owner or his or her family or household member, the disclosing entity shall provide the vehicle owner with the name and address of the requesting party.

(5) Any person who is furnished vehicle owner information under this section shall be responsible for assuring that the information furnished is not used for a purpose contrary to the agreement between the person and the department.

(6) This section shall not apply to requests for information by governmental entities or requests that may be granted under any other provision of this title expressly authorizing the disclosure of the names or addresses of vehicle owners.

(7) This section shall not apply to title history information under RCW 19.118.170.

(8) The department shall charge a fee of two dollars for each record returned pursuant to a request made by a business entity under subsection (1) of this section and deposit the fee into the highway safety account.

NEW SECTION. Sec. 2. This act takes effect January 1, 2014.

Passed by the Senate March 7, 2013.  
 Passed by the House April 17, 2013.  
 Approved by the Governor May 14, 2013.  
 Filed in Office of Secretary of State May 14, 2013.

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## CHAPTER 233

[Second Substitute Senate Bill 5197]

### K-12 SCHOOLS—SECURITY

AN ACT Relating to safe school buildings; amending RCW 28A.335.010; adding a new section to chapter 28A.320 RCW; adding a new section to chapter 28A.300 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28A.320 RCW to read as follows:

School districts must work collaboratively with local law enforcement agencies and school security personnel to develop an emergency response system using evolving technology to expedite the response and arrival of law enforcement in the event of a threat or emergency at a school. School districts are encouraged to use the model policies developed by the school safety advisory committee of the office of the superintendent of public instruction as a resource. Each school district must submit a progress report on its implementation of an emergency response system as required under this section to the office of the superintendent of public instruction by December 1, 2014.

Sec. 2. RCW 28A.335.010 and 1969 ex.s. c 223 s 28A.58.102 are each amended to read as follows:

(1) Every board of directors, unless otherwise specifically provided by law, shall:

~~((4))~~ (a) Cause all school buildings to be properly heated, lighted, and ventilated and maintained in a clean and sanitary condition; and

~~((2))~~ (b) Maintain and repair, furnish, and insure such school buildings.

(2) Every board of directors, unless otherwise specifically provided by law, shall also:

(a) Consider installing a perimeter security control mechanism or system on all school campuses, as appropriate to the design of the campus; and

(b) For new school construction projects or remodeling projects of more than forty percent of an existing school building that are initiated after the effective date of this section, consider school building plans and designs that promote:

(i) An optimal level of security for the specific school site that incorporates evolving technology and best practices to protect students and staff in the event of a threat during school hours;

(ii) Direct control and observation of the public entering school grounds; and

(iii) The public entering school grounds through as few entrances as possible, such as through the main entrance of a school's administrative offices.

(3) The purpose of subsection (2) of this section is to promote generally the safety of all students and staff in Washington public schools. Nothing in subsection (2) of this section creates any civil liability for school districts, or

creates a new cause of action or new theory of negligence against a school district board of directors, a school district, or the state.

**NEW SECTION. Sec. 3.** (1) The school safety advisory committee convened by the office of the superintendent of public instruction shall develop model policies and strategies for school districts and local law enforcement agencies to design emergency response systems using evolving technology to expedite the response and arrival of law enforcement in the event of a threat or emergency at a school. The committee shall develop policies and strategies appropriate for a range of different threat or emergency scenarios.

(2)(a) The school safety advisory committee shall also develop recommendations related to incorporating school safety features in the planning and design of new or remodeled school facilities. The recommendations shall address, at a minimum:

- (i) Options to address public access to school buildings and grounds;
- (ii) Interior design features to address public access to classrooms; and
- (iii) Options and best practices to protect students and staff in the event of a threat during school hours.

(b) The recommendations shall consider and provide flexibility regarding varying campus designs, geographic locations, site-specific needs, grade-level configurations, cost-effectiveness, and coordination with local law enforcement in a manner suitable to the locale.

(3) The school safety advisory committee shall submit a report to the education committees of the legislature by December 1, 2013, and post the report, model policies and recommendations developed under this section, and other resource information to assist school districts on the school safety center web site.

**NEW SECTION. Sec. 4.** A new section is added to chapter 28A.300 RCW to read as follows:

Subject to funds appropriated specifically for this purpose, the office of the superintendent of public instruction shall allocate grants to school districts on a competitive basis for the purpose of implementing emergency response systems using evolving technology to expedite the response and arrival of law enforcement in the event of a threat or emergency at a school.

Passed by the Senate April 19, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 234

[Substitute Senate Bill 5396]

### SPIRITS SAMPLING

AN ACT Relating to limited on-premise spirits sampling; 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 holder of a spirits retail license that is also a participant in the responsible vendor program, created under RCW 66.24.630, may provide, free or for a charge, single-serving samples of one-half ounce or less of spirits, and no more than a total of one and one-half ounces in spirits samples per person, for the purpose of sale promotion. Servers who provide spirit samples must hold a class 12 alcohol server permit. Sampling conducted under this section must be conducted in accordance with rules established for sampling activities in beer and wine specialty shops and grocery stores.

(2) Sampling activities under this section are subject to RCW 66.28.305 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, distiller, or distributor of spirits.

Passed by the Senate March 13, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 235

[Substitute Senate Bill 5444]

### PROPERTY ASSESSMENTS—PUBLICLY OWNED PROPERTY

AN ACT Relating to administration of taxes regarding publicly owned property; and amending RCW 84.40.045, 84.40.175, and 82.29A.120.

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

**Sec. 1.** RCW 84.40.045 and 2001 c 187 s 19 are each amended to read as follows:

(1) The assessor ~~((shall))~~ must give notice of any change in the true and fair value of real property for the tract or lot of land and any improvements thereon no later than thirty days after appraisal ~~((= PROVIDED, That))~~. However, no such notice ~~((shall))~~ may be mailed during the period from January 15<sup>th</sup> to February 15<sup>th</sup> of each year ~~((= PROVIDED FURTHER, That))~~. Furthermore, no notice need be sent with respect to changes in valuation of publicly owned property exempt from taxation under provisions of RCW 84.36.010 or of forest land made pursuant to chapter 84.33 RCW.

(2) The notice ~~((shall))~~ must contain a statement of both the prior and the new true and fair value, stating separately land and improvement values, and a brief statement of the procedure for appeal to the board of equalization and the time, date, and place of the meetings of the board.

(3) The notice ~~((shall))~~ must be mailed by the assessor to the taxpayer.

(4) If any taxpayer, as shown by the tax rolls, holds solely a security interest in the real property which is the subject of the notice, pursuant to a mortgage, contract of sale, or deed of trust, such taxpayer ~~((shall))~~ must, upon written request of the assessor, supply, within thirty days of receipt of such request, to the assessor the name and address of the person making payments pursuant to the mortgage, contract of sale, or deed of trust, and thereafter such person ~~((shall))~~ must also receive a copy of the notice provided for in this section. Willful failure to comply with such request within the time limitation provided for ~~((herein shall make))~~ in this section makes such taxpayer subject to a maximum civil penalty of five thousand dollars. The penalties provided for

~~((herein shall be))~~ in this section are recoverable in an action by the county prosecutor, and when recovered ~~((shall))~~ must be deposited in the county current expense fund. The assessor ~~((shall))~~ must make the request provided for by this section during the month of January.

**Sec. 2.** RCW 84.40.175 and 1994 c 124 s 24 are each amended to read as follows:

At the time of making the assessment of real property, the assessor ~~((shall))~~ must enter each description of property exempt under the provisions of chapter 84.36 RCW, and value and list the same in the manner and subject to the same rule as the assessor is required to assess all other property, designating in each case to whom such property belongs. ~~((However, with respect to publicly owned))~~ The valuation requirements of this section do not apply to property exempt from taxation under provisions of RCW 84.36.010~~((, the assessor shall value only such property as is leased to or occupied by a private person under an agreement allowing such person to occupy or use such property for a private purpose when a request for such valuation is received from the department of revenue or the lessee of such property for use in determining the taxable rent as provided for in chapter 82.29A RCW: PROVIDED FURTHER, That this section shall not prohibit any assessor from valuing any public property leased to or occupied by a private person for private purposes))~~ However, when the exempt status of such property no longer applies as a result of a sale or change in use, the assessor must value and list such property as of the January 1st assessment date for the year of the status change. The owner or person responsible for payment of taxes may thereafter petition the county board of equalization for a change in the assessed value in accordance with the timing and procedures set forth in RCW 84.40.038.

**Sec. 3.** RCW 82.29A.120 and 1994 c 95 s 2 are each amended to read as follows:

After computation of the taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040 ~~((there shall be allowed the following credits in determining the tax payable:~~

~~(1) With respect to a leasehold interest other than a product lease, executed with an effective date of April 1, 1986, or thereafter, or a leasehold interest in respect to which the department of revenue under the authority of RCW 82.29A.020 does adjust the contract rent base used for computing the tax provided for in RCW 82.29A.030, there shall be allowed a credit against the tax as otherwise computed equal to the amount, if any, that such tax exceeds the property tax that would apply to such leased property without regard to any property tax exemption under RCW 84.36.381, if it were privately owned by the lessee or if it were privately owned by any sublessee if the value of the credit inures to the sublessee-)), the following credits are allowed in determining the tax payable:~~

(1) For lessees and sublessees who would qualify for a property tax exemption under RCW 84.36.381 if the property were privately owned, the tax otherwise due after this credit shall be reduced by a percentage equal to the percentage reduction in property tax that would result from the property tax exemption under RCW 84.36.381((-); and

(2) (~~With respect to a product lease,~~) A credit of thirty-three percent of the tax otherwise due is allowed with respect to a product lease.

Passed by the Senate March 12, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 236

[Senate Bill 5593]

### PROPERTY TAX EXEMPTIONS—CONSERVATION DISTRICTS

AN ACT Relating to filing requirements for property tax exemption claims for certain improvements to benefit fish and wildlife habitat, water quality, or water quantity; and amending RCW 84.36.255.

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

**Sec. 1.** RCW 84.36.255 and 1997 c 295 s 2 are each amended to read as follows:

(1) All improvements to real and personal property that benefit fish and wildlife habitat, water quality, or water quantity are exempt from taxation if the improvements are included under a written conservation plan approved by a conservation district. The conservation districts (~~shall~~) must cooperate with the federal natural resource conservation service, other conservation districts, the department of ecology, the department of fish and wildlife, and nonprofit organizations to assist landowners by working with them to obtain approved conservation plans so as to qualify for the exemption provided for in this section. As provided in subsection (3) of this section and RCW 89.08.440(2), a conservation district (~~shall~~) must initially certify that the best management practice benefits fish and wildlife habitat, water quality, or water quantity. A habitat conservation plan under the terms of the federal endangered species act (~~shall~~) is not (~~be~~) considered a conservation plan for purposes of this exemption.

(2) The exemption (~~shall~~) remains in effect only if improvements identified in the written best management practices agreement are maintained as originally approved or amended. Improvements made as a requirement to mitigate for impacts to fish and wildlife habitat, water quality, or water quantity are not eligible for exemption under this section.

(3) A claim for exemption under this section (~~may~~) must be filed annually with the county assessor (~~at any time~~) on or before October 31st during the year for exemption from taxes levied for collection in the following year when submitted on forms prescribed by the department of revenue developed in consultation with the conservation district. The landowner (~~shall~~) must certify each subsequent year that the improvements for which exemption is sought are maintained as originally approved or amended in the written conservation plan. In the first filing year, the claim must contain the initial certification by the conservation district that the improvements for which exemption is sought were included under a written conservation plan approved by the conservation district including best management practices that benefit fish and wildlife habitat, water quality, or water quantity. Each subsequent filing year, the claim must contain a



copy of the conservation district's initial certification made in the first filing year, along with the landowner's own certification for the current filing year.

Passed by the Senate February 20, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

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## CHAPTER 237

[Engrossed Senate Bill 5607]

### BEER, WINE, SPIRITS—THEATER LICENCES

AN ACT Relating to beer, wine, and spirits theater licenses; amending RCW 66.20.300 and 66.20.310; adding a new section to chapter 66.24 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 66.24 RCW to read as follows:

(1) There is a theater license to sell spirits, beer, including strong beer, or wine, or all, at retail, for consumption on theater premises. A spirits, beer, and wine theater license may be issued only to theaters that have no more than one hundred twenty seats per screen and that are maintained in a substantial manner as a place for preparing, cooking, and serving complete meals and providing tabletop accommodations for in-theater dining. Requirements for complete meals are the same as those adopted by the board in rules pursuant to chapter 34.05 RCW for a spirits, beer, and wine restaurant license authorized by RCW 66.24.400. The annual fee for a spirits, beer, and wine theater license is two thousand dollars.

(2) If the theater premises is to be frequented by minors, an alcohol control plan must be submitted to the board at the time of application. The alcohol control plan must be approved by the board and be prominently posted on the premises, prior to minors being allowed.

(3) For the purposes of this section:

(a) "Alcohol control plan" means a written, dated, and signed plan submitted to the board by an applicant or licensee for the entire theater premises, or rooms or areas therein, that shows where and when alcohol is permitted, where and when minors are permitted, and the control measures used to ensure that minors are not able to obtain alcohol or be exposed to environments where drinking alcohol predominates.

(b) "Theater" means a place of business where motion pictures or other primarily nonparticipatory entertainment are shown.

(4) The board must adopt rules regarding alcohol control plans and necessary control measures to ensure that minors are not able to obtain alcohol or be exposed to areas where drinking alcohol predominates. All alcohol control plans must include a requirement that any person involved in the serving of spirits, beer, and/or wine must have completed a mandatory alcohol server training program.

(5)(a) A licensee that is an entity that is exempt from taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended as of January 1, 2013, may enter into arrangements with a spirits, beer, or wine

manufacturer, importer, or distributor for brand advertising at the theater or promotion of events held at the theater. The financial arrangements providing for the brand advertising or promotion of events may not be used as an inducement to purchase the products of the manufacturer, importer, or distributor entering into the arrangement and such arrangements may not result in the exclusion of brands or products of other companies.

(b) The arrangements allowed under this subsection (5) are an exception to arrangements prohibited under RCW 66.28.305. The board must monitor the impacts of these arrangements. The board may conduct audits of a licensee and the affiliated business to determine compliance with this subsection (5). Audits may include, but are not limited to: Product selection at the facility; purchase patterns of the licensee; contracts with the spirits, beer, or wine manufacturer, importer, or distributor; and the amount allocated or used for spirits, beer, or wine advertising by the licensee, affiliated business, manufacturer, importer, or distributor under the arrangements.

(6) The maximum penalties prescribed by the board in WAC 314-29-020 relating to fines and suspensions are double for violations involving minors or the failure to follow the alcohol control plan with respect to theaters licensed under this section.

**Sec. 2.** RCW 66.20.300 and 2011 c 325 s 5 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout RCW 66.20.310 through 66.20.350 unless the context clearly requires otherwise.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person who as part of his or her employment participates in the sale or service of alcoholic beverages for on-premise consumption at a retail licensed premise as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any:

(a) Premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by this section and RCW 66.20.310, 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, ((and)) 66.24.610, and section 1 of this act;

(b) Distillery licensed pursuant to RCW 66.24.140 that is authorized to serve samples of its own production;

(c) Facility established by a domestic winery for serving and selling wine pursuant to RCW 66.24.170(4); and

(d) Grocery store licensed under RCW 66.24.360, but only with respect to employees whose duties include serving during tasting activities under RCW 66.24.363.

**Sec. 3.** RCW 66.20.310 and 2011 c 325 s 4 are each amended to read as follows:

(1)(a) There (~~shall be~~) is an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There (~~shall be~~) is an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every alcohol server employed, under contract or otherwise, at a retail licensed premise (~~shall~~) must be issued a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued (~~shall~~) must be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder (~~shall~~) must present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit (~~shall be~~) is valid for employment at any retail licensed premises described in (a) of this subsection.

(c) Except as provided in (d) of this subsection, no licensee holding a license as authorized by this section and RCW 66.20.300, 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, 66.24.570, 66.24.600, (~~and~~) 66.24.610, and section 1 of this act may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor (~~shall~~) must have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who

does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350, except for employees whose duties include serving during tasting activities under RCW 66.24.363.

Passed by the Senate April 28, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 238

[Senate Bill 5674]

### BEER AND WINE—SAMPLING—FARMERS MARKETS

AN ACT Relating to wine and beer sampling at farmers markets; amending RCW 66.24.170 and 66.24.244; adding a new section to chapter 66.24 RCW; and repealing 2011 c 62 s 1 (uncodified).

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) A qualifying farmers market authorized to allow wineries to sell bottled wine at retail under RCW 66.24.170 or microbreweries to sell bottled beer at retail under RCW 66.24.244, or both, may apply to the liquor control board for an endorsement to allow sampling of wine or beer or both. A winery or microbrewery offering samples under this section must have an endorsement from the board to sell wine or beer, as the case may be, of its own production at a qualifying farmers market under RCW 66.24.170 or 66.24.244, respectively.

(2) Samples may be offered only under the following conditions:

(a) No more than three wineries or microbreweries combined may offer samples at a qualifying farmers market per day.

(b) Samples must be two ounces or less. A winery or microbrewery may provide a maximum of two ounces of wine or beer to a customer per day.

(c) A winery or microbrewery may advertise that it offers samples only at its designated booth, stall, or other designated location at the farmers market.

(d) Customers must remain at the designated booth, stall, or other designated location while sampling beer or wine.

(e) Winery and microbrewery licensees and employees who are involved in sampling activities under this section must hold a class 12 or class 13 alcohol server permit.

(f) A winery or microbrewery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.

(3) The board may establish additional requirements to ensure that persons under twenty-one years of age and apparently intoxicated persons may not possess or consume alcohol under the authority granted in this section.

(4) The board may prohibit sampling at a farmers market that is within the boundaries of an alcohol impact area recognized by resolution of the board if the board finds that the sampling activities at the farmers market have an adverse effect on the reduction of chronic public inebriation in the area.

(5) If a winery or microbrewery is found to have committed a public safety violation in conjunction with tasting activities, the board may suspend the licensee's farmers market endorsement and not reissue the endorsement for up to two years from the date of the violation. If mitigating circumstances exist, the board may offer a monetary penalty in lieu of suspension during a settlement conference.

(6) For the purposes of this section, a "qualifying farmers market" has the same meaning as defined in RCW 66.24.170. However, if a farmers market does not satisfy RCW 66.24.170(5)(g)(i)(B), which requires that the total combined gross annual sales of vendors who are farmers exceed the total combined gross annual sales of vendors who are processors or resellers, a farmers market is still considered a "qualifying farmers market" if the total combined gross annual sales of vendors at the farmers market is one million dollars or more.

**Sec. 2.** RCW 66.24.170 and 2009 c 373 s 4 are each amended to read as follows:

(1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a retailer of wine of its own production. Any domestic winery licensed under this section may act as a distributor of its own production. Notwithstanding any language in this title to the contrary, a domestic winery may use a common carrier to deliver up to one hundred cases of its own production, in the aggregate, per month to licensed Washington retailers. A domestic winery may not arrange for any such common carrier shipments to licensed retailers of wine not of its own production. Except as provided in this section, any winery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a winery operating as a distributor may maintain a warehouse off the premises of the winery for the distribution of wine of its own production provided that: (a) The warehouse has been approved by the board under RCW 66.24.010; and (b) the number of warehouses off the premises of the winery does not exceed one.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, and sell wine of its own production at retail, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does not exceed two; (c) a winery may not act as a distributor at any such additional location; and (d) any person selling or serving wine at an additional location for

on-premise consumption must obtain a class 12 or class 13 alcohol server permit. Each additional location is deemed to be part of the winery license for the purpose of this title. At additional locations operated by multiple wineries under this section, if the board cannot connect a violation of RCW 66.44.200 or 66.44.270 to a single licensee, the board may hold all licensees operating the additional location jointly liable. Nothing in this subsection shall be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars. An endorsement issued pursuant to this subsection does not count toward the two additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. The approved locations under an endorsement granted under this subsection ~~((do not))~~ include ~~((the))~~ tasting or sampling privileges ((of a winery)) subject to the conditions pursuant to section 1 of this act. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale

of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license.

**Sec. 3.** RCW 66.24.244 and 2011 c 195 s 5 are each amended to read as follows:

(1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery licensed under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers, except that a microbrewery operating as a distributor may maintain a warehouse off the premises of the microbrewery for the distribution of beer provided that (a) the warehouse has been approved by the board under RCW 66.24.010 and (b) the number of warehouses off the premises of the microbrewery does not exceed one. A microbrewery holding a spirits, beer, and wine restaurant license may sell beer of its own production for off-premises consumption from its restaurant premises in kegs or in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the licensee at the time of sale.

(3) Any microbrewery licensed under this section may also sell beer produced by another microbrewery or a domestic brewery for on and off-premises consumption from its premises as long as the other breweries' brands

do not exceed twenty-five percent of the microbrewery's on-tap offering of its own brands.

(4) The board may issue up to two retail licenses allowing a microbrewery to operate an on or off-premise tavern, beer and/or wine restaurant, or spirits, beer, and wine restaurant.

(5) A microbrewery that holds a tavern license, spirits, beer, and wine restaurant license, or a beer and/or wine restaurant license shall hold the same privileges and endorsements as permitted under RCW 66.24.320, 66.24.330, and 66.24.420.

(6)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) Any person selling or serving beer must obtain a class 12 or class 13 alcohol server permit.

(d) The beer sold at qualifying farmers markets must be produced in Washington.

~~((d))~~ (e) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection (6) ~~((do not constitute the))~~ include tasting or sampling privileges ~~((of a microbrewery))~~ subject to the conditions pursuant to section 1 of this act. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

~~((e))~~ (f) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (6) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection ~~((e))~~ (f) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

~~((f))~~ (g) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

~~((g))~~ (h) For the purposes of this subsection (6):



(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(7) Any microbrewery licensed under this section may contract-produce beer for another microbrewer. This contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

NEW SECTION. Sec. 4. 2011 c 62 s 1 (uncodified) is repealed.

Passed by the Senate April 23, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 239

[Substitute Senate Bill 5705]

### PROPERTY TAXES—REFUNDS AND ABATEMENTS—TAXING DISTRICTS

AN ACT Relating to amounts received by taxing districts from property tax refunds and abatements; amending RCW 84.69.180, 84.56.020, and 84.56.070; and creating a new section.

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

**Sec. 1.** RCW 84.69.180 and 2009 c 350 s 10 are each amended to read as follows:

(1) Taxing districts other than the state may levy a tax upon all the taxable property within the district for the purpose of:

((+)) (a) Funding refunds paid or to be paid under this chapter, except for refunds under RCW 84.69.020(1), including interest, as ordered by the county treasurer or county legislative authority within the preceding twelve months; and

((=)) (b) Reimbursing the taxing district for taxes abated (~~under RCW 84.70.010~~) or cancelled, offset by any supplemental taxes collected under this

title, other than amounts collected under RCW 84.52.018 within the preceding twelve months. This subsection ~~((2))~~ (1)(b) only applies to abatements and cancellations that do not require a refund under this chapter. Abatements and cancellations that require a refund are included within the scope of (a) of this subsection ~~((1) of this section))~~.

(2) As provided in RCW 84.55.070, the provisions of chapter 84.55 RCW do not apply to a levy made by or for a taxing district under this section.

**NEW SECTION. Sec. 2.** The legislature finds that it is difficult for many property owners to pay property taxes under the current system where past due property tax payments must be paid in full, including penalties and interest. The legislature further finds that providing counties and property owners some flexibility in structuring past due property tax payments may provide some relief for property owners with delinquent tax payments.

**Sec. 3.** RCW 84.56.020 and 2010 c 200 s 1 are each amended to read as follows:

(1) The county treasurer must 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. No treasurer may accept tax payments or issue receipts for the same until the treasurer has completed the tax roll for the current year's collection and provided notification of the completion of the roll. Notification may be accomplished electronically, by posting a notice in the office, or through other written communication as determined by the treasurer. All taxes upon real and personal property made payable by the provisions of this title are 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.

(2) Each tax statement must include a notice that checks for payment of taxes may be made payable to "Treasurer of . . . . County" or other appropriate office, but tax statements may 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.

(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 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 is due and payable on or before the thirty-first day of October following and shall be delinquent after that date.

(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 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 tax payable for that year, the remainder of such tax is due and payable on or before the thirty-first day of October following and is delinquent after that date.

(5) Except as provided in (c) of this subsection, 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 must 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 is assessed on the tax delinquent on June 1st of the year in which the tax is due.

(b) An additional penalty of eight percent is assessed on the amount of tax delinquent on December 1st of the year in which the tax is due.

(c) If a taxpayer is successfully participating in a payment agreement under subsection (11)(b) of this section, the county treasurer may not assess additional penalties on delinquent taxes that are included within the payment agreement. Interest and penalties that have been assessed prior to the payment agreement remain due and payable as provided in the payment agreement.

(6)(a) When real property taxes become delinquent and prior to the filing of the certificate of delinquency, the treasurer is authorized to assess and collect tax foreclosure avoidance costs.

(b) For the purposes of this section, "tax foreclosure avoidance costs" means those costs that can be identified specifically with the administration of properties subject to and prior to foreclosure. Tax foreclosure avoidance costs include:

(i) Compensation of employees for the time devoted and identified specifically to administering the avoidance of property foreclosure; and

(ii) The cost of materials, services, or equipment acquired, consumed, or expended specifically for the purpose of administering tax foreclosure avoidance prior to the filing of a certificate of delinquency.

(c) When tax foreclosure avoidance costs are collected, the tax foreclosure avoidance costs must be credited to the county treasurer service fund account, except as otherwise directed.

(d) For purposes of chapter 84.64 RCW, any taxes, interest, or penalties deemed delinquent under this section remain delinquent until such time as all taxes, interest, and penalties for the tax year in which the taxes were first due and payable have been paid in full.

(7) Subsection (5) of this section notwithstanding, no interest or penalties may be assessed during any period of armed conflict on delinquent taxes imposed on the personal residences owned by active duty military personnel who are participating as part of one of the branches of the military involved in the conflict and assigned to a duty station outside the territorial boundaries of the United States.

~~((7))~~ (8) During a state of emergency declared under RCW 43.06.010(12), the county treasurer, on his or her own motion or at the request of any taxpayer affected by the emergency, may grant extensions of the due date of any taxes payable under this section as the treasurer deems proper.

~~((8))~~ (9) For purposes of this chapter, "interest" means both interest and penalties.

~~((9))~~ (10) All collections of interest on delinquent taxes must 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, must, when collected, be credited to the operation and maintenance fund of the county treasurer prosecuting the foreclosure or distraint or sale; and must 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.

~~((4))~~ (11)(a) For purposes of this chapter, and in accordance with this section and RCW 36.29.190, the treasurer may collect taxes, assessments, fees, rates, interest, and charges by electronic bill presentment and payment. Electronic bill presentment and payment may be utilized as an option by the taxpayer, but the treasurer may not require the use of electronic bill presentment and payment. Electronic bill presentment and payment may be on a monthly or other periodic basis as the treasurer deems proper for ~~((prepayments))~~ delinquent tax year payments only or for prepayments of current tax. All prepayments must be paid in full by the due date specified in (c) of this subsection. Payments on past due taxes must include collection of the oldest delinquent year, which includes interest and taxes within a twelve-month period, prior to filing a certificate of delinquency under chapter 84.64 RCW or distraint pursuant to RCW 84.56.070.

(b) The treasurer must provide, by electronic means or otherwise, a payment agreement that ~~((may include prepayment collection charges. The payment agreement must be signed by the taxpayer and treasurer prior to the sending of an electronic bill))~~ provides for payment of current year taxes, inclusive of prepayment collection charges. The treasurer may provide, by electronic means or otherwise, a payment agreement for payment of past due delinquencies, which must also require current year taxes to be paid timely. The payment agreement must be signed by the taxpayer and treasurer prior to the sending of an electronic or alternative bill, which includes a payment plan for current year taxes.

(c) All taxes upon real and personal property made payable by the provisions of this title are due and payable to the treasurer on or before the thirtieth day of April and are delinquent after that date. The remainder of the tax is due and payable on or before the thirty-first day of October following and is delinquent after that date. All other assessments, fees, rates, and charges are delinquent after the due date.

(d) A county treasurer may authorize payment of past due property taxes, penalties, and interest under this chapter by electronic funds transfer payments on a monthly basis. Delinquent taxes are subject to interest and penalties, as provided in subsection (5) of this section.

(e) The treasurer must pay any collection costs, investment earnings, or both on past due payments or prepayments to the credit of a county treasurer service fund account to be created and used only for the payment of expenses incurred by the treasurer, without limitation, in administering the system for collecting prepayments.

~~((4))~~ (12) For purposes of this section unless the context clearly requires otherwise, the following definitions apply:

(a) "Electronic bill presentment and payment" means statements, invoices, or bills that are created, delivered, and paid using the internet. The term includes an automatic electronic payment from a person's checking account, debit account, or credit card.

(b) "Internet" has the same meaning as provided in RCW 19.270.010.

**Sec. 4.** RCW 84.56.070 and 2009 c 350 s 2 are each amended to read as follows:

(1) The county treasurer (~~shall~~) must proceed to collect all personal property taxes after first completing the tax roll for the current year's collection.

(2) The treasurer (~~shall~~) must give notice by mail to all persons charged with personal property taxes, and if such taxes are not paid before they become delinquent, the treasurer (~~shall forthwith proceed to collect the same~~) must commence delinquent collection efforts. A delinquent collection charge for costs incurred by the treasurer may be added to the account.

(3) In the event that (~~he or she~~) the treasurer is unable to collect the (~~same~~) taxes when due under this section, the treasurer (~~shall~~) must prepare papers in distraint, which (~~shall~~) must contain a description of the personal property, the amount of taxes, the amount of the accrued interest at the rate provided by law from the date of delinquency, and the name of the owner or reputed owner.

(a) The treasurer (~~shall~~) must without demand or notice distraint sufficient goods and chattels belonging to the person charged with such taxes to pay the same, with interest at the rate provided by law from the date of delinquency, together with all accruing costs, and (~~shall~~) must proceed to advertise the same by posting written notices in three public places in the county in which such property has been distrained, one of which places (~~shall~~) must be at the county courthouse, such notice to state the time when and place where such property will be sold.

(b) The county treasurer, or the treasurer's deputy, (~~shall~~) must tax the same fees for making the distraint and sale of goods and chattels for the payment of taxes as are allowed by law to sheriffs for making levy and sale of property on execution; traveling fees to be computed from the county seat of the county to the place of making distraint.

(c) If the taxes for which such property is distrained, and the interest and costs accruing thereon, are not paid before the date appointed for such sale, which (~~shall be~~) may not be less than ten days after the taking of such property, such treasurer or treasurer's designee (~~shall~~) must proceed to sell such property at public auction, or so much thereof as (~~shall be~~) is sufficient to pay such taxes, with interest and costs, and if there be any excess of money arising from the sale of any personal property, the treasurer (~~shall~~) must pay such excess less any cost of the auction to the owner of the property so sold or to his or her legal representative(~~(: PROVIDED, That whenever it shall become)~~).

(d) If necessary to distraint any standing timber owned separately from the ownership of the land upon which the same may stand, or any fish trap, pound net, reef net, set net, or drag seine fishing location, or any other personal property as the treasurer (~~shall~~) determines to be incapable or reasonably impracticable of manual delivery, it (~~shall be~~) is deemed to have been distrained and taken into possession when the treasurer (~~shall have~~) has, at least thirty days before the date fixed for the sale thereof, filed with the auditor of the county wherein such property is located a notice in writing reciting that the treasurer has distrained such property, describing it, giving the name of the owner or reputed owner, the amount of the tax due, with interest, and the time and place of sale(~~(:)~~). A copy of the notice (~~shall~~) must also be sent to the owner or reputed owner at his or her last known address, by registered letter at least thirty days prior to the date of sale(~~(: AND PROVIDED FURTHER, That)~~).

(e) If the county treasurer has reasonable grounds to believe that any personal property, including mobile homes, manufactured homes, or park model trailers, upon which taxes have been levied, but not paid, is about to be removed from the county where the same has been assessed, or is about to be destroyed, sold, or disposed of, the county treasurer may demand such taxes, without the notice provided for in this section, and if necessary may (~~forthwith~~) distrain sufficient goods and chattels to pay the same.

Passed by the Senate April 28, 2013.

Passed by the House April 25, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 240

[Senate Bill 5806]

### PROPERTY TAXES—OBSOLETE PROVISION

AN ACT Relating to repealing an obsolete provision for a credit against property taxes paid on timber on public land; creating a new section; and repealing RCW 84.33.077.

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

**NEW SECTION. Sec. 1.** The legislature intends to repeal an unused and obsolete tax credit provision relating to property taxes paid on timber on public lands. The legislature finds that repealing this unused and obsolete crediting provision will clean up the statutes and reduce taxpayer confusion. The current statute provides a credit for property taxes paid on privately owned timber standing on public land; however, since 2005, privately owned timber standing on public land has been exempt from the property tax. Therefore, because no new tax credits could have been earned under RCW 84.33.077 since 2005, the legislature finds that the statute is obsolete and should be repealed.

**NEW SECTION. Sec. 2.** RCW 84.33.077 (Credit for property taxes paid on timber on public land) and 1984 c 204 s 21 & 1983 1st ex.s. c 62 s 8 are each repealed.

Passed by the Senate March 13, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 14, 2013.

Filed in Office of Secretary of State May 14, 2013.

## CHAPTER 241

[Substitute House Bill 1472]

### K-12 SCHOOLS—COMPUTER SCIENCE EDUCATION

AN ACT Relating to initiatives to improve and expand access to computer science education; amending RCW 28A.230.097; and creating a new section.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that:

(a) Through such initiatives as grants for high-demand career and technical education programs and participation in the Microsoft IT academy, the state has previously supported K-12 computer science education;

(b) However, even though there were nearly sixty-five thousand student enrollments in high school computer science courses in the 2011-12 school year, more than half of those enrollments were in beginning or exploratory courses. Fewer than twelve hundred students enrolled in AP computer science courses;

(c) National studies of K-12 computer science education indicate that, in part because computer science is not treated as an academic subject, students may not perceive advanced computer science as relevant to their future academic or career success;

(d) Public institutions of higher education have expanded capacity to grant certificates and degrees in computer science and related fields in response to high employer demand and high student demand. Additional expansion and improvement will be dependent on new resources, updated equipment, and the availability of expert faculty;

(e) Information technology job vacancies exist at all levels of training and education and across all industries that are critical to Washington's economy; and

(f) Strategies are needed to support additional opportunities for Washington students to have careers in the innovative, technology-based or technology-enhanced industries located in our state.

(2) Therefore the legislature intends to take additional steps to improve and expand access to computer science education, particularly in advanced courses that could prepare students for careers in the field.

**Sec. 2.** RCW 28A.230.097 and 2008 c 170 s 202 are each amended to read as follows:

(1) Each high school or school district board of directors shall adopt course equivalencies for career and technical high school courses offered to students in high schools and skill centers. A career and technical course equivalency may be for whole or partial credit. Each school district board of directors shall develop a course equivalency approval procedure. Boards of directors must approve AP computer science courses as equivalent to high school mathematics or science, and must denote on a student's transcript that AP computer science qualifies as a math-based quantitative course for students who take the course in their senior year. In order for a board to approve AP computer science as equivalent to high school mathematics, the student must be concurrently enrolled in or have successfully completed algebra II.

(2) Career and technical courses determined to be equivalent to academic core courses, in full or in part, by the high school or school district shall be accepted as meeting core requirements, including graduation requirements, if the courses are recorded on the student's transcript using the equivalent academic high school department designation and title. Full or partial credit shall be recorded as appropriate. The high school or school district shall also issue and keep record of course completion certificates that demonstrate that the career and technical courses were successfully completed as needed for industry certification, college credit, or preapprenticeship, as applicable. The certificate shall be either part of the student's high school and beyond plan or the student's culminating project, as determined by the student. The office of the superintendent of public instruction shall develop and make available electronic samples of certificates of course completion.

Passed by the House April 22, 2013.  
 Passed by the Senate April 16, 2013.  
 Approved by the Governor May 14, 2013.  
 Filed in Office of Secretary of State May 15, 2013.

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## CHAPTER 242

[Engrossed Second Substitute House Bill 1134]

### SUPERINTENDENT OF PUBLIC INSTRUCTION— STATE-TRIBAL EDUCATION COMPACTS

AN ACT Relating to state-tribal education compact schools; amending RCW 49.60.400 and 84.52.0531; adding a new section to chapter 28A.642 RCW; adding a new chapter to Title 28A RCW; 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:

(a) American Indian and Alaska Native students make up 2.5 percent of the total student population in the state and twenty-five percent or more of the student population in fifty-seven schools across the state.

(b) American Indian students in Washington have the highest annual drop-out rate at 9.5 percent, compared to 4.6 percent of all students in each of grades nine through twelve. Of the students expected to graduate in 2010 because they entered the ninth grade in 2006, the American Indian on-time graduation rate was only fifty-eight percent, compared to 76.5 percent of all students.

(c) The teaching of American Indian language, culture, and history are important to American Indian people and critical to the educational attainment and achievement of American Indian children.

(d) The state-tribal education compacts authorized under this chapter reaffirm the state's important commitment to government-to-government relationships with the tribes that has been recognized by proclamation, and in the centennial accord and the millennium agreement. These state-tribal education compacts build upon the efforts highlighted by the office of the superintendent of public instruction in its 2012 Centennial Accord Agency Highlights, including: The Since Time Immemorial (STI): Tribal Sovereignty in Washington State Curriculum Project that imbeds the history surrounding sovereignty and intergovernmental responsibilities into this state's classrooms; the agency's regular meetings with the superintendents of the seven current tribal schools, as well as the federal bureau of Indian education representatives at the regional and national level on issues relating to student academic achievement, accessing of funding for tribal schools, and connecting tribal schools to the K-20 network; and the recent establishment, in statute, of the office of native education within the office of the superintendent of public instruction.

(e) School funding should honor tribal sovereignty and reflect the government-to-government relationship between the state and the tribes, however the current structure that requires negotiation of an interlocal agreement between a school district and a tribal school ignores tribal sovereignty and results in a siphoning of funds for administration that could be better used for teaching and learning.

(2) The legislature further finds that:



(a) There is a preparation gap among entering kindergartners with many children, especially those from low-income homes, arriving at kindergarten without the knowledge, skills, and good health necessary to succeed in school;

(b) Upon entry into the K-12 school system, the educational opportunity gap becomes more evident, with children of color and from low-income homes having lower scores on math, reading, and writing standardized tests, as well as lower graduation rates and higher rates of dropping out of school; and

(c) Comprehensive, culturally competent early learning and greater collaboration between the early learning and K-12 school systems will ensure appropriate connections and smoother transitions for children, and help eliminate or bridge gaps that might otherwise develop.

(3) In light of these findings, it is the intent and purpose of the legislature to authorize the superintendent of public instruction to enter into state-tribal education compacts.

**NEW SECTION. Sec. 2.** (1) The superintendent of public instruction is authorized to enter into state-tribal education compacts.

(2) No later than six months after the effective date of this section, the superintendent of public instruction shall establish an application and approval process, procedures, and timelines for the negotiation, approval or disapproval, and execution of state-tribal education compacts.

(3) The process may be initiated by submission, to the superintendent of public instruction, of a resolution by:

(a) The governing body of a tribe in the state of Washington; or

(b) The governing body of any of the schools in Washington that are currently funded by the federal bureau of Indian affairs, whether directly or through a contract or compact with an Indian tribe or a tribal consortium.

(4) The resolution must be accompanied by an application that indicates the grade or grades from kindergarten through twelve that will be offered and that demonstrates that the school will be operated in compliance with all applicable laws, the rules adopted thereunder, and the terms and conditions set forth in the application.

(5) Within ninety days of receipt of a resolution and application under this section, the superintendent must convene a government-to-government meeting for the purpose of considering the resolution and application and initiating negotiations.

(6) State-tribal education compacts must include provisions regarding:

(a) Compliance;

(b) Notices of violation;

(c) Dispute resolution, which may include nonjudicial processes such as mediation;

(d) Recordkeeping and auditing;

(e) The delineation of the respective roles and responsibilities;

(f) The term or length of the contract, and whether or not it is renewable; and

(g) Provisions for compact termination.

(7) The superintendent of public instruction shall adopt such rules as are necessary to implement this chapter.

**NEW SECTION. Sec. 3.** (1) A school that is the subject of a state-tribal education compact must operate according to the terms of its compact executed in accordance with section 2 of this act.

(2) Schools that are the subjects of state-tribal education compacts are exempt from all state statutes and rules applicable to school districts and school district boards of directors, except those statutes and rules made applicable under this chapter and in the state-tribal education compact executed under section 2 of this act.

(3) Each school that is the subject of a state-tribal education compact must:

(a) Provide a curriculum and conduct an educational program that satisfies the requirements of RCW 28A.150.200 through 28A.150.240 and 28A.230.010 through 28A.230.195;

(b) Employ certificated instructional staff as required in RCW 28A.410.010, however such schools may hire noncertificated instructional staff of unusual competence and in exceptional cases as specified in RCW 28A.150.203(7);

(c) Comply with the employee record check requirements in RCW 28A.400.303 and the mandatory termination and notification provisions of RCW 28A.400.320, 28A.400.330, 28A.405.470, and 28A.405.475;

(d) Comply with nondiscrimination laws;

(e) Adhere to generally accepted accounting principles and be subject to financial examinations and audits as determined by the state auditor, including annual audits for legal and fiscal compliance; and

(f) Be subject to and comply with legislation enacted after the effective date of this section governing the operation and management of schools that are the subject of a state-tribal education compact.

(4) No such school may engage in any sectarian practices in its educational program, admissions or employment policies, or operations.

(5) Nothing in this chapter may limit or restrict any enrollment or school choice options otherwise available under Title 28A RCW.

**NEW SECTION. Sec. 4.** (1) A school that is the subject of a state-tribal education compact may not charge tuition except to the same extent as school districts may be permitted to do so with respect to out-of-state and adult students pursuant to chapter 28A.225 RCW, but may charge fees for participation in optional extracurricular events and activities.

(2) Such schools may not limit admission on any basis other than age group, grade level, or capacity and must otherwise enroll all students who apply.

(3) If capacity is insufficient to enroll all students who apply, a school that is the subject of a state-tribal education compact may prioritize the enrollment of tribal members and siblings of already enrolled students.

**NEW SECTION. Sec. 5.** (1) A school that is the subject of a state-tribal education compact must report student enrollment. Reporting must be done in the same manner and use the same definitions of enrolled students and annual average full-time equivalent enrollment as is required of school districts. The reporting requirements in this subsection are required for a school to receive state or federal funding that is allocated based on student characteristics.

(2) Funding for a school that is the subject of a state-tribal education compact shall be apportioned by the superintendent of public instruction according to the schedule established under RCW 28A.510.250, including

general apportionment, special education, categorical, and other nonbasic education moneys. Allocations for certificated instructional staff must be based on the average staff mix ratio of the school, as calculated by the superintendent of public instruction using the statewide salary allocation schedule and related documents, conditions, and limitations established by the omnibus appropriations act. Allocations for classified staff and certificated administrative staff must be based on the salary allocations of the school district in which the school is located, subject to conditions and limitations established by the omnibus appropriations act. Nothing in this section requires a school that is the subject of a state-tribal education compact to use the statewide salary allocation schedule. Such a school is eligible to apply for state grants on the same basis as a school district.

(3) Any moneys received by a school that is the subject of a state-tribal education compact from any source that remain in the school's accounts at the end of any budget year must remain in the school's accounts for use by the school during subsequent budget years.

**NEW SECTION. Sec. 6.** A new section is added to chapter 28A.642 RCW to read as follows:

Nothing in this chapter prohibits schools established under chapter 28A.—RCW (the new chapter created in section 9 of this act) from:

- (1) Implementing a policy of Indian preference in employment; or
- (2) Prioritizing the admission of tribal members where capacity of the school's programs or facilities is not as large as demand.

**Sec. 7.** RCW 49.60.400 and 1999 c 3 s 1 are each amended to read as follows:

(1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

(2) This section applies only to action taken after December 3, 1998.

(3) This section does not affect any law or governmental action that does not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin.

(4) This section does not affect any otherwise lawful classification that:

(a) Is based on sex and is necessary for sexual privacy or medical or psychological treatment; or

(b) Is necessary for undercover law enforcement or for film, video, audio, or theatrical casting; or

(c) Provides for separate athletic teams for each sex.

(5) This section does not invalidate any court order or consent decree that is in force as of December 3, 1998.

(6) This section does not prohibit action that must be taken to establish or maintain eligibility for any federal program, if ineligibility would result in a loss of federal funds to the state.

(7) Nothing in this section prohibits schools established under chapter 28A.—RCW (the new chapter created in section 9 of this act) from:

(a) Implementing a policy of Indian preference in employment; or

(b) Prioritizing the admission of tribal members where capacity of the school's programs or facilities is not as large as demand.

(8) For the purposes of this section, "state" includes, but is not necessarily limited to, the state itself, any city, county, public college or university, community college, school district, special district, or other political subdivision or governmental instrumentality of or within the state.

~~((8))~~ (9) The remedies available for violations of this section shall be the same, regardless of the injured party's race, sex, color, ethnicity, or national origin, as are otherwise available for violations of Washington antidiscrimination law.

~~((9))~~ (10) This section shall be self-executing. If any part or parts of this section are found to be in conflict with federal law, the United States Constitution, or the Washington state Constitution, the section shall be implemented to the maximum extent that federal law, the United States Constitution, and the Washington state Constitution permit. Any provision held invalid shall be severable from the remaining portions of this section.

**Sec. 8.** RCW 84.52.0531 and 2012 1st sp.s. c 10 s 8 are each amended to read as follows:

The maximum dollar amount which may be levied by or for any school district for maintenance and operation support under the provisions of RCW 84.52.053 shall be determined as follows:

(1) For excess levies for collection in calendar year 1997, the maximum dollar amount shall be calculated pursuant to the laws and rules in effect in November 1996.

(2) For excess levies for collection in calendar year 1998 and thereafter, the maximum dollar amount shall be the sum of (a) plus or minus (b), (c), and (d) of this subsection minus (e) of this subsection:

(a) The district's levy base as defined in subsections (3) and (4) of this section multiplied by the district's maximum levy percentage as defined in subsection ~~((6))~~ (7) of this section;

(b) For districts in a high/nonhigh relationship, the high school district's maximum levy amount shall be reduced and the nonhigh school district's maximum levy amount shall be increased by an amount equal to the estimated amount of the nonhigh payment due to the high school district under RCW 28A.545.030(3) and 28A.545.050 for the school year commencing the year of the levy;

(c) Except for nonhigh districts under (d) of this subsection, for districts in an interdistrict cooperative agreement, the nonresident school district's maximum levy amount shall be reduced and the resident school district's maximum levy amount shall be increased by an amount equal to the per pupil basic education allocation included in the nonresident district's levy base under subsection (3) of this section multiplied by:

(i) The number of full-time equivalent students served from the resident district in the prior school year; multiplied by:

(ii) The serving district's maximum levy percentage determined under subsection ~~((6))~~ (7) of this section; increased by:

(iii) The percent increase per full-time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year divided by fifty-five percent;

(d) The levy bases of nonhigh districts participating in an innovation academy cooperative established under RCW 28A.340.080 shall be adjusted by the office of the superintendent of public instruction to reflect each district's proportional share of student enrollment in the cooperative;

(e) The district's maximum levy amount shall be reduced by the maximum amount of state matching funds for which the district is eligible under RCW 28A.500.010.

(3) For excess levies for collection in calendar year 2005 and thereafter, a district's levy base shall be the sum of allocations in (a) through (c) of this subsection received by the district for the prior school year and the amounts determined under subsection (4) of this section, including allocations for compensation increases, plus the sum of such allocations multiplied by the percent increase per full time equivalent student as stated in the state basic education appropriation section of the biennial budget between the prior school year and the current school year and divided by fifty-five percent. A district's levy base shall not include local school district property tax levies or other local revenues, or state and federal allocations not identified in (a) through (c) of this subsection.

(a) The district's basic education allocation as determined pursuant to RCW 28A.150.250, 28A.150.260, and 28A.150.350;

(b) State and federal categorical allocations for the following programs:

(i) Pupil transportation;

(ii) Special education;

(iii) Education of highly capable students;

(iv) Compensatory education, including but not limited to learning assistance, migrant education, Indian education, refugee programs, and bilingual education;

(v) Food services; and

(vi) Statewide block grant programs; and

(c) Any other federal allocations for elementary and secondary school programs, including direct grants, other than federal impact aid funds and allocations in lieu of taxes.

(4) For levy collections in calendar years 2005 through 2017, in addition to the allocations included under subsection (3)(a) through (c) of this section, a district's levy base shall also include the following:

(a)(i) For levy collections in calendar year 2010, the difference between the allocation the district would have received in the current school year had RCW 84.52.068 not been amended by chapter 19, Laws of 2003 1st sp. sess. and the allocation the district received in the current school year pursuant to RCW 28A.505.220;

(ii) For levy collections in calendar years 2011 through 2017, the allocation rate the district would have received in the prior school year using the Initiative 728 rate multiplied by the full-time equivalent student enrollment used to calculate the Initiative 728 allocation for the prior school year; and

(b) The difference between the allocations the district would have received the prior school year using the Initiative 732 base and the allocations the district actually received the prior school year pursuant to RCW 28A.400.205.

(5) For levy collections in calendar years 2011 through 2017, in addition to the allocations included under subsections (3)(a) through (c) and (4)(a) and (b)

of this section, a district's levy base shall also include the difference between an allocation of fifty-three and two-tenths certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through four enrolled in the prior school year and the allocation of certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through four that the district actually received in the prior school year, except that the levy base for a school district whose allocation in the 2009-10 school year was less than fifty-three and two-tenths certificated instructional staff units per thousand full-time equivalent students in grades kindergarten through four shall include the difference between the allocation the district actually received in the 2009-10 school year and the allocation the district actually received in the prior school year.

(6) For levy collections beginning in calendar year 2014 and thereafter, in addition to the allocations included under subsections (3)(a) through (c), (4)(a) and (b), and (5) of this section, a district's levy base shall also include the funds allocated by the superintendent of public instruction under section 5 of this act to a school that is the subject of a state-tribal education compact and that formerly contracted with the school district to provide educational services through an interlocal agreement and received funding from the district.

(7)(a) A district's maximum levy percentage shall be twenty-four percent in 2010 and twenty-eight percent in 2011 through 2017 and twenty-four percent every year thereafter;

(b) For qualifying districts, in addition to the percentage in (a) of this subsection the grandfathered percentage determined as follows:

(i) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(ii) For 2011 through 2017, the percentage calculated as follows:

(A) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(B) Reduce the result of (b)(ii)(A) of this subsection by any levy reduction funds as defined in subsection ~~((7))~~ (8) of this section that are to be allocated to the district for the current school year;

(C) Divide the result of (b)(ii)(B) of this subsection by the district's levy base; and

(D) Take the greater of zero or the percentage calculated in (b)(ii)(C) of this subsection.

~~((7))~~ (8) "Levy reduction funds" shall mean increases in state funds from the prior school year for programs included under subsections (3) and (4) of this section: (a) That are not attributable to enrollment changes, compensation increases, or inflationary adjustments; and (b) that are or were specifically identified as levy reduction funds in the appropriations act. If levy reduction funds are dependent on formula factors which would not be finalized until after the start of the current school year, the superintendent of public instruction shall estimate the total amount of levy reduction funds by using prior school year data in place of current school year data. Levy reduction funds shall not include moneys received by school districts from cities or counties.

~~((8))~~ (9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(b) "Current school year" means the year immediately following the prior school year.

(c) "Initiative 728 rate" means the allocation rate at which the student achievement program would have been funded under chapter 3, Laws of 2001, if all annual adjustments to the initial 2001 allocation rate had been made in previous years and in each subsequent year as provided for under chapter 3, Laws of 2001.

(d) "Initiative 732 base" means the prior year's state allocation for annual salary cost-of-living increases for district employees in the state-funded salary base as it would have been calculated under chapter 4, Laws of 2001, if each annual cost-of-living increase allocation had been provided in previous years and in each subsequent year.

~~((9))~~ (10) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

~~((10))~~ (11) The superintendent of public instruction shall develop rules and inform school districts of the pertinent data necessary to carry out the provisions of this section.

~~((11))~~ (12) For calendar year 2009, the office of the superintendent of public instruction shall recalculate school district levy authority to reflect levy rates certified by school districts for calendar year 2009.

**NEW SECTION. Sec. 9.** Sections 1 through 5 of this act constitute a new chapter in Title 28A RCW.

**NEW SECTION. Sec. 10.** Section 8 of this act expires January 1, 2018.

Passed by the House April 18, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

## CHAPTER 243

[Engrossed Substitute House Bill 1717]

### LOCAL GOVERNMENTS—ENVIRONMENTAL PLANNING AND REVIEW— WATER AND SEWER CONSTRUCTION

AN ACT Relating to incentivizing up-front environmental planning, review, and infrastructure construction actions; amending RCW 82.02.020; reenacting and amending RCW 35.91.020; adding a new section to chapter 43.21C RCW; adding a new section to chapter 35.91 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 43.21C RCW to read as follows:

(1) A county, city, or town may recover its reasonable expenses of preparation of a nonproject environmental impact statement prepared under RCW 43.21C.229 and 43.21C.440:

- (a) Through access to financial assistance under RCW 36.70A.490;
- (b) With funding from private sources; and

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

(2)(a) A county, city, or town is authorized to assess a fee upon subsequent development that will make use of and benefit from: (i) The analysis in an environmental impact statement prepared for the purpose of compliance with RCW 43.21C.440 regarding planned actions; or (ii) the reduction in environmental analysis requirements resulting from the exercise of authority under RCW 43.21C.229 regarding infill development.

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

(c) Counties, cities, and towns are not authorized by this section to assess fees for general comprehensive plan amendments or updates.

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

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

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

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

(7) The county, city, or town shall refund fees collected where a court of competent jurisdiction determines that the environmental review conducted under RCW 43.21C.440, regarding planned actions, or under RCW 43.21C.229, regarding infill development, was not sufficient to comply with the requirements of this chapter regarding the proposed development activity for which the fees were collected. The applicant and the county, city, or town may mutually agree



to a partial refund or to waive the refund in the interest of resolving any dispute regarding compliance with this chapter.

**NEW SECTION. Sec. 2.** A new section is added to chapter 35.91 RCW to read as follows:

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

(1) "Latecomer fee" means a charge collected by a municipality, whether separately stated or as part of a connection fee for providing access to a municipal system, against a real property owner who connects to or uses a water or sewer facility subject to a contract created under RCW 35.91.020.

(2) "Municipality" means the governing body of any county, city, town, or drainage district.

(3) "Water or sewer facilities" means storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances.

**Sec. 3.** RCW 35.91.020 and 2009 c 344 s 1 and 2009 c 230 s 1 are each reenacted and amended to read as follows:

~~(1)(a) ((Except as provided under subsection (2) of this section, the governing body of any city, town, county, water sewer district, or drainage district, hereinafter referred to as a "municipality" may contract with owners of real estate for the construction of storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances, hereinafter called "water or sewer facilities," within their boundaries or (except for counties) within ten miles from their corporate limits connecting with the public water or sewerage system to serve the area in which the real estate of such owners is located, and to provide for a period of not to exceed twenty years for the reimbursement of such owners and their assigns by any owner of real estate who did not contribute to the original cost of such water or sewer facilities and who subsequently tap onto or use the same of a fair pro rata share of the cost of the construction of said water or sewer facilities, including not only those directly connected thereto, but also users connected to laterals or branches connecting thereto, subject to such reasonable rules and regulations as the governing body of such municipality may provide or contract, and notwithstanding the provisions of any other law.)) At the owner's request, a municipality must contract with the owner of real estate for the construction or improvement of water or sewer facilities that the owner elects to install solely at the owner's expense. The owner must submit a request for a contract to the municipality prior to approval of the water or sewer facility by the municipality. The owner's request may only require a contract under this subsection (1)(a) in locations where a municipality's ordinances require the facilities to be improved or constructed as a prerequisite to further property development. Water or sewer facilities improved or constructed in accordance with this subsection (1)(a) must be located within the municipality's corporate limits or, except as provided otherwise by this subsection (1)(a), within ten miles of the municipality's corporate limits. Water or sewer facilities improved or constructed in accordance with this subsection (1)(a) may not be located outside of the county that is party to the contract. The contract must be filed and recorded with the county auditor and must contain conditions required by the municipality in~~

accordance with its adopted policies and standards. Unless the municipality provides written notice to the owner of its intent to request a comprehensive plan approval, the owner must request a comprehensive plan approval for a water or sewer facility, if required, and connection of the water or sewer facility to the municipal system must be conditioned upon:

(i) Construction of the water or sewer facility according to plans and specifications approved by the municipality;

(ii) Inspection and approval of the water or sewer facility by the municipality;

(iii) Transfer to the municipality of the water or sewer facility, without cost to the municipality, upon acceptance by the municipality of the water or sewer facility;

(iv) Full compliance with the owner's obligations under the contract and with the municipality's rules and regulations;

(v) Provision of sufficient security to the municipality to ensure completion of the water or sewer facility and other performance under the contract;

(vi) Payment by the owner to the municipality of all of the municipality's costs associated with the water or sewer facility including, but not limited to, engineering, legal, and administrative costs; and

(vii) Verification and approval of all contracts and costs related to the water or sewer facility.

(b) If authorized by ordinance or contract, a municipality may participate in financing ~~((the development of))~~ water or sewer facilities development projects authorized ~~((by,))~~ and improved or constructed in accordance with ~~((;))~~ (a) of this subsection. Unless otherwise provided by ordinance or contract, municipalities that participate in the financing of water or sewer facilities improved or constructed in accordance with (a) of this subsection:

(i) ~~((Municipalities that contribute to the financing of water or sewer facilities projects under this section))~~ Have the same rights to reimbursement as owners of real estate who make contributions as authorized under this section; and

(ii) ~~((If the projects are jointly financed by a combination of municipal funding and private funding by real estate owners, the amount of reimbursement received by each participant in the financing must be a pro rata share))~~ Are entitled to a pro rata share of the reimbursement based on the respective contribution of the owner and the municipality.

(2) A contract entered into under this section must also provide, in accordance with the requirements of this section, for the pro rata reimbursement to the owner or the owner's assigns for twenty years, or for a longer period if extended in accordance with subsection (4) of this section. The reimbursements must be: (a) Within the period of time that the contract is effective; (b) for a portion of the costs of the water or sewer facilities improved or constructed in accordance with the contract; and (c) from latecomer fees received by the municipality from property owners who subsequently connect to or use the water or sewer facilities, but who did not contribute to the original cost of the facilities.

~~((=))~~ (3) Except as provided otherwise by this section, a municipality seeking reimbursement from an owner of real estate under this section is limited to the dollar amount authorized ~~((under this chapter and may not collect any additional reimbursement, assessment, charge, or fee for the infrastructure or~~

~~facilities that were constructed under the applicable ordinance, contract, or agreement~~) in accordance with subsection (7) of this section. This does not prevent the ~~(collection of)~~ municipality from collecting amounts for services or infrastructure that are additional expenditures not subject to ~~((such))~~ the ordinance, contract, or agreement, nor does it prevent the collection of fees that are reasonable and proportionate to the total expenses incurred by the municipality in complying with this section.

~~((2))~~ (4)(a) The contract may provide for an extension of the twenty-year reimbursement period for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new development within the benefit area for a period of six months or more.

(b) Upon the extension of the reimbursement period pursuant to (a) of this subsection, the contract must specify the duration of the contract extension and must be filed and recorded with the county auditor. Property owners who are subject to the reimbursement obligations under subsection (1) of this section shall be notified by the contracting municipality of the extension filed under this subsection.

~~((3))~~ (5) The requirement for a municipality to contract with an owner of real estate for the construction or improvement of water or sewer facilities under this section is only applicable if the facilities are consistent with all applicable comprehensive plans and development regulations of the municipalities through which the facilities will be constructed or will serve.

(6) Each contract ~~((shall))~~ must include a provision requiring that every two years from the date the contract is executed a property owner entitled to reimbursement under this section provide the ~~((contracting))~~ municipality with information regarding the current contract name, address, and telephone number of the person, company, or partnership that originally entered into the contract. If the property owner fails to comply with the notification requirements of this subsection within sixty days of the specified time, then the contracting municipality may collect any reimbursement funds owed to the property owner under the contract. ~~((Such))~~ The funds collected under this subsection must be deposited in the capital fund of the municipality.

~~((4))~~ (7) To the extent it may require in the performance of ~~((such))~~ the contract, ~~((such))~~ the municipality may install ~~((said))~~ the water or sewer facilities in and along the county streets in the area to be served as hereinabove provided, subject to ~~((such))~~ reasonable requirements as to the manner of occupancy of ~~((such))~~ the streets as the county may by resolution provide. The provisions of ~~((such))~~ the contract ~~((shall))~~ may not be effective as to any owner of real estate not a party thereto unless ~~((such))~~ the contract has been recorded in the office of the county auditor of the county in which the real estate of ~~((such))~~ the owner is located prior to the time ~~((such))~~ the owner taps into or connects to ~~((said))~~ the water or sewer facilities.

(8) Within one hundred twenty days of the completion of a water or sewer facility, the owners of the real estate must submit the total cost of the water or sewer facility to the applicable municipality. This information must be used by the municipality as the basis for determining reimbursements by future users who benefit from the water or sewer facility, but who did not contribute to the original cost of the water or sewer facility.

(9) Nothing in this section is intended to create a private right of action for damages against a municipality for failing to comply with the requirements of this section. A municipality, its officials, employees, or agents may not be held liable for failure to collect a latecomer fee unless the failure was willful or intentional. Failure of a municipality to comply with the requirements of this section does not relieve a municipality of any future requirement to comply with this section.

**Sec. 4.** RCW 82.02.020 and 2010 c 153 s 3 are each amended to read as follows:

Except only as expressly provided in chapters 67.28, 81.104, and 82.14 RCW, the state preempts the field of imposing retail sales and use taxes and taxes upon parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

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

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

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

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

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

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other

municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW, including reasonable fees that are consistent with RCW 43.21C.420(6), section 1 of this act, and beginning July 1, 2014, RCW 35.91.020.

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

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

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

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

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

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

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

NEW SECTION. Sec. 5. Sections 2 and 3 of this act take effect July 1, 2014.

Passed by the House March 8, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

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## CHAPTER 244

[House Bill 1903]

### UNEMPLOYMENT INSURANCE—PART-TIME EMPLOYERS

AN ACT Relating to unemployment insurance benefit charging relief for part-time employers who continue to employ a claimant on a part-time basis and the claimant qualified for two consecutive claims with wages attributable to at least one employer who employed the claimant in both base years; amending RCW 50.29.021; creating a new section; and providing an effective date.

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

**Sec. 1.** RCW 50.29.021 and 2011 c 4 s 14 are each amended to read as follows:

(1) This section applies to benefits charged to the experience rating accounts of employers for claims that have an effective date on or after January 4, 2004.

(2)(a) An experience rating account shall be established and maintained for each employer, except employers as described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers as described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, based on existing records of the employment security department.

(b) Benefits paid to an eligible individual shall be charged to the experience rating accounts of each of such individual's employers during the individual's base year in the same ratio that the wages paid by each employer to the individual during the base year bear to the wages paid by all employers to that individual during that base year, except as otherwise provided in this section.

(c) When the eligible individual's separating employer is a covered contribution paying base year employer, benefits paid to the eligible individual shall be charged to the experience rating account of only the individual's separating employer if the individual qualifies for benefits under:

(i) RCW 50.20.050 (1)(b)(i) or (2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050 (1)(b) (v) through (x) or (2)(b) (v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 50.44.030, and 50.50.030 who have properly elected to make payments in lieu of contributions, taxable local government employers described in RCW 50.44.035, and those employers who are required to make payments in lieu of contributions, as follows:

(a) Benefits paid to any individual later determined to be ineligible shall not be charged to the experience rating account of any contribution paying employer. However, when a benefit claim becomes invalid due to an amendment or adjustment of a report where the employer failed to report or inaccurately reported hours worked or remuneration paid, or both, all benefits paid will be charged to the experience rating account of the contribution paying employer or employers that originally filed the incomplete or inaccurate report or reports. An employer who reimburses the trust fund for benefits paid to workers and who fails to report or inaccurately reported hours worked or remuneration paid, or both, shall reimburse the trust fund for all benefits paid that are based on the originally filed incomplete or inaccurate report or reports.

(b) Benefits paid to an individual filing under the provisions of chapter 50.06 RCW shall not be charged to the experience rating account of any contribution paying employer only if:

(i) The individual files under RCW 50.06.020(1) after receiving crime victims' compensation for a disability resulting from a nonwork-related occurrence; or

(ii) The individual files under RCW 50.06.020(2).

(c) Benefits paid which represent the state's share of benefits payable as extended benefits defined under RCW 50.22.010(6) shall not be charged to the experience rating account of any contribution paying employer.

(d) In the case of individuals who requalify for benefits under RCW 50.20.050 or 50.20.060, benefits based on wage credits earned prior to the

disqualifying separation shall not be charged to the experience rating account of the contribution paying employer from whom that separation took place.

(e) Benefits paid to an individual who qualifies for benefits under RCW 50.20.050 (1)(b) (iv) or (xi) or (2)(b) (iv) or (xi), as applicable, shall not be charged to the experience rating account of any contribution paying employer.

(f) With respect to claims with an effective date on or after the first Sunday following April 22, 2005, benefits paid that exceed the benefits that would have been paid if the weekly benefit amount for the claim had been determined as one percent of the total wages paid in the individual's base year shall not be charged to the experience rating account of any contribution paying employer. This subsection (3)(f) does not apply to the calculation of contribution rates under RCW 50.29.025 for rate year 2010 and thereafter.

(g) The forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1201 and the twenty-five dollar increase paid as part of an individual's weekly benefit amount as provided in RCW 50.20.1202 shall not be charged to the experience rating account of any contribution paying employer.

(h) With respect to claims where the minimum amount payable weekly is increased to one hundred fifty-five dollars pursuant to RCW 50.20.1201(3), benefits paid that exceed the benefits that would have been paid if the minimum amount payable weekly had been calculated pursuant to RCW 50.20.120 shall not be charged to the experience rating account of any contribution paying employer.

(i) Upon approval of an individual's training benefits plan submitted in accordance with RCW 50.22.155(2), an individual is considered enrolled in training, and regular benefits beginning with the week of approval shall not be charged to the experience rating account of any contribution paying employer.

(j) Training benefits paid to an individual under RCW 50.22.155 shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster;

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter ~~(50.06)~~ 50.60 RCW; ~~((06))~~

(v) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who qualified for two consecutive

unemployment claims where wages were attributable to at least one employer who employed the individual in both base years. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.60 RCW; or

(vi) Was hired to replace an employee who is a member of the military reserves or National Guard and was called to federal active military service by the president of the United States and is subsequently laid off when that employee is reemployed by their employer upon release from active duty within the time provided for reemployment in RCW 73.16.035.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

**NEW SECTION. Sec. 2.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

**NEW SECTION. Sec. 3.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 4.** This act takes effect January 1, 2014.

Passed by the House March 9, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

## CHAPTER 245

[Senate Bill 5102]

### VETERINARIANS—ANIMAL CRUELTY—LIABILITY IMMUNITY

AN ACT Relating to veterinarian immunity from liability when reporting suspected animal cruelty; and adding a new section to chapter 16.52 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 16.52 RCW to read as follows:

A veterinarian lawfully licensed in this state to practice veterinary medicine, surgery, and dentistry who reports, in good faith and in the normal course of business, a suspected incident of animal cruelty that is punishable under this chapter to the proper authorities is immune from liability in any civil or criminal



action brought against such veterinarian for reporting the suspected incident. The immunity provided in this section applies only if the veterinarian receives no financial benefit from the suspected incident of animal cruelty beyond charges for services rendered prior to the veterinarian making the initial report.

Passed by the Senate April 23, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

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## CHAPTER 246

[Substitute Senate Bill 5135]

### JUDICIAL PROCEEDINGS—FORMS

AN ACT Relating to judicial proceedings and forms; and amending RCW 2.36.095, 11.96A.090, and 26.26.610.

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

**Sec. 1.** RCW 2.36.095 and 1993 c 408 s 8 are each amended to read as follows:

(1) Persons selected to serve on a petit jury, grand jury, or jury of inquest shall be summoned by mail or personal service. The county clerk shall issue summons and thereby notify persons selected for jury duty. The clerk may issue summons for any jury term, in any consecutive twelve-month period, at any time thirty days or more before the beginning of the jury term for which the summons are issued. However, when applicable, the provisions of RCW 2.36.130 apply.

(2) In courts of limited jurisdiction summons shall be issued by the court. Upon the agreement of the courts, the county clerk may summon jurors for any and all courts in the county or judicial district.

~~((3) The county clerk shall notify the county auditor of each summons for jury duty that is returned by the postal service as undeliverable.))~~

**Sec. 2.** RCW 11.96A.090 and 1999 c 42 s 302 are each amended to read as follows:

(1) A judicial proceeding under this title is a special proceeding under the civil rules of court. The provisions of this title governing such actions control over any inconsistent provision of the civil rules.

(2) A judicial proceeding under this title ~~((may))~~ must be commenced as a new action ~~((or as an action incidental to an existing judicial proceeding relating to the same trust or estate or nonprobate asset)).~~

(3) Once commenced, the action may be consolidated with an existing proceeding ~~((or converted to a separate action))~~ upon the motion of a party for good cause shown, or by the court on its own motion.

(4) The procedural rules of court apply to judicial proceedings under this title only to the extent that they are consistent with this title, unless otherwise provided by statute or ordered by the court under RCW 11.96A.020 or 11.96A.050, or other applicable rules of court.

**Sec. 3.** RCW 26.26.610 and 2002 c 302 s 533 are each amended to read as follows:

(1) On request of a party and for good cause shown, the court may close a proceeding under this section and RCW 26.26.500 through 26.26.605 and 26.26.615 through 26.26.630.

(2) A final order determining parentage in a proceeding under this section and RCW 26.26.500 through 26.26.605 and 26.26.615 through 26.26.630 is ~~((available for public inspection. Other papers and records are available only with the consent of the parties or on order of the court for good cause))~~ publicly accessible. Records entered prior to the entry of a final order determining parentage in a proceeding under this section and RCW 26.26.500 through 26.26.605 and 26.26.615 through 26.26.630 are accessible only to the parties or on order of the court for good cause.

(3) Except as provided by applicable court rules, records entered after the entry of a final order determining parentage in a proceeding under this section and RCW 26.26.500 through 26.26.605 and 26.26.615 through 26.26.630 are publicly accessible.

Passed by the Senate April 23, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

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## CHAPTER 247

[Senate Bill 5145]

### FIRE DEPARTMENTS—COMMUNITY ASSISTANCE REFERRAL AND EDUCATION SERVICES

AN ACT Relating to community assistance referral and education services; and adding a new section to chapter 35.21 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 35.21 RCW to read as follows:

(1) Any fire department may develop a community assistance referral and education services program to provide community outreach and assistance to residents of its district in order to advance injury and illness prevention within its community. The program should identify members of the community who use the 911 system for low acuity assistance calls (calls that are nonemergency or nonurgent) and connect them to their primary care providers, other health care professionals, low-cost medication programs, and other social services. The program may also provide a fire department-based, nonemergency contact in order to provide an alternative resource to the 911 system. The program may hire health care professionals as needed.

(2) A participating fire department may seek grant opportunities and private gifts in order to support its community assistance referral and education services program.

(3) In developing a community assistance referral and education services program, a fire department may consult with the health care personnel shortage task force to identify health care professionals capable of working in a nontraditional setting and providing assistance, referral, and education services.

(4) Community assistance referral and education services programs implemented under this section must, at least annually, measure any reduction of repeated use of the 911 emergency system and any reduction in avoidable emergency room trips attributable to implementation of the program. Results of findings under this subsection must be reportable to the legislature or other local governments upon request. Findings should include estimated amounts of medicaid dollars that would have been spent on emergency room visits had the program not been in existence.

(5) For purposes of this section, "fire department" includes city and town fire departments, fire protection districts organized under Title 52 RCW, and regional fire authorities organized under chapter 52.26 RCW.

Passed by the Senate April 23, 2013.

Passed by the House April 3, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

## CHAPTER 248

[Substitute Senate Bill 5195]

### HIGHER EDUCATION—STATE NEED GRANT PROGRAM

AN ACT Relating to allowing nonprofit institutions recognized by the state of Washington to be eligible to participate in the state need grant program; amending RCW 28B.92.030, 28B.105.020, 28B.133.010, and 28B.133.050; 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 Western Governors University-Washington, recognized by the state of Washington under RCW 28B.77.240, serves a student population that is nontraditional and geographically diverse. Enrollment in Western Governors University-Washington has grown steadily since 2011 reaching over four thousand three hundred students. These students represent an average age of thirty-seven, sixty-nine percent of whom are classified as underserved, including low-income, ethnic minority, rural, and first-generation students.

The legislature also finds that tuition at Western Governors University-Washington has remained static since 2008 at five thousand seven hundred eighty dollars per year.

Further, the legislature finds that the population served by Western Governors University-Washington deserves to have access to affordable postsecondary education, including baccalaureate degree-granting institutions. Therefore, the legislature intends to provide access to the state need grant program for eligible students attending Western Governors University-Washington.

The legislature also intends that Western Governors University-Washington comply with all reporting requirements established by the student achievement council for state need grant participation, including financial information about students, enrollment, graduation and placement rates, and the institution's standing with its accrediting agency, the Northwest Commission on Colleges and Universities, and the United States department of education.

**Sec. 2.** RCW 28B.92.030 and 2012 c 229 s 557 are each amended to read as follows:

As used in this chapter:

(1) "Council" means the student achievement council.

(2) "Disadvantaged student" means a posthigh school student who by reason of adverse cultural, educational, environmental, experiential, familial or other circumstances is unable to qualify for enrollment as a full-time student in an institution of higher education, who would otherwise qualify as a needy student, and who is attending an institution of higher education under an established program designed to qualify the student for enrollment as a full-time student.

(3) "Financial aid" means loans and/or grants to needy students enrolled or accepted for enrollment as a student at institutions of higher education.

(4) "Institution" or "institutions of higher education" means:

(a) Any public university, college, community college, or technical college operated by the state of Washington or any political subdivision thereof; or

(b) Any other university, college, school, or institute in the state of Washington offering instruction beyond the high school level (~~(which)~~) that is a member institution of an accrediting association recognized by rule of the council for the purposes of this section (~~(= PROVIDED, That)~~) and that agrees to and complies with program rules adopted pursuant to RCW 28B.92.150. However, any institution, branch, extension or facility operating within the state of Washington (~~(which)~~) that is affiliated with an institution operating in another state must be:

(i) A separately accredited member institution of any such accrediting association (~~(= or)~~);

(ii) A branch of a member institution of an accrediting association recognized by rule of the council for purposes of this section, that is eligible for federal student financial aid assistance and has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington, and has an annual enrollment of at least seven hundred full-time equivalent students (~~(= PROVIDED FURTHER, That no institution of higher education shall be eligible to participate in a student financial aid program unless it agrees to and complies with program rules and regulations adopted pursuant to RCW 28B.92.150)~~); or

(iii) A nonprofit institution recognized by the state of Washington as provided in RCW 28B.77.240.

(5) "Needy student" means a posthigh school student of an institution of higher education who demonstrates to the office the financial inability, either through the student's parents, family and/or personally, to meet the total cost of board, room, books, and tuition and incidental fees for any semester or quarter. "Needy student" also means an opportunity internship graduate as defined by RCW 28C.18.162 who enrolls in a postsecondary program of study as defined in RCW 28C.18.162 within one year of high school graduation.

(6) "Office" means the office of student financial assistance.

(7) "Placebound student" means a student who (a) is unable to complete a college program because of family or employment commitments, health concerns, monetary inability, or other similar factors; and (b) may be influenced by the receipt of an enhanced student financial aid award to complete a baccalaureate degree at an eligible institution.

**Sec. 3.** RCW 28B.105.020 and 2011 1st sp.s. c 11 s 183 are each amended to read as follows:

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

(1) "GET units" means tuition units under the advanced college tuition payment program in chapter 28B.95 RCW.

(2) "Institution of higher education" has the same meaning as in RCW 28B.92.030(4) (a) and (b) (i) and (ii).

(3) "Office" means the office of student financial assistance.

(4) "Program administrator" means the private nonprofit corporation that is registered under Title 24 RCW and qualified as a tax-exempt entity under section 501(c)(3) of the federal internal revenue code, that will serve as the private partner in the public-private partnership under this chapter.

(5) "Qualified program" or "qualified major" means a mathematics, science, or related degree program or major line of study offered by an institution of higher education that is included on the list of programs or majors selected by the ((board)) office and the program administrator under RCW 28B.105.100.

**Sec. 4.** RCW 28B.133.010 and 2004 c 275 s 72 are each amended to read as follows:

The educational assistance grant program for students with dependents is hereby created, subject to the availability of receipts of gifts, grants, or endowments from private sources. The program is created to serve financially needy students with dependents eighteen years of age or younger, by assisting them directly through a grant program to pursue a degree or certificate at public or private institutions of higher education, as defined in RCW 28B.92.030(4) (a) and (b) (i) and (ii), that participate in the state need grant program.

**Sec. 5.** RCW 28B.133.050 and 2011 1st sp.s. c 11 s 238 are each amended to read as follows:

The educational assistance grant program for students with dependents grants may be used by eligible participants to attend any public or private college or university in the state of Washington as defined in RCW 28B.92.030(4) (a) and (b) (i) and (ii). Each participating student may receive an amount to be determined by the office of student financial assistance, with a minimum amount of one thousand dollars per academic year, not to exceed the student's documented financial need for the course of study as determined by the institution.

Educational assistance grants for students with dependents are not intended to supplant any grant scholarship or tax program related to postsecondary education. If the office of student financial assistance finds that the educational assistance grants for students with dependents supplant or reduce any grant, scholarship, or tax program for categories of students, then the office shall adjust the financial eligibility criteria or the amount of the grant to the level necessary to avoid supplanting.

**NEW SECTION. Sec. 6.** This act takes effect August 1, 2013.

Passed by the Senate March 13, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 15, 2013.  
 Filed in Office of Secretary of State May 16, 2013.

## CHAPTER 249

[Engrossed Senate Bill 5206]

### UNIVERSITY OF WASHINGTON HEALTH SCIENCES LIBRARY—ACCESS

AN ACT Relating to increasing the health professions participating in online access to the University of Washington health sciences library; and amending RCW 43.70.110.

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

**Sec. 1.** RCW 43.70.110 and 2011 c 35 s 1 are each amended to read as follows:

(1) The secretary shall charge fees to the licensee for obtaining a license. Physicians regulated pursuant to chapter 18.71 RCW who reside and practice in Washington and obtain or renew a retired active license are exempt from such fees. After June 30, 1995, municipal corporations providing emergency medical care and transportation services pursuant to chapter 18.73 RCW shall be exempt from such fees, provided that such other emergency services shall only be charged for their pro rata share of the cost of licensure and inspection, if appropriate. The secretary may waive the fees when, in the discretion of the secretary, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.

(2) Except as provided in subsection (3) of this section, fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) License fees shall include amounts in addition to the cost of licensure activities in the following circumstances:

(a) For registered nurses and licensed practical nurses licensed under chapter 18.79 RCW, support of a central nursing resource center as provided in RCW 18.79.202, until June 30, 2013;

(b) For all health care providers licensed under RCW 18.130.040, the cost of regulatory activities for retired volunteer medical worker licensees as provided in RCW 18.130.360; and

(c) For physicians licensed under chapter 18.71 RCW, physician assistants licensed under chapter 18.71A RCW, osteopathic physicians licensed under chapter 18.57 RCW, osteopathic physicians' assistants licensed under chapter 18.57A RCW, naturopaths licensed under chapter 18.36A RCW, podiatrists licensed under chapter 18.22 RCW, chiropractors licensed under chapter 18.25 RCW, psychologists licensed under chapter 18.83 RCW, registered nurses and licensed practical nurses licensed under chapter 18.79 RCW, optometrists licensed under chapter 18.53 RCW, mental health counselors licensed under chapter 18.225 RCW, massage therapists licensed under chapter 18.108 RCW, clinical social workers licensed under chapter 18.225 RCW, midwives licensed under chapter 18.50 RCW, licensed marriage and family therapists under chapter 18.225 RCW, occupational therapists and occupational therapy assistants licensed under chapter 18.59 RCW, dietitians and nutritionists certified under chapter 18.138 RCW, speech-language pathologists licensed under chapter 18.35 RCW, and East Asian medicine practitioners licensed under chapter 18.06 RCW, the license fees shall include up to an additional twenty-five

dollars to be transferred by the department to the University of Washington for the purposes of RCW 43.70.112.

(4) Department of health advisory committees may review fees established by the secretary for licenses and comment upon the appropriateness of the level of such fees.

Passed by the Senate April 23, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

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## CHAPTER 250

[Substitute Senate Bill 5227]

### EMPLOYMENT SECURITY ACT—CORPORATE OFFICERS

AN ACT Relating to the corporate officer provisions of the employment security act; amending RCW 50.12.070, 50.04.165, 50.04.080, and 50.04.090; creating a new section; and providing an effective date.

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

**Sec. 1.** RCW 50.12.070 and 2009 c 432 s 11 are each amended to read as follows:

(1)(a) Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. Such records shall be open to inspection and be subject to being copied by the commissioner or his or her authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports with respect to persons employed by it, which he or she deems necessary for the effective administration of this title.

(b) An employer who contracts with another person or entity for work subject to chapter 18.27 or 19.28 RCW shall obtain and preserve a record of the unified business identifier account number for and compensation paid to the person or entity performing the work. In addition to the penalty in subsection (3) of this section, failure to obtain or maintain the record is subject to RCW 39.06.010.

(2)(a) Each employer shall register with the department and obtain an employment security account number. ~~((Registration must include the names and social security numbers of the owners, partners, members, or corporate officers of the business, as well as their mailing addresses and telephone numbers and other information the commissioner may by rule prescribe. Registration of corporations must also include the percentage of stock ownership for each corporate officer, delineated by zero percent, less than ten percent, or ten percent or more. Any changes in the owners, partners, members, or corporate officers of the business, and changes in percentage of ownership of the outstanding shares of stock of the corporation, must be reported to the department at intervals prescribed by the commissioner under (b) of this subsection.~~

~~(b))~~ Each employer shall make periodic reports at such intervals as the commissioner may by regulation prescribe, setting forth the remuneration paid for employment to workers in its employ, the full names and social security

numbers of all such workers, and the total hours worked by each worker and such other information as the commissioner may by regulation prescribe.

~~((e))~~ (b) If the employing unit fails or has failed to report the number of hours in a reporting period for which a worker worked, such number will be computed by the commissioner and given the same force and effect as if it had been reported by the employing unit. In computing the number of such hours worked, the total wages for the reporting period, as reported by the employing unit, shall be divided by the dollar amount of the state's minimum wage in effect for such reporting period and the quotient, disregarding any remainder, shall be credited to the worker: PROVIDED, That although the computation so made will not be subject to appeal by the employing unit, monetary entitlement may be redetermined upon request if the department is provided with credible evidence of the actual hours worked. Benefits paid using computed hours are not considered an overpayment and are not subject to collections when the correction of computed hours results in an invalid or reduced claim; however:

(i) A contribution paying employer who fails to report the number of hours worked will have its experience rating account charged for all benefits paid that are based on hours computed under this subsection; and

(ii) An employer who reimburses the trust fund for benefits paid to workers and fails to report the number of hours worked shall reimburse the trust fund for all benefits paid that are based on hours computed under this subsection.

(3) Any employer who fails to keep and preserve records required by this section shall be subject to a penalty determined by the commissioner but not to exceed two hundred fifty dollars or two hundred percent of the quarterly tax for each offense, whichever is greater.

**Sec. 2.** RCW 50.04.165 and 2007 c 146 s 4 are each amended to read as follows:

~~((1)(a))~~ Services performed by a person appointed as an officer of a corporation under RCW 23B.08.400 ~~((are)), other than those covered by chapters 50.44 and 50.50 RCW, shall not be considered services in employment. However, a corporation~~~~((, other than those covered by chapters 50.44 and 50.50 RCW,))~~ may elect to ~~((exempt from coverage under this title as provided in subsection (2) of this section, any bona fide officer of a public company as defined in RCW 23B.01.400 who:~~

~~(i) Is voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation;~~

~~(ii) Is a shareholder of the corporation;~~

~~(iii) Exercises substantial control in the daily management of the corporation; and~~

~~(iv) Whose primary responsibilities do not include the performance of manual labor.~~

~~(b) A corporation, other than those covered by chapters 50.44 and 50.50 RCW, that is not a public company as defined in RCW 23B.01.400 may exempt from coverage under this title as provided in subsection (2) of this section:~~

~~(i) Eight or fewer bona fide officers who: Voluntarily agree to be exempted from coverage; are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation; and who exercise substantial control in the daily management of the corporation, from coverage~~



under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation; and

(ii) Any number of officers if all the exempted officers are related by blood within the third degree or marriage.

(c) Determinations with respect to the status of persons performing services for a corporation must be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance controls over form, and mandatory coverage under this title extends to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(2)(a) The corporation must notify the department when it elects to exempt one or more corporate officers from coverage. The notice must be in a format prescribed by the department and signed by the officer or officers being exempted and by another corporate officer verifying the decision to be exempt from coverage.

(b) The election to exempt one or more corporate officers from coverage under this title may be made when the corporation registers as required under RCW 50.12.070. The corporation may also elect exemption at any time following registration; however, an exemption will be effective only as of the first day of a calendar year. A written notice from the corporation must be sent to the department by January 15th following the end of the last calendar year of coverage. Exemption from coverage will not be retroactive, and the corporation is not eligible for a refund or credit for contributions paid for corporate officers for periods before the effective date of the exemption.

(3) A corporation may elect to reinstate coverage for one or more officers previously exempted under this section, subject to the following:

(a) Coverage may be reinstated only at set intervals of five years beginning with the calendar year that begins five years after January 1, 2009.

(b) Coverage may only be reinstated effective the first day of the calendar year. A written notice from the corporation must be sent to the department by January 15th following the end of the last calendar year the exemption from coverage will apply.

(c) Coverage will not be reinstated if the corporation: Has committed fraud related to the payment of contributions within the previous five years; is delinquent in the payment of contributions; or is assigned the array calculation factor rate for nonqualified employers because of a failure to pay contributions when due as provided in RCW 50.29.025, or for related reasons as determined by the commissioner.

(d) Coverage will not be reinstated retroactively.

(4) Except for corporations covered by chapters 50.44 and 50.50 RCW, personal services performed by bona fide corporate officers for corporations described under RCW 50.04.080(3) and 50.04.090(2) are not considered services in employment, unless the corporation registers with the department as required in RCW 50.12.070 and elects to provide coverage for its corporate officers under RCW 50.24.160)) cover not less than all of its corporate officers under RCW 50.24.160. If an employer does not elect to cover its corporate officers under RCW 50.24.160, the employer must notify its corporate officers in writing that they are ineligible for unemployment benefits. However, if the

employer fails to provide notice, the individual's status as a corporate officer is unchanged and the person remains ineligible for unemployment benefits.

**Sec. 3.** RCW 50.04.080 and 2007 c 146 s 19 are each amended to read as follows:

~~((4))~~ "Employer" means any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title.

~~((2) For the purposes of collection remedies available under chapter 50.24 RCW, "employer," in the case of a corporation or limited liability company, includes persons found personally liable for any unpaid contributions and interest and penalties on those contributions under RCW 50.24.230.~~

~~(3) Except for corporations covered by chapters 50.44 and 50.50 RCW, "employer" does not include a corporation when all personal services are performed only by bona fide corporate officers, unless the corporation registers with the department as required in RCW 50.12.070 and elects to provide coverage for its corporate officers under RCW 50.24.160.)~~

**Sec. 4.** RCW 50.04.090 and 2007 c 146 s 20 are each amended to read as follows:

~~((4))~~ "Employing unit" means any individual or any type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1937, had in its employ or in its "employment" one or more individuals performing services within this state. The state and its political subdivisions shall be deemed employing units as to any transactions occurring on or after September 21, 1977, which would render an employing unit liable for contributions, interest, or penalties under RCW 50.24.130. "Employing unit" includes Indian tribes as defined in RCW 50.50.010.

~~((2) Except for corporations covered by chapters 50.44 and 50.50 RCW, "employing unit" does not include a corporation when all personal services are performed only by bona fide corporate officers, unless the corporation registers with the department as required in RCW 50.12.070 and elects to provide coverage for its corporate officers under RCW 50.24.160.)~~

**NEW SECTION. Sec. 5.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state or the eligibility of employers in this state for federal unemployment tax credits, the conflicting part of this act is inoperative solely to the extent of the conflict, and the finding or determination does not affect the operation of the remainder of this act. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state or the granting of federal unemployment tax credits to employers in this state.

**NEW SECTION. Sec. 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 takes effect December 29, 2013.

Passed by the Senate April 22, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

## CHAPTER 251

[Substitute Senate Bill 5287]

### ACCOUNTS AND FUNDS—ELIMINATION

AN ACT Relating to eliminating accounts and funds; amending RCW 41.06.280, 43.19.025, 64.44.060, 70.116.134, 41.05.140, 82.45.180, and 70.122.130; reenacting and amending RCW 43.84.092, 43.84.092, 43.79A.040, 70.47.100, and 82.44.180; creating new sections; repealing RCW 43.19.730, 43.70.325, 43.338.030, 46.68.210, 46.68.330, and 70.122.140; repealing 2006 c 372 s 715 (uncodified); providing an effective date; providing a contingent effective date; providing a contingent expiration date; and declaring an emergency.

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

**Sec. 1.** RCW 41.06.280 and 2011 1st sp.s. c 43 s 419 are each amended to read as follows:

There is hereby created a fund within the state treasury, designated as the "personnel service fund," to be used by the office of financial management (~~and the department of enterprise services~~) as a revolving fund for the payment of salaries, wages, and operations required for the administration of the provisions of this chapter, applicable provisions of chapter 41.04 RCW, and chapter 41.60 RCW. An amount not to exceed one and one-half percent of the salaries and wages for all positions in the classified service in each of the agencies subject to this chapter, except the institutions of higher education, shall be charged to the operations appropriations of each agency and credited to the personnel service fund as the allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, the amount shall be charged against the allotments pro rata, at a rate to be fixed by the director from time to time which, together with income derived from services rendered under RCW 41.06.080, will provide the office of financial management (~~and the department of enterprise services~~) with funds to meet its anticipated expenditures during the allotment period, including the training requirements in RCW 41.06.500 and 41.06.530. All revenues, net of expenditures, previously derived from services provided by the department of enterprise services under RCW 41.06.080 must be transferred to the enterprise services account.

The director shall fix the terms and charges for services rendered by (~~the department of enterprise services and~~) the office of financial management pursuant to RCW 41.06.080, which amounts shall be credited to the personnel service fund and charged against the proper fund or appropriation of the recipient of such services on a monthly basis. Payment for services so rendered under RCW 41.06.080 shall be made on a monthly basis to the state treasurer and deposited in the personnel service fund.

Moneys from the personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the office of financial management (~~and the department of enterprise services~~).

**Sec. 2.** RCW 43.19.025 and 2011 1st sp.s. c 43 s 202 are each amended to read as follows:

The enterprise services account is created in the custody of the state treasurer and shall be used for all activities (~~previously budgeted and accounted for in the following internal service funds: The motor transport account, the enterprise services management fund, the enterprise services facilities and services revolving fund, the central stores revolving fund, the surplus property purchase revolving fund, and the energy efficiency services account~~) conducted by the department, except information technology services. Only the director or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW.

**Sec. 3.** RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c 187 s 14, and 2012 c 83 s 4 are each reenacted and amended to read as follows:

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

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

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

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

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the

Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, ~~((the freight congestion relief account,))~~ the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety ~~((account fund))~~ fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, ~~((the public transportation systems account,))~~ the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, ~~((the Puyallup tribal settlement account,))~~ the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route

number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state economic development commission account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

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

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

**Sec. 4.** RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c 187 s 14, 2012 c 83 s 4, and 2012 c 36 s 5 are each reenacted and amended to read as follows:

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

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

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

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

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

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the Columbia river crossing project account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, (~~the freight congestion relief account,~~) the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety (~~account~~ ~~fund~~) fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax

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



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

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

**Sec. 5.** RCW 43.79A.040 and 2012 c 198 s 8, 2012 c 196 s 6, 2012 c 187 s 13, and 2012 c 114 s 3 are each reenacted and amended to read as follows:

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

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

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

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the Washington advanced college tuition payment program account, the accessible communities account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, ~~((the basic health plan self insurance reserve account,))~~ the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family leave insurance account, the food animal veterinarian conditional scholarship account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the multiagency permitting team account, the pilotage account, the produce railcar pool account, the regional transportation investment district account, the rural

rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account), the life sciences discovery fund, the Washington state heritage center account, ~~((and))~~ the reduced cigarette ignition propensity account, the center for childhood deafness and hearing loss account, ~~((and))~~ the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, and the radiation perpetual maintenance fund.

(c) The following accounts and funds must receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right-of-way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

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

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

**Sec. 6.** RCW 64.44.060 and 2006 c 339 s 206 are each amended to read as follows:

(1) A contractor, supervisor, or worker may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health. The department shall establish performance standards for contractors, supervisors, and workers by rule in accordance with chapter 34.05 RCW, the administrative procedure act. The department shall train and test, or may approve courses to train and test, contractors, supervisors, and workers on the essential elements in assessing property used as an illegal controlled substances manufacturing or storage site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment, methods for proper decontamination, demolition, removal, and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, and after a background check, the contractor, supervisor, or worker shall be certified.

(2) The department may require the successful completion of annual refresher courses provided or approved by the department for the continued certification of the contractor or employee.

(3) The department shall provide for reciprocal certification of any individual trained to engage in decontamination, demolition, or disposal work in

another state when the prior training is shown to be substantially similar to the training required by the department. The department may require such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, revoke, or place restrictions on a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to this chapter. A certificate may be denied, suspended, revoked, or have restrictions placed on it on any of the following grounds:

(a) Failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel;

(b) Failing to perform decontamination, demolition, or disposal work using department of health certified decontamination personnel;

(c) Failing to file a work plan;

(d) Failing to perform work pursuant to the work plan;

(e) Failing to perform work that meets the requirements of the department and the requirements of the local health officers;

(f) Failing to properly dispose of contaminated property;

(g) Committing fraud or misrepresentation in: (i) Applying for or obtaining a certification, recertification, or reinstatement; (ii) seeking approval of a work plan; and (iii) documenting completion of work to the department or local health officer;

(h) Failing the evaluation and inspection of decontamination projects pursuant to RCW 64.44.075; or

(i) If the person has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(5) A contractor, supervisor, or worker who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation.

(6) The department of health shall prescribe fees as provided for in RCW 43.70.250 for: The issuance and renewal of certificates, conducting background checks of applicants, the administration of examinations, and the review of training courses.

~~((7) The decontamination account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in this account. Moneys in the account may only be spent after appropriation for costs incurred by the department in the administration and enforcement of this chapter.))~~

**Sec. 7.** RCW 70.47.100 and 2011 1st sp.s. c 9 s 4 and 2011 c 316 s 5 are each reenacted and amended to read as follows:

(1) A managed health care system participating in the plan shall do so by contract with the ((administrator)) director and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee covered by its contract with the ((administrator)) director as long as payments from the ((administrator)) director on behalf of the enrollee are current. A participating managed health care system may offer, without additional cost, health care benefits or services not included in the schedule of

covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The ((~~administrator~~)) director may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the ((~~administrator~~)) director to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

(2) A managed health care system shall pay a nonparticipating provider that provides a service covered under this chapter to the system's enrollee no more than the lowest amount paid for that service under the managed health care system's contracts with similar providers in the state.

(3) Pursuant to federal managed care access standards, 42 C.F.R. Sec. 438, managed health care systems must maintain a network of appropriate providers that is supported by written agreements sufficient to provide adequate access to all services covered under the contract with the authority, including hospital-based physician services. The authority will monitor and periodically report on the proportion of services provided by contracted providers and nonparticipating providers, by county, for each managed health care system to ensure that managed health care systems are meeting network adequacy requirements. No later than January 1st of each year, the authority will review and report its findings to the appropriate policy and fiscal committees of the legislature for the preceding state fiscal year.

(4) The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating managed health care systems serving their respective areas. The ((~~administrator~~)) director shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the ((~~administrator~~)) director shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another participating managed health care system at any time upon a showing of good cause for the transfer.

(5) Prior to negotiating with any managed health care system, the ((~~administrator~~)) director shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different areas of the state.

(6) In negotiating with managed health care systems for participation in the plan, the ((~~administrator~~)) director shall adopt a uniform procedure that includes at least the following:

(a) The ((~~administrator~~)) director shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

(b) The ~~((administrator))~~ director shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

(c) The ~~((administrator))~~ director may then select one or more systems to provide the covered services within a local area; and

(d) The ~~((administrator))~~ director may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons.

(7)(a) The ~~((administrator))~~ director may contract with a managed health care system to provide covered basic health care services to subsidized enrollees, nonsubsidized enrollees, health coverage tax credit eligible enrollees, or any combination thereof. At a minimum, such contracts issued on or after January 1, 2012, must include:

(i) Provider reimbursement methods that incentivize chronic care management within health homes;

(ii) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use; and

(iii) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, including allocation of funds to support provider participation in the training unless the managed care system is an integrated health delivery system that has programs in place for chronic care management.

(b) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(c) For the purposes of this subsection, "chronic care management," "chronic condition," and "health home" have the same meaning as in RCW 74.09.010.

(d) Contracts that include the items in (a)(i) through (iii) of this subsection must not exceed the rates that would be paid in the absence of these provisions.

(8) The ~~((administrator))~~ director may establish procedures and policies to further negotiate and contract with managed health care systems following completion of the request for proposal process in subsection (6) of this section, upon a determination by the ~~((administrator))~~ director that it is necessary to provide access, as defined in the request for proposal documents, to covered basic health care services for enrollees.

~~(9) ((The administrator may implement a self-funded or self-insured method of providing insurance coverage to subsidized enrollees, as provided under RCW 41.05.140. Prior to implementing a self-funded or self-insured method, the administrator shall ensure that funding available in the basic health plan self-insurance reserve account is sufficient for the self-funded or self-insured risk assumed, or expected to be assumed, by the administrator. If implementing a self-funded or self-insured method, the administrator may request funds to be moved from the basic health plan trust account or the basic health plan subscription account to the basic health plan self-insurance reserve account established in RCW 41.05.140.~~

~~(10))~~ Subsections (2) and (3) of this section expire July 1, 2016.

**Sec. 8.** RCW 70.116.134 and 1991 c 18 s 1 are each amended to read as follows:

(1) The secretary shall adopt rules pursuant to chapter 34.05 RCW establishing criteria for designating individuals or water purveyors as qualified satellite system management agencies. The criteria shall set forth minimum standards for designation as a satellite system management agency qualified to assume ownership, operation, or both, of an existing or proposed public water system. The criteria shall include demonstration of financial integrity and operational capability, and may require demonstration of previous experience in successful operation and management of a public water system.

(2) Each county shall identify potential satellite system management agencies to the secretary for areas where: (a) No purveyor has been designated a future service area pursuant to this chapter, or (b) an existing purveyor is unable or unwilling to provide service. Preference shall be given to public utilities or utility districts or to investor-owned utilities under the jurisdiction of the utilities and transportation commission.

(3) The secretary shall approve satellite system management agencies meeting the established criteria and shall maintain and make available to counties a list of approved agencies. Prior to the construction of a new public water system, the individual(s) proposing the new system or requesting service shall first be directed by the local agency responsible for issuing the construction or building permit to one or more qualified satellite system management agencies designated for the service area where the new system is proposed for the purpose of exploring the possibility of a satellite agency either owning or operating the proposed new water system.

(4) Approved satellite system management agencies shall be reviewed periodically by the secretary for continued compliance with established criteria. The secretary may require status reports and other information necessary for such review. Satellite system management agencies shall be subject to reapproval at the discretion of the secretary but not less than once every five years.

(5) The secretary may assess reasonable fees to process applications for initial approval and for periodic review of satellite system management agencies. ~~((A satellite system management account is hereby created in the custody of the state treasurer. All receipts from satellite system management agencies or applicants under subsection (4) of this section shall be deposited into the account. Funds in this account may be used only for administration of the satellite system management program. Expenditures from the account shall be authorized by the secretary or the secretary's designee. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.))~~

(6) For purposes of this section, "satellite system management agency" and "satellite agency" shall mean a person or entity that is certified by the secretary to own or operate more than one public water system on a regional or countywide basis, without the necessity for a physical connection between such systems.

**Sec. 9.** RCW 82.44.180 and 1999 c 402 s 5 and 1999 c 94 s 31 are each reenacted and amended to read as follows:

~~((4))~~ The transportation fund is created in the state treasury. Revenues under RCW ~~((82.44.110 and))~~ 82.50.510 shall be deposited into the fund as provided in ~~((those))~~ that section~~((s))~~.

Moneys in the fund may be spent only after appropriation. Expenditures from the fund may be used only for transportation purposes and activities and operations of the Washington state patrol not directly related to the policing of public highways and that are not authorized under Article II, section 40 of the state Constitution.

~~((2) There is hereby created the public transportation systems account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2) (b) and (c) shall be appropriated to the transportation improvement board and allocated by the transportation improvement board to public transportation projects submitted by the public transportation systems as defined by chapters 36.56, 36.57, and 36.57A RCW and RCW 35.84.060 and 81.112.030, and the Washington state ferry system, solely for:~~

- ~~(a) Planning;~~
- ~~(b) Development of capital projects;~~
- ~~(c) Development of high capacity transportation systems as defined in RCW 81.104.015;~~
- ~~(d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020;~~
- ~~(e) Other public transportation system related roadway projects on state highways, county roads, or city streets;~~
- ~~(f) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board from other fund sources; and~~
- ~~(g) Reimbursement to the general fund of tax credits authorized under RCW 82.04.4453 and 82.16.048, subject to appropriation.)~~

**Sec. 10.** RCW 41.05.140 and 2012 c 187 s 10 are each amended to read as follows:

(1) Except for property and casualty insurance, the authority may self-fund, self-insure, or enter into other methods of providing insurance coverage for insurance programs under its jurisdiction, including the basic health plan as provided in chapter 70.47 RCW. The authority shall contract for payment of claims or other administrative services for programs under its jurisdiction. If a program does not require the prepayment of reserves, the authority shall establish such reserves within a reasonable period of time for the payment of claims as are normally required for that type of insurance under an insured program. The authority shall endeavor to reimburse basic health plan health care providers under this section at rates similar to the average reimbursement rates offered by the statewide benchmark plan determined through the request for proposal process.

(2) Reserves established by the authority for employee and retiree benefit programs shall be held in a separate account in the custody of the state treasurer and shall be known as the public employees' and retirees' insurance reserve fund. The state treasurer may invest the moneys in the reserve fund pursuant to RCW 43.79A.040.

(3) Any savings realized as a result of a program created for employees and retirees under this section shall not be used to increase benefits unless such use is authorized by statute.

~~(4) ((Reserves established by the authority to provide insurance coverage for the basic health plan under chapter 70.47 RCW shall be held in a separate~~

~~trust account in the custody of the state treasurer and shall be known as the basic health plan self-insurance reserve account. The state treasurer may invest the moneys in the reserve fund pursuant to RCW 43.79A.040.~~

~~(5))~~ (5) Any program created under this section shall be subject to the examination requirements of chapter 48.03 RCW as if the program were a domestic insurer. In conducting an examination, the commissioner shall determine the adequacy of the reserves established for the program.

~~((6))~~ (6) The authority shall keep full and adequate accounts and records of the assets, obligations, transactions, and affairs of any program created under this section.

~~((7))~~ (7) The authority shall file a quarterly statement of the financial condition, transactions, and affairs of any program created under this section in a form and manner prescribed by the insurance commissioner. The statement shall contain information as required by the commissioner for the type of insurance being offered under the program. A copy of the annual statement shall be filed with the speaker of the house of representatives and the president of the senate.

~~((8))~~ (8) The provisions of this section do not apply to the administration of chapter 74.09 RCW.

**Sec. 11.** RCW 82.45.180 and 2010 1st sp. s. c 26 s 9 are each amended to read as follows:

(1)(a) For taxes collected by the county under this chapter, the county treasurer shall collect a five dollar fee on all transactions required by this chapter where the transaction does not require the payment of tax. A total of five dollars shall be collected in the form of a tax and fee, where the calculated tax payment is less than five dollars. Through June 30, 2006, the county treasurer shall place one percent of the taxes collected by the county under this chapter and the treasurer's fee in the county current expense fund to defray costs of collection. After June 30, 2006, the county treasurer shall place one and three-tenths percent of the taxes collected by the county under this chapter and the treasurer's fee in the county current expense fund to defray costs of collection. For taxes collected by the county under this chapter before July 1, 2006, the county treasurer shall pay over to the state treasurer and account to the department of revenue for the proceeds at the same time the county treasurer remits funds to the state under RCW 84.56.280. For taxes collected by the county under this chapter after June 30, 2006, on a monthly basis the county treasurer shall pay over to the state treasurer the month's transmittal. The month's transmittal must be received by the state treasurer by 12:00 p.m. on the last working day of each month. The county treasurer shall account to the department for the month's transmittal by the twentieth day of the month following the month in which the month's transmittal was paid over to the state treasurer. The state treasurer shall deposit the proceeds in the general fund.

(b) For purposes of this subsection, the definitions in this subsection apply.

(i) "Close of business" means the time when the county treasurer makes his or her daily deposit of proceeds.

(ii) "Month's transmittal" means all proceeds deposited by the county through the close of business of the day that is two working days before the last working day of the month. This definition of "month's transmittal" shall not be construed as requiring any change in a county's practices regarding the timing of its daily deposits of proceeds.



(iii) "Proceeds" means moneys collected and receipted by the county from the taxes imposed by this chapter, less the county's share of the proceeds used to defray the county's costs of collection allowable in (a) of this subsection.

(iv) "Working day" means a calendar day, except Saturdays, Sundays, and all legal holidays as provided in RCW 1.16.050.

(2) For taxes collected by the department of revenue under this chapter, the department shall remit the tax to the state treasurer who shall deposit the proceeds of any state tax in the general fund. The state treasurer shall deposit the proceeds of any local taxes imposed under chapter 82.46 RCW in the local real estate excise tax account hereby created in the state treasury. Moneys in the local real estate excise tax account may be spent only for distribution to counties, cities, and towns imposing a tax under chapter 82.46 RCW. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local real estate excise tax account shall be credited to the local real estate excise tax account and distributed to the counties, cities, and towns monthly. Monthly the state treasurer shall make distribution from the local real estate excise tax account to the counties, cities, and towns the amount of tax collected on behalf of each taxing authority. The state treasurer shall make the distribution under this subsection without appropriation.

~~(3)(a) ((The real estate excise tax electronic technology account is created in the custody of the state treasurer. An appropriation is not required for expenditures and the account is not subject to allotment procedures under chapter 43.88 RCW.~~

~~(b))~~ Through June 30, 2010, the county treasurer shall collect an additional five dollar fee on all transactions required by this chapter, regardless of whether the transaction requires the payment of tax. The county treasurer shall remit this fee to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer shall place money from this fee in the ~~((real estate excise tax electronic technology account))~~ general fund. By the twentieth day of the subsequent month, the state treasurer shall distribute to each county treasurer according to the following formula: Three-quarters of the funds available shall be equally distributed among the thirty-nine counties; and the balance shall be ratably distributed among the counties in direct proportion to their population as it relates to the total state's population based on most recent statistics by the office of financial management.

~~((c))~~ (b) When received by the county treasurer, the funds shall be placed in a special real estate excise tax electronic technology fund held by the county treasurer to be used exclusively for the development, implementation, and maintenance of an electronic processing and reporting system for real estate excise tax affidavits. Funds may be expended to make the system compatible with the automated real estate excise tax system developed by the department and compatible with the processes used in the offices of the county assessor and county auditor. Any funds held in the account that are not expended by the earlier of: July 1, 2015, or at such time that the county treasurer is utilizing an electronic processing and reporting system for real estate excise tax affidavits compatible with the department and compatible with the processes used in the offices of the county assessor and county auditor, revert to the special real estate and property tax administration assistance account in accordance with subsection (5)(c) of this section.

(4) Beginning July 1, 2010, through December 31, 2013, the county treasurer shall continue to collect the additional five dollar fee in subsection (3) of this section on all transactions required by this chapter, regardless of whether the transaction requires the payment of tax. During this period, the county treasurer shall remit this fee to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer shall place money from this fee in the annual property revaluation grant account created in RCW 84.41.170.

(5)(a) The real estate and property tax administration assistance account is created in the custody of the state treasurer. An appropriation is not required for expenditures and the account is not subject to allotment procedures under chapter 43.88 RCW.

(b) Beginning January 1, 2014, the county treasurer must continue to collect the additional five dollar fee in subsection (3) of this section on all transactions required by this chapter, regardless of whether the transaction requires the payment of tax. The county treasurer shall deposit one-half of this fee in the special real estate and property tax administration assistance account in accordance with (c) of this subsection and remit the balance to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer must place money from this fee in the real estate and property tax administration assistance account. By the twentieth day of the subsequent month, the state treasurer must distribute the funds to each county treasurer according to the following formula: One-half of the funds available must be equally distributed among the thirty-nine counties; and the balance must be ratably distributed among the counties in direct proportion to their population as it relates to the total state's population based on most recent statistics by the office of financial management.

(c) When received by the county treasurer, the funds must be placed in a special real estate and property tax administration assistance account held by the county treasurer to be used for:

(i) Maintenance and operation of an annual revaluation system for property tax valuation; and

(ii) Maintenance and operation of an electronic processing and reporting system for real estate excise tax affidavits.

**Sec. 12.** RCW 70.122.130 and 2006 c 108 s 2 are each amended to read as follows:

(1) The department of health shall establish and maintain a statewide health care declarations registry containing the health care declarations identified in subsection (2) of this section as submitted by residents of Washington. The department shall digitally reproduce and store health care declarations in the registry. The department may establish standards for individuals to submit digitally reproduced health care declarations directly to the registry, but is not required to review the health care declarations that it receives to ensure they comply with the particular statutory requirements applicable to the document. The department may contract with an organization that meets the standards identified in this section.

(2)(a) An individual may submit any of the following health care declarations to the department of health to be digitally reproduced and stored in the registry:

(i) A directive, as defined by this chapter;  
 (ii) A durable power of attorney for health care, as authorized in chapter 11.94 RCW;

(iii) A mental health advance directive, as defined by chapter 71.32 RCW;  
 or

(iv) A form adopted pursuant to the department of health's authority in RCW 43.70.480.

(b) Failure to submit a health care declaration to the department of health does not affect the validity of the declaration.

(c) Failure to notify the department of health of a valid revocation of a health care declaration does not affect the validity of the revocation.

(d) The entry of a health care directive in the registry under this section does not:

(i) Affect the validity of the document;

(ii) Take the place of any requirements in law necessary to make the submitted document legal; or

(iii) Create a presumption regarding the validity of the document.

(3) The department of health shall prescribe a procedure for an individual to revoke a health care declaration contained in the registry.

(4) The registry must:

(a) Be maintained in a secure database that is accessible through a web site maintained by the department of health;

(b) Send annual electronic messages to individuals that have submitted health care declarations to request that they review the registry materials to ensure that it is current;

(c) Provide individuals who have submitted one or more health care declarations with access to their documents and the ability to revoke their documents at all times; and

(d) Provide the personal representatives of individuals who have submitted one or more health care declarations to the registry, attending physicians, advanced registered nurse practitioners, health care providers licensed by a disciplining authority identified in RCW 18.130.040 who is acting under the direction of a physician or an advanced registered nurse practitioner, and health care facilities, as defined in this chapter or in chapter 71.32 RCW, access to the registry at all times.

(5) In designing the registry and web site, the department of health shall ensure compliance with state and federal requirements related to patient confidentiality.

(6) The department shall provide information to health care providers and health care facilities on the registry web site regarding the different federal and Washington state requirements to ascertain and document whether a patient has an advance directive.

(7) The department of health may accept donations, grants, gifts, or other forms of voluntary contributions to support activities related to the creation and maintenance of the health care declarations registry and statewide public education campaigns related to the existence of the registry. ~~((All funds received shall be transferred to the health care declarations registry account, created in RCW 70.122.140.))~~ All receipts from donations made under this section, and other contributions and appropriations specifically made for the purposes of

creating and maintaining the registry established under this section and statewide public education campaigns related to the existence of the registry, shall be deposited into the general fund. These moneys in the general fund may be spent only after appropriation.

(8) The department of health may adopt rules as necessary to implement chapter 108, Laws of 2006.

(9) By December 1, 2008, the department shall report to the house and senate committees on health care the following information:

(a) Number of participants in the registry;

(b) Number of health care declarations submitted by type of declaration as defined in this section;

(c) Number of health care declarations revoked and the method of revocation;

(d) Number of providers and facilities, by type, that have been provided access to the registry;

(e) Actual costs of operation of the registry(;

~~(f) Donations received by the department for deposit into the health care declarations registry account, created in RCW 70.122.140 by type of donor).~~

NEW SECTION. Sec. 13. The following acts or parts of acts are each repealed:

(1) RCW 43.19.730 (Public printing revolving account) and 2011 1st sp.s. c 43 s 307;

(2) RCW 43.70.325 (Rural health access account) and 1992 c 120 s 1;

(3) RCW 43.338.030 (Manufacturing innovation and modernization account) and 2008 c 315 s 5;

(4) RCW 46.68.210 (Puyallup tribal settlement account) and 1991 sp.s. c 13 s 104 & 1990 c 42 s 411;

(5) RCW 46.68.330 (Freight congestion relief account) and 2007 c 514 s 2;

(6) RCW 70.122.140 (Health care declarations registry account) and 2006 c 108 s 3; and

(7) 2006 c 372 s 715 (uncodified).

NEW SECTION. Sec. 14. The office of the state treasurer, the office of financial management, and the code reviser shall review state statutes relating to state capital construction funds and accounts and bond authorizations and submit to the appropriate fiscal committees of the 2015 legislature recommended legislation for the amendment, repeal, or decodification of those statutes that are inactive, obsolete, or no longer necessary for continued publication in the Revised Code of Washington.

NEW SECTION. Sec. 15. Section 3 of this act expires if the requirements set out in section 7, chapter 36, Laws of 2012 are met.

NEW SECTION. Sec. 16. Section 4 of this act takes effect if the requirements set out in section 7, chapter 36, Laws of 2012 are met.

NEW SECTION. Sec. 17. Any residual balance of funds remaining in the public printing revolving account repealed by section 13 of this act on the effective date of this section shall be transferred to the enterprise services account. Any residual balance of funds remaining in the Puyallup tribal settlement account repealed by section 13 of this act on the effective date of this section shall be transferred to the motor vehicle fund. Any residual balance of

funds remaining in any other account abolished in this act on June 30, 2013, shall be transferred by the state treasurer to the state general fund.

**NEW SECTION. Sec. 18.** Except for section 4 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2013.

Passed by the Senate April 24, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

## CHAPTER 252

[Engrossed Senate Bill 5305]

### HOSPITALS—WOUND REPORTING

AN ACT Relating to requiring hospitals to report when providing treatment for bullet wounds, gunshot wounds, and stab wounds to all patients; and amending RCW 70.41.440.

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

**Sec. 1.** RCW 70.41.440 and 2009 c 359 s 2 are each amended to read as follows:

(1) A hospital shall report to a local law enforcement authority as soon as reasonably possible, taking into consideration a patient's emergency care needs, when the hospital provides treatment for a bullet wound, gunshot wound, or stab wound to a patient (~~who is unconscious~~). A hospital shall establish a written policy to identify the person or persons responsible for making the report.

(2) The report required under subsection (1) of this section must include the following information, if known:

(a) The name, residence, sex, and age of the patient;

(b) Whether the patient has received a bullet wound, gunshot wound, or stab wound; and

(c) The name of the health care provider providing treatment for the bullet wound, gunshot wound, or stab wound.

(3) Nothing in this section shall limit a person's duty to report under RCW 26.44.030 or 74.34.035.

(4) Any bullets, clothing, or other foreign objects that are removed from a patient for whom a hospital is required to make a report pursuant to subsection (1) of this section shall be preserved and kept in custody in such a way that the identity and integrity thereof are reasonably maintained until the bullets, clothing, or other foreign objects are taken into possession by a law enforcement authority or the hospital's normal period for retention of such items expires, whichever occurs first.

(5) Any hospital or person who in good faith, and without gross negligence or willful or wanton misconduct, makes a report required by this section, cooperates in an investigation or criminal or judicial proceeding related to such report, or maintains bullets, clothing, or other foreign objects, or provides such items to a law enforcement authority as described in subsection (4) of this section, is immune from civil or criminal liability or professional licensure action arising out of or related to the report and its contents or the absence of

information in the report, cooperation in an investigation or criminal or judicial proceeding, and the maintenance or provision to a law enforcement authority of bullets, clothing, or other foreign objects under subsection (4) of this section.

(6) The physician-patient privilege described in RCW 5.60.060(4), the registered nurse-patient privilege described in RCW 5.62.020, and any other health care provider-patient privilege created or recognized by law are not a basis for excluding as evidence in any criminal proceeding any report, or information contained in a report made under this section.

(7) All reporting, preservation, or other requirements of this section are secondary to patient care needs and may be delayed or compromised without penalty to the hospital or person required to fulfill the requirements of this section.

(8) If the patient states his or her injury is the result of domestic violence, the hospital shall follow its established processes to inform the patient of resources to assure the safety of the patient and his or her family.

Passed by the Senate April 22, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

## CHAPTER 253

[Substitute Senate Bill 5308]

### SEXUALLY EXPLOITED CHILDREN—COMMITTEE

AN ACT Relating to establishing the commercially sexually exploited children statewide coordinating committee; adding a new section to chapter 7.68 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 7.68 RCW to read as follows:

(1) The commercially sexually exploited children statewide coordinating committee is established to address the issue of children who are commercially sexually exploited, to examine the practices of local and regional entities involved in addressing sexually exploited children, and to make recommendations on statewide laws and practices.

(2) The committee is convened by the office of the attorney general and consists of the following members:

(a) One member from each of the two largest caucuses of the house of representatives appointed by the speaker of the house;

(b) One member from each of the two largest caucuses of the senate appointed by the speaker of the senate;

(c) A representative of the governor's office appointed by the governor;

(d) The secretary of the children's administration or his or her designee;

(e) The secretary of the juvenile rehabilitation administration or his or her designee;

(f) The attorney general or his or her designee;

(g) The superintendent of public instruction or his or her designee;

(h) A representative of the administrative office of the courts appointed by the administrative office of the courts;

(i) The executive director of the Washington association of sheriffs and police chiefs or his or her designee;

(j) The executive director of the Washington state criminal justice training commission or his or her designee;

(k) A representative of the Washington association of prosecuting attorneys appointed by the association;

(l) The executive director of the office of public defense or his or her designee;

(m) Three representatives of community service providers that provide direct services to commercially sexually exploited children appointed by the attorney general;

(n) Two representatives of nongovernmental organizations familiar with the issues affecting commercially sexually exploited children appointed by the attorney general;

(o) The president of the superior court judges' association or his or her designee;

(p) The president of the juvenile court administrators or his or her designee;

(q) Any existing chairs of regional task forces on commercially sexually exploited children;

(r) A representative from the criminal defense bar;

(s) A representative of the center for children and youth justice;

(t) A representative from the office of crime victims advocacy; and

(u) The executive director of the Washington coalition of sexual assault programs.

(3) The duties of the committee include, but are not limited to:

(a) Overseeing and reviewing the implementation of the Washington state model protocol for commercially sexually exploited children at pilot sites;

(b) Receiving reports and data from local and regional entities regarding the incidence of commercially sexually exploited children in their areas as well as data information regarding perpetrators, geographic data and location trends, and any other data deemed relevant;

(c) Receiving reports on local coordinated community response practices and results of the community responses;

(d) Reviewing recommendations from local and regional entities regarding policy and legislative changes that would improve the efficiency and effectiveness of local response practices;

(e) Making recommendations regarding policy and legislative changes that would improve the effectiveness of the state's response to and promote best practices for suppression of the commercial sexual exploitation of children;

(f) Making recommendations regarding data collection useful to understanding or addressing the problem of commercially sexually exploited children; and

(g) Reviewing and making recommendations regarding strategic local investments or opportunities for federal and state funding to address the commercial sexual exploitation of children.

(4) The committee must meet no less than annually.

(5) The committee shall report its findings to the appropriate committees of the legislature and to any other known statewide committees addressing trafficking or the commercial sex trade by June 30th of each year.

(6) This section expires June 30, 2015.

Passed by the Senate April 23, 2013.

Passed by the House April 11, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

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## CHAPTER 254

[Substitute Senate Bill 5315]

### CHILDREN—OUT-OF-HOME CARE—VISITATION—CRIMINAL INVESTIGATION

AN ACT Relating to the implementation of the recommendations made by the Powell fatality team; amending RCW 13.34.136, 13.34.380, and 74.14B.010; reenacting and amending RCW 13.34.130; and adding a new section to chapter 13.34 RCW.

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

**Sec. 1.** RCW 13.34.130 and 2011 c 309 s 27 and 2011 c 292 s 1 are each reenacted and amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition that maintains the child in his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose services to assist the parents in maintaining the child in the home, including housing assistance, if appropriate, that least interfere with family autonomy and are adequate to protect the child.

(b)(i) Order the child to be removed from his or her home and into the custody, control, and care of a relative or other suitable person, the department, or a supervising agency for supervision of the child's placement. If the court orders that the child be placed with a caregiver over the objections of the parent or the department, the court shall articulate, on the record, his or her reasons for ordering the placement. The court may not order an Indian child, as defined in RCW 13.38.040, to be removed from his or her home unless the court finds, by clear and convincing evidence including testimony of qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(ii) The department or supervising agency has the authority to place the child, subject to review and approval by the court (A) with a relative as defined in RCW 74.15.020(2)(a), (B) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be suitable and competent to provide care for the child, or (C) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW.



(iii) The department may also consider placing the child, subject to review and approval by the court, with a person with whom the child's sibling or half-sibling is residing or a person who has adopted the sibling or half-sibling of the child being placed as long as the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be competent to provide care for the child.

(2) Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260.

(3) The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a), including a placement provided for in subsection (1)(b)(iii) of this section, when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, the child shall be placed with a person who is willing, appropriate, and available to care for the child, and who is: (I) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; or (II) a suitable person as described in subsection (1)(b) of this section. The court shall consider the child's existing relationships and attachments when determining placement.

(4) When placing an Indian child in out-of-home care, the department or supervising agency shall follow the placement preference characteristics in RCW 13.38.180.

(5) Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services, including housing assistance, that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(6) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

(i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to petitions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a stepbrother or stepsister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the stepsibling.

(7) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section and placed into nonparental or nonrelative care, the court shall order a placement that allows the child to remain in the same school he or she attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

(8) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(9) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative or other suitable person, the child shall remain in foster care and the court shall direct the department or supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative or other person appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives or other suitable persons, pursuant to this section, shall be contingent upon cooperation by the relative or other suitable person with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's or other suitable person's home, subject to review by the court.

**Sec. 2.** RCW 13.34.136 and 2011 c 309 s 29 are each amended to read as follows:

(1) Whenever a child is ordered removed from the home, a permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the

department's or supervising agency's proposed permanency plan must be provided to the department or supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption, including a tribal customary adoption as defined in RCW 13.38.040; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to RCW 13.34.130(~~(6)~~) (8), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the supervising agency or the department will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the department or supervising agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The department's or supervising agency's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii)(A) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The supervising agency or department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement.

(B) Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation.

(C) Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. When a parent or sibling has been identified as a suspect in an active criminal investigation for a violent crime that, if the allegations are true, would impact the safety of the child, the department shall make a concerted effort to consult with the assigned law enforcement officer in the criminal case before recommending any changes in parent/child or child/sibling contact. In the event that the law enforcement officer has information pertaining to the criminal case that may have serious implications for child safety or well-being, the law enforcement officer shall provide this information to the department during the consultation. The department may only use the information provided by law

enforcement during the consultation to inform family visitation plans and may not share or otherwise distribute the information to any person or entity. Any information provided to the department by law enforcement during the consultation is considered investigative information and is exempt from public inspection pursuant to RCW 42.56.240. The results of the consultation shall be communicated to the court.

(D) The court and the department or supervising agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department or supervising agency.

(v) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

(vi) The supervising agency or department shall provide all reasonable services that are available within the department or supervising agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(~~(6)~~) (8), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The department or supervising agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for fifteen of the most recent twenty-two months, the court shall require the department or supervising agency to file a petition seeking termination of parental rights in accordance with RCW 13.34.145(3)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(~~((4))~~) (6). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and when it is in the best interests of the child adoptee and his or her siblings, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department of social and health services or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe.

**Sec. 3.** RCW 13.34.380 and 2009 c 520 s 45 are each amended to read as follows:

The department shall develop consistent policies and protocols, based on current relevant research, concerning visitation for dependent children to be implemented consistently throughout the state. The department shall develop the policies and protocols in consultation with researchers in the field, community-based agencies, court-appointed special advocates, parents' representatives, and court representatives. The policies and protocols shall include, but not be limited to: The structure and quality of visitations; consultation with the assigned law enforcement officer in the event the parent or sibling of the child is identified as a suspect in an active criminal investigation for a violent crime that, if the allegations are true, would impact the safety of the child; and training for department and supervising agency caseworkers, visitation supervisors, and foster parents related to visitation.

The policies and protocols shall be consistent with the provisions of this chapter and implementation of the policies and protocols shall be consistent with relevant orders of the court.

NEW SECTION. **Sec. 4.** A new section is added to chapter 13.34 RCW to read as follows:

In the event a judge orders a parent to undergo a psychosexual evaluation, and pending the outcome of the evaluation, the department, subject to the approval of the court, may reassess visitation duration, supervision, and location, if appropriate. If the assessment indicates the current visitation plan is contrary to the child's health, safety, or welfare, the department, subject to approval by the court, may alter the visitation plan pending the outcome of the investigation.

**Sec. 5.** RCW 74.14B.010 and 1999 c 389 s 5 are each amended to read as follows:

(1) Caseworkers employed in children services shall meet minimum standards established by the department of social and health services. Comprehensive training for caseworkers shall be completed before such caseworkers are assigned to case-carrying responsibilities without direct supervision. Intermittent, part-time, and standby workers shall be subject to the same minimum standards and training.

(2) Ongoing specialized training shall be provided for persons responsible for investigating child sexual abuse. Training participants shall have the opportunity to practice interview skills and receive feedback from instructors.

(3) The department, the criminal justice training commission, the Washington association of sheriffs and police chiefs, and the Washington association of prosecuting attorneys shall design and implement statewide training that contains consistent elements for persons engaged in the interviewing of children, including law enforcement, prosecution, and child protective services.

(4) The training shall: (a) Be based on research-based practices and standards; (b) minimize the trauma of all persons who are interviewed during abuse investigations; (c) provide methods of reducing the number of investigative interviews necessary whenever possible; (d) assure, to the extent possible, that investigative interviews are thorough, objective, and complete; (e) recognize needs of special populations, such as persons with developmental disabilities; (f) recognize the nature and consequences of victimization; (g) require investigative interviews to be conducted in a manner most likely to permit the interviewed persons the maximum emotional comfort under the circumstances; (h) address record retention and retrieval; and (i) documentation of investigative interviews.

(5) The identification of domestic violence is critical in ensuring the safety of children in the child welfare system. As a result, ongoing domestic violence training and consultation shall be provided to caseworkers, including how to use the children's administration's practice guide to domestic violence.

Passed by the Senate April 22, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

## CHAPTER 255

[Senate Bill 5337]

## DEPARTMENT OF NATURAL RESOURCES—TIMBER SALE PROGRAM

AN ACT Relating to expiration dates affecting the department of natural resources' timber sale program; amending 2009 c 418 s 7 (uncodified); amending 2010 c 126 ss 15 and 16 (uncodified); providing an effective date; and providing expiration dates.

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

**Sec. 1.** 2009 c 418 s 7 (uncodified) is amended to read as follows:

This act expires January 1, (~~2014~~) 2019.

**Sec. 2.** 2010 c 126 s 15 (uncodified) is amended to read as follows:

Section 11 of this act expires January 1, (~~2014~~) 2019.

**Sec. 3.** 2010 c 126 s 16 (uncodified) is amended to read as follows:

Section 12 of this act takes effect January 1, (~~2014~~) 2019.

Passed by the Senate March 8, 2013.

Passed by the House April 25, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

## CHAPTER 256

[Engrossed Senate Bill 5484]

## CRIMES—ASSAULT—COURT PROCEEDINGS

AN ACT Relating to assault in the third degree occurring in areas used in connection with court proceedings; amending RCW 9.94A.535; reenacting and amending RCW 9A.36.031; adding a new section to chapter 2.28 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 9A.36.031 and 2011 c 336 s 359 and 2011 c 238 s 1 are each reenacted and amended to read as follows:

(1) A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree:

(a) With intent to prevent or resist the execution of any lawful process or mandate of any court officer or the lawful apprehension or detention of himself, herself, or another person, assaults another; or

(b) Assaults a person employed as a transit operator or driver, the immediate supervisor of a transit operator or driver, a mechanic, or a security officer, by a public or private transit company or a contracted transit service provider, while that person is performing his or her official duties at the time of the assault; or

(c) Assaults a school bus driver, the immediate supervisor of a driver, a mechanic, or a security officer, employed by a school district transportation service or a private company under contract for transportation services with a school district, while the person is performing his or her official duties at the time of the assault; or

(d) With criminal negligence, causes bodily harm to another person by means of a weapon or other instrument or thing likely to produce bodily harm; or

(e) Assaults a firefighter or other employee of a fire department, county fire marshal's office, county fire prevention bureau, or fire protection district who was performing his or her official duties at the time of the assault; or

(f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering; or

(g) Assaults a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault; or

(h) Assaults a peace officer with a projectile stun gun; or

(i) Assaults a nurse, physician, or health care provider who was performing his or her nursing or health care duties at the time of the assault. For purposes of this subsection: "Nurse" means a person licensed under chapter 18.79 RCW; "physician" means a person licensed under chapter 18.57 or 18.71 RCW; and "health care provider" means a person certified under chapter 18.71 or 18.73 RCW who performs emergency medical services or a person regulated under Title 18 RCW and employed by, or contracting with, a hospital licensed under chapter 70.41 RCW; or

(j) Assaults a judicial officer, court-related employee, county clerk, or county clerk's employee, while that person is performing his or her official duties at the time of the assault or as a result of that person's employment within the judicial system. For purposes of this subsection, "court-related employee" includes bailiffs, court reporters, judicial assistants, court managers, court managers' employees, and any other employee, regardless of title, who is engaged in equivalent functions; or

(k) Assaults a person located in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. This section shall apply only: (i) During the times when a courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with section 3 of this act at the time of the assault.

(2) Assault in the third degree is a class C felony.

**Sec. 2.** RCW 9.94A.535 and 2011 c 87 s 1 are each amended to read as follows:

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider



The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(i) The defendant was making a good faith effort to obtain or provide medical assistance for someone who is experiencing a drug-related overdose.

(j) The current offense involved domestic violence, as defined in RCW 10.99.020, and the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse.

#### (2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury -Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(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.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the

theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010.

(aa) The defendant committed the offense with the intent to directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage to or for a criminal street gang as defined in RCW 9.94A.030, its reputation, influence, or membership.

(bb) The current offense involved paying to view, over the internet in violation of RCW 9.68A.075, depictions of a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4) (a) through (g).

(cc) The offense was intentionally committed because the defendant perceived the victim to be homeless, as defined in RCW 9.94A.030.

(dd) The current offense involved a felony crime against persons, except for assault in the third degree pursuant to RCW 9A.36.031(1)(k), that occurs in a courtroom, jury room, judge's chamber, or any waiting area or corridor immediately adjacent to a courtroom, jury room, or judge's chamber. This subsection shall apply only: (i) During the times when a courtroom, jury room, or judge's chamber is being used for judicial purposes during court proceedings; and (ii) if signage was posted in compliance with section 3 of this act at the time of the offense.

**NEW SECTION. Sec. 3.** A new section is added to chapter 2.28 RCW to read as follows:

(1) Signage shall be posted notifying the public of the possible enhanced penalties under this act.

(2) The signage shall be prominently displayed at any public entrance to a courtroom.

(3) The administrative office of the courts shall develop a standard signage form notifying the public of the possible enhanced penalties under this act.

Passed by the Senate April 27, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

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## CHAPTER 257

[Senate Bill 5797]

### COURTS—SPECIALTY AND THERAPEUTIC

AN ACT Relating to specialty courts; amending RCW 2.28.170, 2.28.175, 2.28.180, and 2.28.190; adding a new section to chapter 2.28 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 in the state of Washington, there exists a type of court administered by the judiciary commonly called a specialty or therapeutic court. Judges in the trial courts throughout the state effectively utilize specialty and therapeutic courts to remove defendants with their consent and the consent of the prosecuting authority from the normal

criminal court system and allow those defendants the opportunity to obtain treatment services to address particular issues that may have contributed to the conduct that led to their arrest in exchange for dismissal of the charges. Trial courts have proved adept at creative approaches in fashioning a wide variety of specialty and therapeutic courts addressing the spectrum of social issues that can contribute to criminal activity.

The legislature also finds that there are presently more than seventy-four specialty and therapeutic courts operating in the state of Washington that save costs to both the trial courts and law enforcement by strategic focus of resources within the criminal justice system. There are presently more than fifteen types of specialty and therapeutic courts in the state including: Veterans treatment court, adult drug court, juvenile drug court, family dependency treatment court, mental health court, DUI court, community court, reentry drug court, tribal healing to wellness court, truancy court, homeless court, domestic violence court, gambling court, and Back on TRAC: Treatment, responsibility, accountability on campus.

The legislature recognizes the inherent authority of the judiciary under Article IV, section 1 of the state Constitution to establish specialty and therapeutic courts. The legislature recognizes the outstanding contribution to the state and a local community made by the establishment of specialty and therapeutic courts and desires to provide a general provision in statute acknowledging and encouraging the judiciary to provide for such courts to address the particular needs within a given judicial jurisdiction.

**NEW SECTION. Sec. 2.** A new section is added to chapter 2.28 RCW to read as follows:

(1) The legislature respectfully encourages the supreme court to adopt any administrative orders and court rules of practice and procedure it deems necessary to support the establishment of effective specialty and therapeutic courts.

(2) Any jurisdiction may establish a specialty or therapeutic court under this section and may seek state or federal funding as it becomes available for the establishment, maintenance, and expansion of specialty and therapeutic courts and for the provision by participating agencies of treatment to participating defendants.

(3) Any jurisdiction establishing a specialty court shall endeavor to incorporate the treatment court principles of best practices as recognized by state and national treatment court agencies and organizations in structuring a particular program, which may include:

- (a) Determine the population;
- (b) Perform a clinical assessment;
- (c) Develop the treatment plan;
- (d) Supervise the offender;
- (e) Forge agency, organization, and community partnerships;
- (f) Take a judicial leadership role;
- (g) Develop case management strategies;
- (h) Address transportation issues;
- (i) Evaluate the program;
- (j) Ensure a sustainable program.

(4) No therapeutic or specialty court may be established specifically for the purpose of applying foreign law, including foreign criminal, civil, or religious law, that is otherwise not required by treaty.

(5) Specialty and therapeutic courts shall continue to: (a) Obtain the consent of the prosecuting authority in order to remove a charged offender from the regular course of prosecution and punishment; and (b) comply with sentencing requirements as established in state law.

(6) No specialty or therapeutic court established by court rule shall enforce a foreign law, if doing so would violate a right guaranteed by the Constitution of this state or of the United States.

NEW SECTION. **Sec. 3.** The superior court judges' association and the district and municipal court judges' association are encouraged to invite other appropriate organizations and convene a work group to examine the structure of all specialty and therapeutic courts in Washington. If such a work group is convened, the legislature requests a recommendation for the structure for such courts in the law and court rules, incorporating principles of best practices relative to a particular court as recognized by state and national treatment court agencies and organizations, to make such courts more effective and more prevalent throughout the state. The legislature requests such recommendations prior to the beginning of the 2014 legislative session, and respectfully requests the supreme court to consider any recommendations from the work group pertaining to necessary changes in court rules.

NEW SECTION. **Sec. 4.** For the purposes of this act, "specialty court" and "therapeutic court" both mean a specialized pretrial or sentencing docket in select criminal cases where agencies coordinate work to provide treatment for a defendant who has particular needs.

**Sec. 5.** RCW 2.28.170 and 2009 c 445 s 2 are each amended to read as follows:

(1) (~~Counties~~) Jurisdictions may establish and operate drug courts.

(2) For the purposes of this section, "drug court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing felony and nonfelony offenders, whether adult or juvenile, by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

(3)(a) Any jurisdiction that seeks a state appropriation to fund a drug court program must first:

(i) Exhaust all federal funding that is available to support the operations of its drug court and associated services; and

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for drug court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for drug court operations and associated services. However, from July 26, 2009, until June 30, 2013, no match is required for state moneys expended for the administrative and overhead costs associated with the operation of a drug court pursuant to RCW 70.96A.350.

(b) Any (~~county~~) jurisdiction that establishes a drug court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The drug court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

- (i) The offender would benefit from substance abuse treatment;
- (ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and
- (iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:
  - (A) That is a sex offense;
  - (B) That is a serious violent offense;
  - (C) During which the defendant used a firearm; or
  - (D) During which the defendant caused substantial or great bodily harm or death to another person.

**Sec. 6.** RCW 2.28.175 and 2012 c 183 s 1 are each amended to read as follows:

(1) (~~Counties~~) Jurisdictions may establish and operate DUI courts. Municipalities may enter into cooperative agreements with counties or other municipalities that have DUI courts to provide DUI court services.

(2) For the purposes of this section, "DUI court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism of impaired driving among nonviolent, alcohol abusing offenders, whether adult or juvenile, by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic testing for alcohol use and, if applicable, drug use; and the use of appropriate sanctions and other rehabilitation services.

(3)(a) Any jurisdiction that seeks a state appropriation to fund a DUI court program must first:

- (i) Exhaust all federal funding that is available to support the operations of its DUI court and associated services; and
- (ii) Match, on a dollar-for-dollar basis, state moneys allocated for DUI court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for DUI court operations and associated services. However, until June 30, 2014, no match is required for state moneys expended for the administrative and overhead costs associated with the operation of a DUI court established as of January 1, 2011.

(b) Any jurisdiction that establishes a DUI court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The DUI court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

- (i) The offender would benefit from alcohol treatment;
- (ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030, vehicular homicide under RCW 46.61.520, vehicular assault under RCW 46.61.522, or an equivalent out-of-state offense; and
- (iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:
  - (A) That is a sex offense;

- (B) That is a serious violent offense;
- (C) That is vehicular homicide or vehicular assault;
- (D) During which the defendant used a firearm; or
- (E) During which the defendant caused substantial or great bodily harm or death to another person.

**Sec. 7.** RCW 2.28.180 and 2011 c 236 s 1 are each amended to read as follows:

(1) (~~Counties~~) Jurisdictions may establish and operate mental health courts.

(2) For the purposes of this section, "mental health court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and symptoms of mental illness among nonviolent, felony and nonfelony offenders with mental illnesses and recidivism among nonviolent felony and nonfelony offenders who have developmental disabilities as defined in RCW 71A.10.020 or who have suffered a traumatic brain injury by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment including drug treatment for persons with co-occurring disorders; mandatory periodic reviews, including drug testing if indicated; and the use of appropriate sanctions and other rehabilitation services.

(3)(a) Any jurisdiction that seeks a state appropriation to fund a mental health court program must first:

(i) Exhaust all federal funding that is available to support the operations of its mental health court and associated services; and

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for mental health court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for mental health court operations and associated services.

(b) Any (~~county~~) jurisdiction that establishes a mental health court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The mental health court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

(i) The offender would benefit from psychiatric treatment or treatment related to his or her developmental disability or traumatic brain injury;

(ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and

(iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:

- (A) That is a sex offense;
- (B) That is a serious violent offense;
- (C) During which the defendant used a firearm; or
- (D) During which the defendant caused substantial or great bodily harm or death to another person.

**Sec. 8.** RCW 2.28.190 and 2011 c 293 s 11 are each amended to read as follows:

Any (~~county~~) jurisdiction that has established a DUI court, drug court, and a mental health court under this chapter may combine the functions of these courts into a single therapeutic court.



NEW SECTION. Sec. 9. This act takes effect August 1, 2013.

Passed by the Senate April 25, 2013.

Passed by the House April 12, 2013.

Approved by the Governor May 15, 2013.

Filed in Office of Secretary of State May 16, 2013.

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## CHAPTER 258

[Substitute House Bill 1499]

### ELDER CARE—PACE PROGRAM

AN ACT Relating to the program of all-inclusive care for the elderly; and amending RCW 74.09.523.

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

**Sec. 1.** RCW 74.09.523 and 2001 c 191 s 2 are each amended to read as follows:

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

(a) "PACE" means the program of all-inclusive care for the elderly, a managed care medicare/medicaid program authorized under sections 1894, 1905(a), and 1934 of the social security act and administered by the department.

(b) "PACE program agreement" means an agreement between a PACE organization, the health care financing administration, and the department.

(2) A PACE program may operate in the state only in accordance with a PACE program agreement with the department.

(3) A PACE program shall at the time of entering into the initial PACE program agreement, and at each renewal thereof, demonstrate cash reserves to cover expenses in the event of insolvency.

(a) The cash reserves at a minimum shall equal the sum of:

(i) One month's total capitation revenue; and

(ii) One month's average payment to subcontractors.

(b) The program may demonstrate cash reserves to cover expenses of insolvency with one or more of the following: Reasonable and sufficient net worth, insolvency insurance, or parental guarantees.

(4) A PACE program must provide full disclosure regarding the terms of enrollment and the option to disenroll at any time to all persons who seek to participate or who are participants in the program.

(5) The department must establish rules to authorize long-term care clients enrolled in a PACE program to elect to continue their enrollment in a PACE program regardless of improved status related to functional criteria for nursing facility level of care, consistent with 42 C.F.R. Sec. 460.160(b) (2013).

(6) The department must develop and implement a coordinated plan to provide education about PACE program site operations under this section. The plan must include:

(a) A strategy to assure that case managers and other staff with responsibilities related to eligibility determinations discuss the option and potential benefits of participating in a PACE program with all eligible long-term care clients;

(b) Requirements that all clients eligible for placement in the community options program entry system waiver program that are age fifty-five or over and reside in a PACE service area be referred to the PACE provider for evaluation. The department's plan must assure that referrals are conducted in a manner that is consistent with federal requirements of Title XIX of the federal social security act; and

(c) Requirements for additional and ongoing training for case managers and other staff with responsibilities related to eligibility determinations in those counties in which a PACE program is operating. The training must include instruction in recognizing the benefits of continued enrollment in a PACE program for those clients who have experienced improved status related to functional criteria for nursing facility level of care.

(7) The department must identify a private entity that operates PACE program sites in Washington to provide the training required under subsection (6) of this section at no cost to the state.

Passed by the House March 11, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 259

[Substitute House Bill 1629]

### HOME CARE AIDES—CREDENTIALING AND CONTINUING EDUCATION

AN ACT Relating to eliminating barriers to credentialing and continuing education as a home care aide; amending RCW 18.88B.021, 74.39A.341, and 70.128.230; reenacting and amending RCW 18.20.270; adding a new section to chapter 18.88B RCW; and providing an expiration date.

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

**Sec. 1.** RCW 18.88B.021 and 2012 c 164 s 301 are each amended to read as follows:

(1) Beginning January 7, 2012, except as provided in RCW 18.88B.041, any person hired as a long-term care worker must be certified as a home care aide as provided in this chapter within ~~((one))~~ two hundred ~~((fifty))~~ calendar days after the date of being hired ~~((or within one hundred fifty calendar days after March 29, 2012, whichever is later)).~~ In computing the time periods in this subsection, the first day is the date of hire ~~((or March 29, 2012, whichever is applicable)).~~

(2)(a) No person may practice or, by use of any title or description, represent himself or herself as a certified home care aide without being certified as provided in this chapter.

(b) This section does not prohibit a person: (i) From practicing a profession for which the person has been issued a license or which is specifically authorized under this state's laws; or (ii) who is exempt from certification under RCW 18.88B.041 from providing services as a long-term care worker.

(c) In consultation with consumer and worker representatives, the department shall, by January 1, 2013, establish by rule a single scope of practice that encompasses both long-term care workers who are certified home care aides and long-term care workers who are exempted from certification under RCW 18.88B.041.

(3) The department shall adopt rules to implement this section.

**NEW SECTION. Sec. 2.** A new section is added to chapter 18.88B RCW to read as follows:

(1) The department may issue a provisional certification to a long-term care worker who is limited English proficient to allow the person additional time to comply with the requirement that a long-term care worker become certified as a home care aide within two hundred calendar days after the date of hire as provided in RCW 18.88B.021, if the long-term care worker:

- (a) Is limited English proficient; and
- (b) Complies with other requirements established by the department in rule.

(2) The department shall issue a provisional certification to a long-term care worker who has met the requirements of subsection (1) of this section. The provisional certification may only be issued once and is valid for no more than sixty days after the expiration of the two hundred calendar day requirement for becoming certified.

(3) The department shall adopt rules to implement this section.

(4) For the purposes of this section, "limited English proficient" means that an individual is limited in his or her ability to read, write, or speak English.

(5) The department may not issue any provisional certifications after March 1, 2016.

(6) This section expires July 1, 2016.

**Sec. 3.** RCW 74.39A.341 and 2012 c 164 s 405 are each amended to read as follows:

(1) All long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year. This requirement applies beginning July 1, 2012.

(2) Completion of continuing education as required in this section is a prerequisite to maintaining home care aide certification under chapter 18.88B RCW.

(3) Unless voluntarily certified as a home care aide under chapter 18.88B RCW, subsection (1) of this section does not apply to:

(a) An individual provider caring only for his or her biological, step, or adoptive child;

(b) Registered nurses and licensed practical nurses licensed under chapter 18.79 RCW;

(c) Before January 1, 2016, a long-term care worker employed by a community residential service business; or

~~((c))~~ (d) Before July 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(5) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(6) The department of health shall adopt rules to implement subsection (1) of this section.

(7) The department shall adopt rules to implement subsection (2) of this section.

**Sec. 4.** RCW 18.20.270 and 2012 c 164 s 702 and 2012 c 10 s 16 are each reenacted and amended to read as follows:

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

(a) "Caregiver" includes any person who provides residents with hands-on personal care on behalf of an assisted living facility, except volunteers who are directly supervised.

(b) "Direct supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section, is on the premises, and is quickly and easily available to the caregiver.

(2) Training must have the following components: Orientation, basic training, specialty training as appropriate, and continuing education. All assisted living facility employees or volunteers who routinely interact with residents shall complete orientation. Assisted living facility administrators, or their designees, and caregivers shall complete orientation, basic training, specialty training as appropriate, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate assisted living facility staff to all assisted living facility employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care. Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without direct supervision. Assisted living facility administrators, or their designees, must complete basic training and demonstrate competency within one hundred twenty days of employment.

(5) For assisted living facilities that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of administrators, or designees, and caregivers.

(a) Specialty training consists of modules on the core knowledge and skills that caregivers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test.

(b) Specialty training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care to a resident having special needs. However, if specialty training is not integrated with basic training, the specialty training must be completed within ninety days of completion of basic training. Until competency in the core specialty areas has

been demonstrated, caregivers shall not provide hands-on personal care to residents with special needs without direct supervision.

(c) Assisted living facility administrators, or their designees, must complete specialty training and demonstrate competency within one hundred twenty days from the date on which the administrator or his or her designee is hired, if the assisted living facility serves one or more residents with special needs.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8) ~~(Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.)~~ (a) Registered nurses and licensed practical nurses licensed under chapter 18.79 RCW are exempt from any continuing education requirement established under this section.

(b) The department may adopt rules that would exempt licensed persons from all or part of the training requirements under this chapter, if they are (i) performing the tasks for which they are licensed and (ii) subject to chapter 18.130 RCW.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(10) The department shall develop criteria for the approval of orientation, basic training, and specialty training programs.

(11) Assisted living facilities that desire to deliver facility-based training with facility designated trainers, or assisted living facilities that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The department shall develop criteria for reviewing and approving trainers and training materials that are substantially similar to or better than the materials developed by the department. The department may approve a curriculum based upon attestation by an assisted living facility administrator that the assisted living facility's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled yearly inspection and investigation required under RCW 18.20.110. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(12) The department shall adopt rules for the implementation of this section.

(13)(a) Except as provided in (b) of this subsection, the orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, or one hundred twenty days from the date of employment, whichever is later, and shall be applied to (i) employees hired subsequent to September 1, 2002; and (ii) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 74.39A.010 or 74.39A.020 and this section. Existing employees who have not successfully completed the training requirements under RCW 74.39A.010 or 74.39A.020 shall be subject to all applicable requirements of this section.

(b) Beginning January 7, 2012, long-term care workers, as defined in RCW 74.39A.009, employed by facilities licensed under this chapter are also subject to the training requirements under RCW 74.39A.074.

**Sec. 5.** RCW 70.128.230 and 2012 c 164 s 705 are each amended to read as follows:

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

(a) "Caregiver" includes all adult family home resident managers and any person who provides residents with hands-on personal care on behalf of an adult family home, except volunteers who are directly supervised.

(b) "Indirect supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section and is quickly and easily available to the caregiver, but not necessarily on-site.

(2) Training must have three components: Orientation, basic training, and continuing education. All adult family home providers, resident managers, and employees, or volunteers who routinely interact with residents shall complete orientation. Caregivers shall complete orientation, basic training, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate adult family home staff to all adult family home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care. Until competency in the core areas has been demonstrated, caregivers shall not provide hands-on personal care to residents without (~~indirect~~) direct supervision.

(5) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers.

(a) Specialty training consists of modules on the core knowledge and skills that providers and resident managers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic

training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test.

(b) Specialty training must be completed by providers and resident managers before admitting and serving residents who have been determined to have special needs related to mental illness, dementia, or a developmental disability. Should a resident develop special needs while living in a home without specialty designation, the provider and resident manager have one hundred twenty days to complete specialty training.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

~~(8) (Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.)~~ (a) Registered nurses and licensed practical nurses licensed under chapter 18.79 RCW are exempt from any continuing education requirement established under this section.

(b) The department may adopt rules that would exempt licensed persons from all or part of the training requirements under this chapter, if they are (i) performing the tasks for which they are licensed and (ii) subject to chapter 18.130 RCW.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges, private associations, or other entities, as defined by the department.

(10) Adult family homes that desire to deliver facility-based training with facility designated trainers, or adult family homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The department shall develop criteria for reviewing and approving trainers and training materials. The department may approve a curriculum based upon attestation by an adult family home administrator that the adult family home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled inspection authorized under RCW 70.128.070. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(11) The department shall adopt rules by September 1, 2002, for the implementation of this section.

(12)(a) Except as provided in (b) of this subsection, the orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, and shall be applied to (i) employees hired subsequent to September 1, 2002; or (ii) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 and this section. Existing employees who have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 shall be subject to all applicable requirements of this section.

(b) Beginning January 7, 2012, long-term care workers, as defined in RCW 74.39A.009, employed by an adult family home are also subject to the training requirements under RCW 74.39A.074.

Passed by the House March 5, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

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## CHAPTER 260

[Substitute Senate Bill 5148]

### PRESCRIPTION DRUGS—ACCESS—UNINSURED

AN ACT Relating to medication access for the uninsured; adding a new chapter to Title 69 RCW; and providing an effective date.

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

**NEW SECTION. Sec. 1.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Drug manufacturer" means a facility licensed by the board of pharmacy under chapter 18.64 RCW that engages in the manufacture of drugs or devices.

(3) "Drug wholesaler" means a facility licensed by the board of pharmacy under chapter 18.64 RCW that buys drugs or devices for resale and distribution to corporations, individuals, or entities other than consumers.

(4) "Medical facility" means a hospital, pharmacy, nursing home, boarding home, adult family home, or medical clinic where the prescription drugs are under the control of a practitioner.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(6) "Pharmacist" means a person licensed by the board of pharmacy under chapter 18.64 RCW to practice pharmacy.

(7) "Pharmacy" means a facility licensed by the board of pharmacy under chapter 18.64 RCW in which the practice of pharmacy is conducted.

(8) "Practitioner" has the same meaning as in RCW 69.41.010.

(9) "Prescribing practitioner" means a person authorized to issue orders or prescriptions for legend drugs as listed in RCW 69.41.030.



(10) "Prescription drugs" has the same meaning as "legend drugs" as defined in RCW 69.41.010. The term includes cancer drugs and antirejection drugs. The term does not include controlled substances.

(11) "Supplies" means the supplies necessary to administer prescription drugs that are donated under the prescription drug redistribution program.

**NEW SECTION. Sec. 2.** Any practitioner, pharmacist, medical facility, drug manufacturer, or drug wholesaler may donate prescription drugs and supplies to a pharmacy for redistribution without compensation or the expectation of compensation to individuals who meet the prioritization criteria established in section 4 of this act. Donations of prescription drugs and supplies may be made on the premises of a pharmacy that elects to participate in the provisions of this chapter. A pharmacy that receives prescription drugs or supplies may distribute the prescription drugs or supplies to another pharmacy, pharmacist, or prescribing practitioner for use pursuant to the program.

**NEW SECTION. Sec. 3.** To be eligible for the immunity in section 7 of this act, a person distributing donated prescription drugs under this chapter must:

(1) Meet all requirements in section 5 of this act and any applicable rules related to the return or exchange of prescription drugs or supplies adopted by the board of pharmacy;

(2) Maintain records of any prescription drugs and supplies donated to the pharmacy and subsequently dispensed by the pharmacy; and

(3) Identify itself to the public as participating in this chapter.

**NEW SECTION. Sec. 4.** Pharmacies, pharmacists, and prescribing practitioners that elect to dispense donated prescription drugs and supplies under this chapter shall give priority to individuals who are uninsured and at or below two hundred percent of the federal poverty level. If an uninsured and low-income individual has not been identified as in need of available prescription drugs and supplies, those prescription drugs and supplies may be dispensed to other individuals expressing need.

**NEW SECTION. Sec. 5.** (1) Prescription drugs or supplies may be accepted and dispensed under this chapter if all of the following conditions are met:

(a) The prescription drug is in:

(i) Its original sealed and tamper evident packaging; or

(ii) An opened package if it contains single unit doses that remain intact;

(b) The prescription drug bears an expiration date that is more than six months after the date the prescription drug was donated;

(c) The prescription drug or supplies are inspected before the prescription drug or supplies are dispensed by a pharmacist employed by or under contract with the pharmacy, and the pharmacist determines that the prescription drug or supplies are not adulterated or misbranded;

(d) The prescription drug or supplies are prescribed by a practitioner for use by an eligible individual and are dispensed by a pharmacist; and

(e) Any other safety precautions established by the department have been satisfied.

(2)(a) If a person who donates prescription drugs or supplies to a pharmacy under this chapter receives a notice that the donated prescription drugs or supplies have been recalled, the person shall notify the pharmacy of the recall.

(b) If a pharmacy that receives and distributes donated prescription drugs to another pharmacy, pharmacist, or prescribing practitioner under this chapter receives notice that the donated prescription drugs or supplies have been recalled, the pharmacy shall notify the other pharmacy, pharmacist, or prescribing practitioner of the recall.

(c) If a person collecting or distributing donated prescription drugs or supplies under this chapter receives a recall notice from the drug manufacturer or the federal food and drug administration for donated prescription drugs or supplies, the person shall immediately remove all recalled medications from stock and comply with the instructions in the recall notice.

(3) Prescription drugs and supplies donated under this chapter may not be resold.

(4) Prescription drugs and supplies dispensed under this chapter shall not be eligible for reimbursement of the prescription drug or any related dispensing fees by any public or private health care payer.

(5) A prescription drug that can only be dispensed to a patient registered with the manufacturer of that drug, in accordance with the requirements established by the federal food and drug administration, may not be accepted or distributed under the program.

**NEW SECTION. Sec. 6.** (1) The department must adopt rules establishing forms and procedures to: Reasonably verify eligibility and prioritize patients seeking to receive donated prescription drugs and supplies; and inform a person receiving prescription drugs donated under this program that the prescription drugs have been donated for the purposes of redistribution. A patient's eligibility may be determined by a form signed by the patient certifying that the patient is uninsured and at or below two hundred percent of the federal poverty level.

(2) The department may establish any other rules necessary to implement this chapter.

**NEW SECTION. Sec. 7.** (1) A drug manufacturer acting in good faith may not, in the absence of a finding of gross negligence, be subject to criminal prosecution or liability in tort or other civil action, for injury, death, or loss to person or property for matters relating to the donation, acceptance, or dispensing of a drug manufactured by the drug manufacturer that is donated by any person under the program including, but not limited to, liability for failure to transfer or communicate product or consumer information or the expiration date of the donated prescription drug.

(2) Any person or entity, other than a drug manufacturer subject to subsection (1) of this section, acting in good faith in donating, accepting, or distributing prescription drugs under this chapter is immune from criminal prosecution, professional discipline, or civil liability of any kind for any injury, death, or loss to any person or property relating to such activities other than acts or omissions constituting gross negligence or willful or wanton misconduct.

(3) The immunity provided under subsection (1) of this section does not absolve a drug manufacturer of a criminal or civil liability that would have existed but for the donation, nor does such donation increase the liability of the drug manufacturer in such an action.

**NEW SECTION. Sec. 8.** Access to prescription drugs and supplies under this chapter is subject to availability. Nothing in this chapter establishes an entitlement to receive prescription drugs and supplies through the program.

**NEW SECTION. Sec. 9.** Nothing in this chapter restricts the use of samples by a practitioner during the course of the practitioner's duties at a medical facility or pharmacy.

**NEW SECTION. Sec. 10.** Nothing in this chapter authorizes the resale of prescription drugs by any person.

**NEW SECTION. Sec. 11.** Sections 1 through 10 of this act constitute a new chapter in Title 69 RCW.

**NEW SECTION. Sec. 12.** This act takes effect July 1, 2014.

Passed by the Senate April 23, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

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## CHAPTER 261

[Second Substitute Senate Bill 5213]

### MEDICAID ENROLLEES—MEDICATION MANAGEMENT—SERVICES

AN ACT Relating to prescription review for medicaid managed care enrollees; reenacting and amending RCW 74.09.522; and adding a new section to chapter 74.09 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 74.09 RCW to read as follows:

The legislature finds that chronic care management, including comprehensive medication management services, provided by licensed pharmacists and qualified providers is a critical component of a collaborative, multidisciplinary, inter-professional approach to the treatment of chronic diseases for targeted individuals, to improve the quality of care and reduce overall cost in the treatment of such diseases.

**Sec. 2.** RCW 74.09.522 and 2011 1st sp.s. c 15 s 29, 2011 1st sp.s. c 9 s 2, and 2011 c 316 s 4 are each reenacted and amended to read as follows:

(1) For the purposes of this section:

(a) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under this chapter and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(b) "Nonparticipating provider" means a person, health care provider, practitioner, facility, or entity, acting within their scope of practice, that does not have a written contract to participate in a managed health care system's provider network, but provides health care services to enrollees of programs authorized

under this chapter whose health care services are provided by the managed health care system.

(2) The authority shall enter into agreements with managed health care systems to provide health care services to recipients of temporary assistance for needy families under the following conditions:

(a) Agreements shall be made for at least thirty thousand recipients statewide;

(b) Agreements in at least one county shall include enrollment of all recipients of temporary assistance for needy families;

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: PROVIDED, That the authority may limit recipient termination of enrollment without cause to the first month of a period of enrollment, which period shall not exceed twelve months: AND PROVIDED FURTHER, That the authority shall not restrict a recipient's right to terminate enrollment in a system for good cause as established by the authority by rule;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed health care systems, except as authorized by the authority under federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(e)(i) In negotiating with managed health care systems the authority shall adopt a uniform procedure to enter into contractual arrangements, to be included in contracts issued or renewed on or after January 1, (~~2012~~) 2015, including:

(A) Standards regarding the quality of services to be provided;

(B) The financial integrity of the responding system;

(C) Provider reimbursement methods that incentivize chronic care management within health homes, including comprehensive medication management services for patients with multiple chronic conditions consistent with the findings and goals established in section 1 of this act;

(D) Provider reimbursement methods that reward health homes that, by using chronic care management, reduce emergency department and inpatient use; (~~and~~)

(E) Promoting provider participation in the program of training and technical assistance regarding care of people with chronic conditions described in RCW 43.70.533, including allocation of funds to support provider participation in the training, unless the managed care system is an integrated health delivery system that has programs in place for chronic care management;

(F) Provider reimbursement methods within the medical billing processes that incentivize pharmacists or other qualified providers licensed in Washington state to provide comprehensive medication management services consistent with the findings and goals established in section 1 of this act; and

(G) Evaluation and reporting on the impact of comprehensive medication management services on patient clinical outcomes and total health care costs,

including reductions in emergency department utilization, hospitalization, and drug costs.

(ii)(A) Health home services contracted for under this subsection may be prioritized to enrollees with complex, high cost, or multiple chronic conditions.

(B) Contracts that include the items in (e)(i)(C) through ~~((E))~~ (G) of this subsection must not exceed the rates that would be paid in the absence of these provisions;

(f) The authority shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The authority shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the authority may enter into prepaid capitation contracts that do not include inpatient care;

(h) The authority shall define those circumstances under which a managed health care system is responsible for out-of-plan services and assure that recipients shall not be charged for such services;

(i) Nothing in this section prevents the authority from entering into similar agreements for other groups of people eligible to receive services under this chapter; and

(j) The ~~((department))~~ authority must consult with the federal center for medicare and medicaid innovation and seek funding opportunities to support health homes.

(3) The authority shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate as managed health care systems are seriously considered as contractors. The authority shall coordinate its managed care activities with activities under chapter 70.47 RCW.

(4) The authority shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs.

(5) The legislature finds that competition in the managed health care marketplace is enhanced, in the long term, by the existence of a large number of managed health care system options for medicaid clients. In a managed care delivery system, whose goal is to focus on prevention, primary care, and improved enrollee health status, continuity in care relationships is of substantial importance, and disruption to clients and health care providers should be minimized. To help ensure these goals are met, the following principles shall guide the authority in its healthy options managed health care purchasing efforts:

(a) All managed health care systems should have an opportunity to contract with the authority to the extent that minimum contracting requirements defined by the authority are met, at payment rates that enable the authority to operate as far below appropriated spending levels as possible, consistent with the principles established in this section.

(b) Managed health care systems should compete for the award of contracts and assignment of medicaid beneficiaries who do not voluntarily select a contracting system, based upon:

(i) Demonstrated commitment to or experience in serving low-income populations;

- (ii) Quality of services provided to enrollees;
  - (iii) Accessibility, including appropriate utilization, of services offered to enrollees;
  - (iv) Demonstrated capability to perform contracted services, including ability to supply an adequate provider network;
  - (v) Payment rates; and
  - (vi) The ability to meet other specifically defined contract requirements established by the authority, including consideration of past and current performance and participation in other state or federal health programs as a contractor.
- (c) Consideration should be given to using multiple year contracting periods.
- (d) Quality, accessibility, and demonstrated commitment to serving low-income populations shall be given significant weight in the contracting, evaluation, and assignment process.
- (e) All contractors that are regulated health carriers must meet state minimum net worth requirements as defined in applicable state laws. The authority shall adopt rules establishing the minimum net worth requirements for contractors that are not regulated health carriers. This subsection does not limit the authority of the Washington state health care authority to take action under a contract upon finding that a contractor's financial status seriously jeopardizes the contractor's ability to meet its contract obligations.
- (f) Procedures for resolution of disputes between the authority and contract bidders or the authority and contracting carriers related to the award of, or failure to award, a managed care contract must be clearly set out in the procurement document.
- (6) The authority may apply the principles set forth in subsection (5) of this section to its managed health care purchasing efforts on behalf of clients receiving supplemental security income benefits to the extent appropriate.
- (7) A managed health care system shall pay a nonparticipating provider that provides a service covered under this chapter to the system's enrollee no more than the lowest amount paid for that service under the managed health care system's contracts with similar providers in the state.
- (8) For services covered under this chapter to medical assistance or medical care services enrollees and provided on or after August 24, 2011, nonparticipating providers must accept as payment in full the amount paid by the managed health care system under subsection (7) of this section in addition to any deductible, coinsurance, or copayment that is due from the enrollee for the service provided. An enrollee is not liable to any nonparticipating provider for covered services, except for amounts due for any deductible, coinsurance, or copayment under the terms and conditions set forth in the managed health care system contract to provide services under this section.
- (9) Pursuant to federal managed care access standards, 42 C.F.R. Sec. 438, managed health care systems must maintain a network of appropriate providers that is supported by written agreements sufficient to provide adequate access to all services covered under the contract with the department, including hospital-based physician services. The department will monitor and periodically report on the proportion of services provided by contracted providers and nonparticipating providers, by county, for each managed health care system to

ensure that managed health care systems are meeting network adequacy requirements. No later than January 1st of each year, the department will review and report its findings to the appropriate policy and fiscal committees of the legislature for the preceding state fiscal year.

(10) Subsections (7) through (9) of this section expire July 1, 2016.

Passed by the Senate April 26, 2013.

Passed by the House April 24, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

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## CHAPTER 262

[Substitute Senate Bill 5459]

### PHARMACISTS—SUPPLY LIMITS—CONTROLLED SUBSTANCES

AN ACT Relating to requiring ninety-day supply limits on certain drugs dispensed by a pharmacist; and adding a new section to chapter 18.64 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 18.64 RCW to read as follows:

(1) A pharmacist may dispense not more than a ninety-day supply of a drug other than a controlled substance pursuant to a valid prescription that specifies an initial quantity of less than a ninety-day supply followed by periodic refills of that amount if all of the following requirements are satisfied:

(a) The patient has completed an initial thirty-day supply of the drug. However, if the prescription continues the same medication as previously dispensed in a ninety-day supply, the initial thirty-day supply under this subsection (1) is not required;

(b) The total quantity of dosage units dispensed does not exceed the total quantity of dosage units authorized by the prescriber on the prescription including refills;

(c) The prescriber has not specified on the prescription that dispensing the prescription in an initial amount followed by periodic refills is medically necessary; and

(d) The pharmacist is exercising his or her professional judgment.

(2) In no case may a pharmacist dispense a greater supply of a drug pursuant to this section if the prescriber personally indicates, either orally or in their own handwriting, "no change to quantity," or words of similar meaning. Nothing in this section prohibits a prescriber from checking a box on a prescription marked "no change to quantity," provided that the prescriber personally initials the box or checkmark.

(3) A pharmacist dispensing an increased supply of a drug pursuant to this section shall notify the prescriber of the increase in the quantity of dosage units dispensed.

(4) Nothing in this section may be construed to require a health benefit plan, health carrier, workers' compensation insurance plan, pharmacy benefit manager, or any other person or entity including, but not limited to, a state program or state employer, to provide coverage in a manner inconsistent with the beneficiary's or enrollee's plan benefit.

Passed by the Senate April 23, 2013.  
Passed by the House April 9, 2013.  
Approved by the Governor May 16, 2013.  
Filed in Office of Secretary of State May 17, 2013.

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## CHAPTER 263

[Senate Bill 5510]

### VULNERABLE ADULTS—ABUSE

AN ACT Relating to abuse of vulnerable adults; and amending RCW 74.34.020, 74.34.035, and 74.34.067.

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

**Sec. 1.** RCW 74.34.020 and 2012 c 10 s 62 are each amended to read as follows:

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

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.



(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

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

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department.

(6) "Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of his or her property, income, resources, or trust funds.

(7) "Financial institution" has the same meaning as in RCW 30.22.040 and 30.22.041. For purposes of this chapter only, "financial institution" also means a "broker-dealer" or "investment adviser" as defined in RCW 21.20.005.

(8) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1) (a), (b), (c), or (d).

(9) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(10) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(11) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(12) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or

prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(13) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(14) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(15) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(16) "Social worker" means:

(a) A social worker as defined in RCW 18.320.010(2); or

(b) Anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of vulnerable adults, or providing social services to vulnerable adults, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(17) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020;

or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

**Sec. 2.** RCW 74.34.035 and 2010 c 133 s 4 are each amended to read as follows:

(1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department.

(2) When there is reason to suspect that sexual assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

(3) When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:

(a) Mandated reporters shall immediately report to the department; and

(b) Mandated reporters shall immediately report to the appropriate law enforcement agency, except as provided in subsection (4) of this section.

(4) A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

(a) The injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) There is a fracture;

(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or

(d) There is an attempt to choke a vulnerable adult.

(5) When there is reason to suspect that the death of a vulnerable adult was caused by abuse, neglect, or abandonment by another person, mandated reporters shall, pursuant to RCW 68.50.020, report the death to the medical examiner or coroner having jurisdiction, as well as the department and local law enforcement, in the most expeditious manner possible. A mandated reporter is not relieved from the reporting requirement provisions of this subsection by the existence of a previously signed death certificate. If abuse, neglect, or abandonment caused or contributed to the death of a vulnerable adult, the death is a death caused by unnatural or unlawful means, and the body shall be the jurisdiction of the coroner or medical examiner pursuant to RCW 68.50.010.

(6) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

(7) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter 70.127 RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

(8) Each report, oral or written, must contain as much as possible of the following information:

(a) The name and address of the person making the report;

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

(c) The name and address of the legal guardian or alternate decision maker;

(d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;

(e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;

(f) The identity of the alleged perpetrator, if known; and

(g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

(9) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential.

(10) In conducting an investigation of abandonment, abuse, financial exploitation, self-neglect, or neglect, the department or law enforcement, upon request, must have access to all relevant records related to the vulnerable adult that are in the possession of mandated reporters and their employees, unless otherwise prohibited by law. Records maintained under RCW 4.24.250, 18.20.390, 43.70.510, 70.41.200, 70.230.080, and 74.42.640 shall not be subject to the requirements of this subsection. Providing access to records relevant to an investigation by the department or law enforcement under this provision may not be deemed a violation of any confidential communication privilege. Access to any records that would violate attorney-client privilege shall not be provided without a court order unless otherwise required by court rule or caselaw.

**Sec. 3.** RCW 74.34.067 and 2011 c 170 s 2 are each amended to read as follows:

(1) Where appropriate, an investigation by the department may include a private interview with the vulnerable adult regarding the alleged abandonment, abuse, financial exploitation, neglect, or self-neglect.

(2) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(3) The department may conduct ongoing case planning and consultation with: (a) Those persons or agencies required to report under this chapter or submit a report under this chapter; (b) consultants designated by the department; and (c) designated representatives of Washington Indian tribes if client information exchanged is pertinent to cases under investigation or the provision of protective services. Information considered privileged by statute and not directly related to reports required by this chapter must not be divulged without a valid written waiver of the privilege.

(4) The department shall prepare and keep on file a report of each investigation conducted by the department for a period of time in accordance with policies established by the department.

(5) If the department has reason to believe that the vulnerable adult has suffered from abandonment, abuse, financial exploitation, neglect, or self-neglect, and lacks the ability or capacity to consent, and needs the protection of a guardian, the department may bring a guardianship action under chapter 11.88 RCW.

(6) For purposes consistent with this chapter, the department, the certified professional guardian board, and the office of public guardianship may share information contained in reports and investigations of the abuse, abandonment, neglect, self-neglect, and financial exploitation of vulnerable adults. This information may be used solely for (a) recruiting or appointing appropriate guardians and (b) monitoring, or when appropriate, disciplining certified professional or public guardians. Reports of abuse, abandonment, neglect, self-neglect, and financial exploitation are confidential under RCW 74.34.095 and

other laws, and secondary disclosure of information shared under this section is prohibited.

~~(7)~~ (7) When the investigation is completed and the department determines that an incident of abandonment, abuse, financial exploitation, neglect, or self-neglect has occurred, the department shall inform the vulnerable adult of their right to refuse protective services, and ensure that, if necessary, appropriate protective services are provided to the vulnerable adult, with the consent of the vulnerable adult. The vulnerable adult has the right to withdraw or refuse protective services.

~~((7))~~ (8) The department's adult protective services division may enter into agreements with federally recognized tribes to investigate reports of abandonment, abuse, financial exploitation, neglect, or self-neglect of vulnerable adults on property over which a federally recognized tribe has exclusive jurisdiction. If the department has information that abandonment, abuse, financial exploitation, or neglect is criminal or is placing a vulnerable adult on tribal property at potential risk of personal or financial harm, the department may notify tribal law enforcement or another tribal representative specified by the tribe. Upon receipt of the notification, the tribe may assume jurisdiction of the matter. Neither the department nor its employees may participate in the investigation after the tribe assumes jurisdiction. The department, its officers, and its employees are not liable for any action or inaction of the tribe or for any harm to the alleged victim, the person against whom the allegations were made, or other parties that occurs after the tribe assumes jurisdiction. Nothing in this section limits the department's jurisdiction and authority over facilities or entities that the department licenses or certifies under federal or state law.

~~((8))~~ (9) The department may photograph a vulnerable adult or their environment for the purpose of providing documentary evidence of the physical condition of the vulnerable adult or his or her environment. When photographing the vulnerable adult, the department shall obtain permission from the vulnerable adult or his or her legal representative unless immediate photographing is necessary to preserve evidence. However, if the legal representative is alleged to have abused, neglected, abandoned, or exploited the vulnerable adult, consent from the legal representative is not necessary. No such consent is necessary when photographing the physical environment.

~~((9))~~ (10) When the investigation is complete and the department determines that the incident of abandonment, abuse, financial exploitation, or neglect has occurred, the department shall inform the facility in which the incident occurred, consistent with confidentiality requirements concerning the vulnerable adult, witnesses, and complainants.

Passed by the Senate April 27, 2013.

Passed by the House April 25, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 264

[House Bill 1045]

## SPEED LIMITS—LOCAL GOVERNMENTS

AN ACT Relating to local authorities altering maximum speed limits; and amending RCW 46.61.415.

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

**Sec. 1.** RCW 46.61.415 and 1977 ex.s. c 151 s 36 are each amended to read as follows:

(1) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the maximum speed permitted under RCW 46.61.400 or 46.61.440 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which

- (a) Decreases the limit at intersections; or
- (b) Increases the limit but not to more than sixty miles per hour; or
- (c) Decreases the limit but not to less than twenty miles per hour.

(2) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the maximum speed permitted under RCW 46.61.400(2) but shall not exceed sixty miles per hour.

(3)(a) Cities and towns in their respective jurisdictions may establish a maximum speed limit of twenty miles per hour on a nonarterial highway, or part of a nonarterial highway, that is within a residence district or business district.

(b) A speed limit established under this subsection by a city or town does not need to be determined on the basis of an engineering and traffic investigation if the city or town has developed procedures regarding establishing a maximum speed limit under this subsection. Any speed limit established under this subsection may be canceled within one year of its establishment, and the previous speed limit reestablished, without an engineering and traffic investigation. This subsection does not otherwise affect the requirement that cities and towns conduct an engineering and traffic investigation to determine whether to increase speed limits.

(c) When establishing speed limits under this subsection, cities and towns shall consult the manual on uniform traffic control devices as adopted by the Washington state department of transportation.

(4) The secretary of transportation is authorized to establish speed limits on county roads and city and town streets as shall be necessary to conform with any federal requirements which are a prescribed condition for the allocation of federal funds to the state.

~~((4))~~ (5) Any altered limit established as hereinbefore authorized shall be effective when appropriate signs giving notice thereof are erected. Such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon such signs; 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.

~~((5))~~ (6) Any alteration of maximum limits on state highways within incorporated cities or towns by local authorities shall not be effective until such alteration has been approved by the secretary of transportation.

Passed by the House February 18, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

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## CHAPTER 265

[Substitute House Bill 1613]

### CRIMINAL JUSTICE TRAINING COMMISSION— FIRING RANGE MAINTENANCE ACCOUNT

AN ACT Relating to the criminal justice training commission firing range maintenance account; and adding a new section to chapter 43.101 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 43.101 RCW to read as follows:

The criminal justice training commission firing range maintenance account is created in the custody of the state treasurer. All moneys generated by the rental of the commission's firing range facilities, property, and equipment must be deposited into the account. The sources of the moneys generated and deposited under this section may include federal, state, local, or private grants, consistent with RCW 43.101.190. Expenditures from the account may be used only for cost related to rental, maintenance, or development of the commission's firing range facilities, property, and equipment. Only the executive director, acting on behalf of the criminal justice training commission, or the executive director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Passed by the House March 11, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

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## CHAPTER 266

[Engrossed Senate Bill 5105]

### DEPARTMENT OF CORRECTIONS—OFFENDERS—RENTAL

AN ACT Relating to conditions under which the department of corrections provides rental vouchers to an offender; amending RCW 9.94A.729; and adding a new section to chapter 72.09 RCW.

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

**Sec. 1.** RCW 9.94A.729 and 2011 1st sp.s. c 40 s 4 are each amended to read as follows:

(1)(a) The term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and adopted by the

correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits.

(b) Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. The department may approve a jail certification from a correctional agency that calculates earned release time based on the actual amount of confinement time served by the offender before sentencing when an erroneous calculation of confinement time served by the offender before sentencing appears on the judgment and sentence.

(2) An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(3) An offender may earn early release time as follows:

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence.

(b) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(c) An offender is qualified to earn up to fifty percent of aggregate earned release time if he or she:

(i) Is not classified as an offender who is at a high risk to reoffend as provided in subsection (4) of this section;

(ii) Is not confined pursuant to a sentence for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(iii) Has no prior conviction for the offenses listed in (c)(ii) of this subsection;

(iv) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(v) Has not committed a new felony after July 22, 2007, while under community custody.



(d) In no other case shall the aggregate earned release time exceed one-third of the total sentence.

(4) The department shall perform a risk assessment of each offender who may qualify for earned early release under subsection (3)(c) of this section utilizing the risk assessment tool recommended by the Washington state institute for public policy. Subsection (3)(c) of this section does not apply to offenders convicted after July 1, 2010.

(5)(a) A person who is eligible for earned early release as provided in this section and who will be supervised by the department pursuant to RCW 9.94A.501 or 9.94A.5011, shall be transferred to community custody in lieu of earned release time;

(b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(c) The department may deny transfer to community custody in lieu of earned release time if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody;

(d) If the department is unable to approve the offender's release plan, the department may do one or more of the following:

(i) Transfer an offender to partial confinement in lieu of earned early release for a period not to exceed three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in RCW 9.94A.728(5);

(ii) Provide rental vouchers to the offender for a period not to exceed three months if rental assistance will result in an approved release plan. ~~((The))~~

A voucher must be provided in conjunction with additional transition support programming or services that enable an offender to participate in services including, but not limited to, substance abuse treatment, mental health treatment, sex offender treatment, educational programming, or employment programming;

(e) The department shall maintain a list of housing providers that meets the requirements of section 2 of this act. If more than two voucher recipients will be residing per dwelling unit, as defined in RCW 59.18.030, rental vouchers for those recipients may only be paid to a housing provider on the department's list.

(f) For each offender who is the recipient of a rental voucher, the department shall ~~((include, concurrent with the data that the department otherwise obtains and records, the housing status of the offender for the duration of the offender's supervision))~~ gather data as recommended by the Washington state institute for public policy in order to best demonstrate whether rental vouchers are effective in reducing recidivism.

(6) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section.

**NEW SECTION, Sec. 2.** A new section is added to chapter 72.09 RCW to read as follows:

(1) A housing provider may be placed on a list with the department to receive rental vouchers under RCW 9.94A.729 in accordance with the provisions of this section.

(2) For living environments with between four and eight beds, or a greater number of individuals if permitted by local code, the department shall provide transition support that verifies an offender is participating in programming or services including, but not limited to, substance abuse treatment, mental health treatment, sex offender treatment, educational programming, development of positive living skills, or employment programming. In addition, when selecting housing providers, the department shall consider the compatibility of the proposed offender housing with the surrounding neighborhood and underlying zoning. The department shall adopt procedures to limit the concentration of housing providers who provide housing to sex offenders in a single neighborhood or area.

(3)(a) The department shall provide the local law and justice council, county sheriff, or, if such housing is located within a city, a city's chief law enforcement officer with notice anytime a housing provider or new housing location requests to be or is added to the list within that county.

(b) The county or city local government may provide the department with a community impact statement which includes the number and location of other special needs housing in the neighborhood and a review of services and supports in the area to assist offenders in their transition. If a community impact statement is provided to the department within ten business days of the notice of a new housing provider or housing location request, the department shall consider the community impact statement in determining whether to add the provider to the list and, if the provider is added, shall include the community impact statement in the notice that a provider is added to the list within that county.

(4) If a certificate of inspection, as provided in RCW 59.18.125, is required by local regulation and the local government does not have a current certificate of inspection on file, the local government shall have ten business days from the later of (a) receipt of notice from the department as provided in subsection (3) of this section; or (b) from the date the local government is given access to the dwelling unit to conduct an inspection or reinspection to issue a certificate. This section is deemed satisfied if a local government does not issue a timely certificate of inspection.

(5)(a) If, within ten business days of receipt of a notice from the department of a new location or new housing provider, the county or city determines that the housing is in a neighborhood with an existing concentration of special needs housing, including but not limited to offender reentry housing, retirement homes, assisted living, emergency or transitional housing, or adult family homes, the county or city may request that the department program administrator remove the new location or new housing provider from the list.

(b) This subsection does not apply to housing providers approved by the department to receive rental vouchers on the effective date of this section.

(6) The county or city may at any time request a housing provider be removed from the list if it provides information to the department that:

(a) It has determined that the housing does not comply with state and local fire and building codes or applicable zoning and development regulations in effect at the time the housing provider first began receiving housing vouchers; or

(b) The housing provider is not complying with the provisions of this section.

(7) After receiving a request to remove a housing provider from the county or city, the department shall immediately notify the provider of the concerns and request that the provider demonstrate that it is in compliance with the provisions of this section. If, after ten days' written notice, the housing provider cannot demonstrate to the department that it is in compliance with the reasons for the county's or city's request for removal, the department shall remove the housing provider from the list.

(8) A housing provider who provides housing pursuant to this section is not liable for civil damages arising from the criminal conduct of an offender to any greater extent than a regular tenant, and no special duties are created under this section.

Passed by the Senate April 23, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

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## CHAPTER 267

[Engrossed Senate Bill 5053]

### CRIMES—VEHICLE PROWLING

AN ACT Relating to vehicle prowling; amending RCW 9A.52.100; reenacting and amending RCW 9.94A.515; and prescribing penalties.

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

**Sec. 1.** RCW 9A.52.100 and 2011 c 336 s 376 are each amended to read as follows:

(1) A person is guilty of vehicle prowling in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a vehicle other than a motor home, as defined in RCW 46.04.305, or a vessel equipped for propulsion by mechanical means or by sail which has a cabin equipped with permanently installed sleeping quarters or cooking facilities.

(2) Except as provided in subsection (3) of this section, vehicle prowling in the second degree is a gross misdemeanor.

(3) Vehicle prowling in the second degree is a class C felony upon a third or subsequent conviction of vehicle prowling in the second degree. A third or subsequent conviction means that a person has been previously convicted at least two separate occasions of the crime of vehicle prowling in the second degree.

(4) Multiple counts of vehicle prowling (a) charged in the same charging document do not count as separate offenses for the purposes of charging as a felony based on previous convictions for vehicle prowling in the second degree and (b) based on the same date of occurrence do not count as separate offenses

for the purposes of charging as a felony based on previous convictions for vehicle prowling in the second degree.

**Sec. 2.** RCW 9.94A.515 and 2012 c 176 s 3 and 2012 c 162 s 1 are each reenacted and amended to read as follows:

TABLE 2	
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1)) Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050) Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a)) Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060) Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
X	Child Molestation 1 (RCW 9A.44.083) Criminal Mistreatment 1 (RCW 9A.42.020) Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))

- Kidnapping 1 (RCW 9A.40.020)
- Leading Organized Crime (RCW 9A.82.060(1)(a))
- Malicious explosion 3 (RCW 70.74.280(3))
- Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Abandonment of Dependent Person 1 (RCW 9A.42.060)
- Assault of a Child 2 (RCW 9A.36.130)
- Explosive devices prohibited (RCW 70.74.180)
- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- VIII Arson 1 (RCW 9A.48.020)
- Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Theft of Ammonia (RCW 69.55.010)
- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)

- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1))
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))

- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of Dependent Person 2 (RCW 9A.42.070)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
- Driving While Under the Influence (RCW 46.61.502(6))
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)

- Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))



- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Malicious Harassment (RCW 9A.36.080)
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(2))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicle Prowling 2 (third or subsequent offense) (RCW 9A.52.100(3))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)

- Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))
- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))
- Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
- Assault of a Child 3 (RCW 9A.36.140)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
- Burglary 2 (RCW 9A.52.030)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Criminal Gang Intimidation (RCW 9A.46.120)
- Custodial Assault (RCW 9A.36.100)
- Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))
- Escape 2 (RCW 9A.76.120)
- Extortion 2 (RCW 9A.56.130)
- Harassment (RCW 9A.46.020)
- Intimidating a Public Servant (RCW 9A.76.180)
- Introducing Contraband 2 (RCW 9A.76.150)
- Malicious Injury to Railroad Property (RCW 81.60.070)
- Mortgage Fraud (RCW 19.144.080)
- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
- Organized Retail Theft 1 (RCW 9A.56.350(2))

Perjury 2 (RCW 9A.72.030)  
Possession of Incendiary Device (RCW 9.40.120)  
Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)  
Promoting Prostitution 2 (RCW 9A.88.080)  
Retail Theft with Extenuating Circumstances 1 (RCW 9A.56.360(2))  
Securities Act violation (RCW 21.20.400)  
Tampering with a Witness (RCW 9A.72.120)  
Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))  
Theft of Livestock 2 (RCW 9A.56.083)  
Theft with the Intent to Resell 1 (RCW 9A.56.340(2))  
Trafficking in Stolen Property 2 (RCW 9A.82.055)  
Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b))  
Unlawful Imprisonment (RCW 9A.40.040)  
Unlawful possession of firearm in the second degree (RCW 9.41.040(2))  
Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b))  
Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b))  
Unlawful Use of a Nondesignated Vessel (RCW 77.15.530(4))  
Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)

- Willful Failure to Return from Work  
Release (RCW 72.65.070)
- II Commercial Fishing Without a License  
1 (RCW 77.15.500(3)(b))
- Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Engaging in Fish Dealing Activity  
Unlicensed 1 (RCW 77.15.620(3))
- Escape from Community Custody  
(RCW 72.09.310)
- Failure to Register as a Sex Offender  
(second or subsequent offense)  
(RCW 9A.44.132)
- Health Care False Claims (RCW  
48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial  
Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW  
9A.48.070)
- Organized Retail Theft 2 (RCW  
9A.56.350(3))
- Possession of Stolen Property 1 (RCW  
9A.56.150)
- Possession of a Stolen Vehicle (RCW  
9A.56.068)
- Retail Theft with Extenuating  
Circumstances 2 (RCW  
9A.56.360(3))
- Theft 1 (RCW 9A.56.030)
- Theft of a Motor Vehicle (RCW  
9A.56.065)
- Theft of Rental, Leased, or Lease-  
purchased Property (valued at one  
thousand five hundred dollars or  
more) (RCW 9A.56.096(5)(a))
- Theft with the Intent to Resell 2 (RCW  
9A.56.340(3))
- Trafficking in Insurance Claims (RCW  
48.30A.015)

- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Unlawful Purchase or Use of a License (RCW 77.15.650(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a))
- Voyeurism (RCW 9A.44.115)
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Spotlighting Big Game 1 (RCW 77.15.450(3)(b))
- Suspension of Department Privileges 1 (RCW 77.15.670(3)(b))
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)

- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))
- Transaction of insurance business beyond the scope of licensure (RCW 48.17.063)
- Unlawful Fish and Shellfish Catch Accounting (RCW 77.15.630(3)(b))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment Instruments (RCW 9A.56.320)
- Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
- Unlawful Production of Payment Instruments (RCW 9A.56.320)
- Unlawful Release of Deleterious Exotic Wildlife (RCW 77.15.250(2)(b))
- Unlawful Trafficking in Food Stamps (RCW 9.91.142)
- Unlawful Use of Food Stamps (RCW 9.91.144)
- Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b))
- Unlawful Use of Prohibited Aquatic Animal Species (RCW 77.15.253(3))
- Vehicle Prowl 1 (RCW 9A.52.095)
- Violating Commercial Fishing Area or Time 1 (RCW 77.15.550(3)(b))

Passed by the Senate April 24, 2013.  
Passed by the House April 11, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

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## CHAPTER 268

[Engrossed Senate Bill 5104]

### K-12 SCHOOLS—EPINEPHRINE AUTOINJECTORS

AN ACT Relating to placing epinephrine autoinjectors in schools; adding a new section to chapter 28A.210 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that allergies are a serious medical disorder that affect more than one in five persons in the United States and are the sixth leading cause of chronic disease. Roughly one in thirteen children has a food allergy, and the incidence is rising. Up to forty percent of food-allergic children may be at risk for anaphylaxis, a severe and potentially life-threatening reaction. Anaphylaxis may also occur due to an insect sting, drug allergy, or other causes. Twenty-five percent of first-time anaphylactic reactions among children occur in a school setting. Anaphylaxis can occur anywhere on school property, including the classroom, playground, school bus, or on field trips.

(2) Rapid and appropriate administration of the drug epinephrine, also known as adrenaline, to a patient experiencing an anaphylactic reaction may make the difference between life and death. In a school setting, epinephrine is typically administered intramuscularly via an epinephrine autoinjector device. Medical experts agree that the benefits of emergency epinephrine administration far outweigh the risks.

(3) The legislature further finds that, on many days, as much as twenty percent of the nation's combined adult and child population can be found in public and nonpublic schools. Therefore, schools need to be prepared to treat potentially life-threatening anaphylactic reactions in the event a student is experiencing a first-time anaphylactic reaction, a student does not have his or her own epinephrine autoinjector device available, or if a school nurse is not in the vicinity at the time.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.210 RCW to read as follows:

(1) School districts and nonpublic schools may maintain at a school in a designated location a supply of epinephrine autoinjectors based on the number of students enrolled in the school.

(2)(a) A licensed health professional with the authority to prescribe epinephrine autoinjectors may prescribe epinephrine autoinjectors in the name of the school district or school to be maintained for use when necessary. Epinephrine prescriptions must be accompanied by a standing order for the administration of school-supplied, undesignated epinephrine autoinjectors for potentially life-threatening allergic reactions.

(b) There are no changes to current prescription or self-administration practices for children with existing epinephrine autoinjector prescriptions or a guided anaphylaxis care plan.

(c) Epinephrine autoinjectors may be obtained from donation sources, but must be accompanied by a prescription.

(3)(a) When a student has a prescription for an epinephrine autoinjector on file, the school nurse or designated trained school personnel may utilize the school district or school supply of epinephrine autoinjectors to respond to an anaphylactic reaction under a standing protocol according to RCW 28A.210.300.

(b) When a student does not have an epinephrine autoinjector or prescription for an epinephrine autoinjector on file, the school nurse may utilize the school district or school supply of epinephrine autoinjectors to respond to an anaphylactic reaction under a standing protocol according to RCW 28A.210.300.

(c) Epinephrine autoinjectors may be used on school property, including the school building, playground, and school bus, as well as during field trips or sanctioned excursions away from school property. The school nurse or designated trained school personnel may carry an appropriate supply of school-owned epinephrine autoinjectors on field trips or excursions.

(4)(a) If a student is injured or harmed due to the administration of epinephrine that a licensed health professional with prescribing authority has prescribed and a pharmacist has dispensed to a school under this section, the licensed health professional with prescribing authority and pharmacist may not be held responsible for the injury unless he or she issued the prescription with a conscious disregard for safety.

(b) In the event a school nurse or other school employee administers epinephrine in substantial compliance with a student's prescription that has been prescribed by a licensed health professional within the scope of the professional's prescriptive authority, if applicable, and written policies of the school district or private school, then the school employee, the employee's school district or school of employment, and the members of the governing board and chief administrator thereof are not liable in any criminal action or for civil damages in their individual, marital, governmental, corporate, or other capacity as a result of providing the epinephrine.

(c) School employees, except those licensed under chapter 18.79 RCW, who have not agreed in writing to the use of epinephrine autoinjectors as a specific part of their job description, may file with the school district a written letter of refusal to use epinephrine autoinjectors. This written letter of refusal may not serve as grounds for discharge, nonrenewal of an employment contract, or other action adversely affecting the employee's contract status.

(5) The office of the superintendent of public instruction shall review the anaphylaxis policy guidelines required under RCW 28A.210.380 and make a recommendation to the education committees of the legislature by December 1, 2013, based on student safety, regarding whether to designate other trained school employees to administer epinephrine autoinjectors to students without prescriptions for epinephrine autoinjectors demonstrating the symptoms of anaphylaxis when a school nurse is not in the vicinity.

Passed by the Senate April 23, 2013.

Passed by the House April 16, 2013.



Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

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## CHAPTER 269

[Senate Bill 5113]

### CONDOMINIUM ASSOCIATIONS—SPEED LIMITS

AN ACT Relating to enforcing speed limits within condominium association communities; and amending RCW 46.61.419.

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

**Sec. 1.** RCW 46.61.419 and 2003 c 193 s 1 are each amended to read as follows:

State, local, or county law enforcement personnel may enforce speeding violations under RCW 46.61.400 on private roads within a community organized under chapter 64.34, 64.32, or 64.38 RCW if:

(1) A majority of the homeowner's association's, association of apartment owners', or condominium association's board of directors votes to authorize the issuance of speeding infractions on its private roads, and declares a speed limit not lower than twenty miles per hour;

(2) A written agreement regarding the speeding enforcement is signed by the homeowner's association, association of apartment owners, or condominium association president and the chief law enforcement official of the city or county within whose jurisdiction the private road is located;

(3) The homeowner's association, association of apartment owners, or condominium association has provided written notice to all of the homeowners, apartment owners, or unit owners describing the new authority to issue speeding infractions; and

(4) Signs have been posted declaring the speed limit at all vehicle entrances to the community.

Passed by the Senate April 23, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

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## CHAPTER 270

[Senate Bill 5149]

### CRIMES—PHARMACIES

AN ACT Relating to crimes against pharmacies; amending RCW 9.94A.533; and adding a new section to chapter 9.94A RCW.

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:

In a criminal case where:

(1) The defendant has been convicted of robbery in the first degree or robbery in the second degree; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant committed a robbery of a pharmacy as defined in RCW 18.64.011(21); the court shall make a finding of fact of the special allegation, or if a jury is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation.

**Sec. 2.** RCW 9.94A.533 and 2012 c 42 s 3 are each amended to read as follows:

(1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter.

However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum

term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.827. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055. All enhancements under this subsection shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions.

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense

under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (a)(i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (a)(i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(3);

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in the sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For

purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10)(a) For a person age eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

(c) The increased penalty specified in (a) of this subsection is unavailable in the event that the prosecution gives notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

(12) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.831.

(13) An additional twelve months shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.520 or for vehicular assault committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.522, or for any felony driving under the influence (RCW 46.61.502(6)) or felony physical control under the influence (RCW 46.61.504(6)) for each child passenger under the age of sixteen who is an occupant in the defendant's vehicle. These enhancements shall be mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions. If the addition of a minor child enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(14) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of section 1 of this act.

Passed by the Senate March 5, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

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## CHAPTER 271

[Senate Bill 5343]

### HIGHER EDUCATION—STUDENTS—MILITARY SERVICE

AN ACT Relating to the rights of higher education students involved in military service; and amending RCW 28B.10.270.

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

**Sec. 1.** RCW 28B.10.270 and 2004 c 161 s 1 are each amended to read as follows:

(1) A member of the Washington national guard or any other military reserve component who is a student at an institution of higher education and who is ordered for a period exceeding thirty days to either active state service, as defined in RCW 38.04.010, or to federal active military service has the following rights:

(a) With regard to courses in which the person is enrolled, the person may:

(i) Withdraw from one or more courses for which tuition and fees have been paid that are attributable to the courses. The tuition and fees must be credited to the person's account at the institution. Any refunds are subject to the requirements of the state or federal financial aid programs of origination. In such a case, the student shall not receive credit for the courses and shall not receive a failing grade, an incomplete, or other negative annotation on the student's record, and the student's grade point average shall not be altered or affected in any manner because of action under this item;

(ii) Be given a grade of incomplete and be allowed to complete the course upon release from active duty under the institution's standard practice for completion of incompletes; or

(iii) Continue and complete the course for full credit. Class sessions the student misses due to performance of state or federal active military service must be counted as excused absences and must not be used in any way to adversely impact the student's grade or standing in the class. Any student who selects this option is not, however, automatically excused from completing assignments due during the period the student is performing state or federal active military service. A letter grade or a grade of pass must only be awarded if, in the opinion of the faculty member teaching the course, the student has completed sufficient work and has demonstrated sufficient progress toward meeting course requirements to justify the grade;

(b) To receive a refund of amounts paid for room, board, and fees attributable to the time period during which the student was serving in state or federal active military service and did not use the facilities or services for which the amounts were paid. Any refund of room, board, and fees is subject to the requirements of the state or federal financial aid programs of origination; and

(c) If the student chooses to withdraw, the student has the right to be readmitted and enrolled as a student at the institution, without penalty or redetermination of admission eligibility, within one year following release from the state or federal active military service.

(2)(a) A member of the Washington national guard or any other military reserve or guard component who is a student at an institution of higher education and who is ordered for a period of thirty days or less to either active or inactive state or federal service and as a result of that service or follow-up medical treatment for injury incurred during that service misses any class, test, examination, laboratory, or class day on which a written or oral assignment is due, or other event upon which a course grade or evaluation is based, is entitled to make up the class, test, examination, laboratory, presentation, or event without prejudice to the final course grade or evaluation. The makeup must be scheduled

after the member's return from service and after a reasonable time for the student to prepare for the test, examination, laboratory, presentation, or event.

(b) Class sessions a student misses due to performance of state or federal active or inactive military service must be counted as excused absences and may not be used in any way to adversely impact the student's grade or standing in class.

(c) If the faculty member teaching the course determines that the student has completed sufficient work and has demonstrated sufficient progress toward meeting course requirements to justify the grade without making up the class, test, examination, presentation, or other event, the grade may be awarded without the makeup, but the missed class, test, examination, laboratory, class day, presentation, or other event must not be used in any way to adversely impact the student's grade or standing in the class.

(3) The protections in this section may be invoked as follows:

(a) The person, or an appropriate officer from the military organization in which the person will be serving, must give written notice that the person is being, or has been, ordered to qualifying service; and

(b) Upon written request from the institution, the person shall provide written verification of service.

~~((3))~~ (4) This section provides minimum protections for students. Nothing in this section prevents institutions of higher education from providing additional options or protections to students who are ordered to state or federal active military service.

Passed by the Senate February 22, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 272

[Senate Bill 5344]

### TRUSTS

AN ACT Relating to revising state statutes concerning trusts; amending RCW 11.36.010, 11.36.021, 11.96A.050, 11.96A.070, 11.96A.120, 11.96A.125, 11.97.010, 11.98.005, 11.98.019, 11.98.039, 11.98.041, 11.98.045, 11.98.051, 11.98.080, 11.103.040, 11.103.050, 11.96A.250, 11.98.015, 11.98.078, 11.103.030, 11.106.010, 11.106.020, and 11.118.050; adding new sections to chapter 11.98 RCW; creating a new section; and repealing RCW 11.98.090.

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

**Sec. 1.** RCW 11.36.010 and 1983 c 51 s 1 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), and (4) of this section, the following persons are not qualified to act as personal representatives: Corporations, limited liability companies, limited liability partnerships, minors, persons of unsound mind, or persons who have been convicted of (a) any felony or ((of a misdemeanor)) (b) any crime involving moral turpitude(= PROVIDED, That)).

(2) Trust companies regularly organized under the laws of this state and national banks when authorized so to do may act as the personal representative of ((decedents' or incompetents' estates)) an individual's estate or of the estate of



an incapacitated person upon petition of any person having a right to such appointment and may act as ~~((executors))~~ personal representatives or guardians when so appointed by will ~~((~~PROVIDED FURTHER, That professional service corporations regularly organized under the laws of this state whose shareholder or shareholders are exclusively attorneys may act as personal representatives~~))~~. No trust company or national bank may qualify as such ~~((executor))~~ personal representative or guardian under any will hereafter drawn by it or its agents or employees, and no salaried attorney of any such company may be allowed any attorney fee for probating any such will or in relation to the administration or settlement of any such estate, and no part of any attorney fee may inure, directly or indirectly, to the benefit of any trust company or national bank.

(3) Professional service corporations, professional limited liability companies, or limited liability partnerships, that are duly organized under the laws of this state and whose shareholders, members, or partners, respectively, are exclusively attorneys, may act as personal representatives.

(4) Any nonprofit corporation may act as personal representative if the articles of incorporation or bylaws of that corporation permit the action and the corporation is in compliance with all applicable provisions of Title 24 RCW.

(5) When any person to whom letters testamentary or of administration have been issued becomes disqualified to act because of becoming of unsound mind or being convicted of (a) any felony or (b) any crime ((or misdemeanor)) involving moral turpitude, the court having jurisdiction ((shall)) must revoke his or her letters.

(6) A nonresident may be appointed to act as personal representative if the nonresident appoints an agent who is a resident of the county where such estate is being probated or who is an attorney of record of the estate, upon whom service of all papers may be made; such appointment to be made in writing and filed by the clerk with other papers of such estate; and, unless bond has been waived as provided by RCW 11.28.185, such nonresident personal representative ((shall)) must file a bond to be approved by the court.

**Sec. 2.** RCW 11.36.021 and 1991 c 72 s 1 are each amended to read as follows:

(1) The following may serve as trustees:

(a) Any suitable persons over the age of eighteen years, if not otherwise disqualified;

(b) Any trust company regularly organized under the laws of this state and national banks when authorized to do so;

(c) Any nonprofit corporation, if the articles of incorporation or bylaws of that corporation permit the action and if the corporation is in compliance with all applicable provisions of Title 24 RCW;

(d) Any professional service corporations ~~((regularly))~~, professional limited liability companies, or limited liability partnerships, that are duly organized under the laws of this state and whose ((shareholder or)) shareholders, members, or partners, respectively, are exclusively attorneys; ((and))

(e) Any state or regional college or university, as those institutions are defined in RCW 28B.10.016;

(f) Any community or technical college, as those institutions are defined in RCW 28B.50.030; and

(g) Any other entity so authorized under the laws of the state of Washington.

(2) The following are disqualified to serve as trustees:

(a) Minors, persons of unsound mind, or persons who have been convicted of (i) any felony or ((a misdemeanor)) (ii) any crime involving moral turpitude; and

(b) A corporation organized under Title 23B RCW that is not authorized under the laws of the state of Washington to act as a fiduciary.

**Sec. 3.** RCW 11.96A.050 and 2011 c 327 s 6 are each amended to read as follows:

(1) Venue for proceedings pertaining to trusts (~~((shall be))~~ is):

(a) For testamentary trusts established under wills probated in the state of Washington, in the superior court of the county where the probate of the will is being administered or was completed or, in the alternative, the superior court of the county where any qualified beneficiary of the trust (~~((entitled to notice under RCW 11.97.010))~~ as defined in section 8 of this act resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located; and

(b) For all other trusts, in the superior court of the county where any qualified beneficiary of the trust (~~((entitled to notice under RCW 11.97.010))~~ as defined in section 8 of this act resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located. If no county has venue for proceedings pertaining to a trust under the preceding sentence, then in any county.

(2) A party to a proceeding pertaining to a trust may request that venue be changed. If the request is made within four months of the giving of the first notice of a proceeding pertaining to the trust, except for good cause shown, venue must be moved to the county with the strongest connection to the trust as determined by the court, considering such factors as the residence of a qualified beneficiary of the trust (~~((entitled to notice under RCW 11.97.010))~~ as defined in section 8 of this act, the residence or place of business of a trustee, and the location of any real property that is an asset of the trust.

(3) Venue for proceedings subject to chapter 11.88 or 11.92 RCW (~~((shall))~~ must be determined under the provisions of those chapters.

(4) Venue for proceedings pertaining to the probate of wills, the administration and disposition of a decedent's property, including nonprobate assets, and any other matter not identified in subsection (1), (2), or (3) of this section, (~~((shall))~~ must be in any county in the state of Washington that the petitioner selects. A party to a proceeding may request that venue be changed if the request is made within four months of the mailing of the notice of appointment and pendency of probate required by RCW 11.28.237, and except for good cause shown, venue must be moved as follows:

(a) If the decedent was a resident of the state of Washington at the time of death, to the county of the decedent's residence; or

(b) If the decedent was not a resident of the state of Washington at the time of death, to any of the following:

(i) Any county in which any part of the probate estate might be;

(ii) If there are no probate assets, any county where any nonprobate asset might be; or

(iii) The county in which the decedent died.

(5) Once letters testamentary or of administration have been granted in the state of Washington, all orders, settlements, trials, and other proceedings under this title (~~(shall)~~) must be had or made in the county in which such letters have been granted unless venue is moved as provided in subsection (4) of this section.

(6) Venue for proceedings pertaining to powers of attorney (~~(shall)~~) must be in the superior court of the county of the principal's residence, except for good cause shown.

(7) If venue is moved, an action taken before venue is changed is not invalid because of the venue.

(8) Any request to change venue that is made more than four months after the commencement of the action may be granted in the discretion of the court.

**Sec. 4.** RCW 11.96A.070 and 2011 c 327 s 7 are each amended to read as follows:

(1)(a) A beneficiary of an express trust may not commence a proceeding against a trustee for breach of trust more than three years after the date a report was delivered in the manner provided in RCW 11.96A.110 to the beneficiary or to a representative of the beneficiary (~~((was sent a report that))~~) if the report adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

(b) A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows or should have known of the potential claim (~~((or should have inquired into its existence))~~). A report that includes (~~((the following information))~~) all of the items described in this subsection (b) that are relevant for the reporting period is presumed to have provided such sufficient information regarding the existence of potential claims for breach of trust for such period:

(i) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;

(ii) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;

(iii) The trustee's compensation for the period;

(iv) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;

(v) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;

(vi) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in RCW 11.98.078 or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;

(vii) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and

(viii) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the (~~((beneficiary receives the statement))~~) trustee delivers the report in the manner provided in RCW 11.96A.110.

(c) If (a) of this subsection does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within three years after the first to occur of:

- (i) The removal, resignation, or death of the trustee;
- (ii) The termination of the beneficiary's interest in the trust; or
- (iii) The termination of the trust.

(d) For purposes of this section, "express trust" does not include resulting trusts, constructive trusts, business trusts in which certificates of beneficial interest are issued to the beneficiary, investment trusts, voting trusts, trusts in the nature of mortgages or pledges, liquidation trusts, or trusts for the sole purpose of paying dividends, interest, interest coupons, salaries, wages, pensions, or profits, trusts created in deposits in any financial institution under chapter 30.22 RCW, unless any such trust that is created in writing specifically incorporates this chapter in whole or in part.

(2) Except as provided in RCW 11.96A.250 with respect to special representatives, an action against a personal representative for alleged breach of fiduciary duty by an heir, legatee, or other interested party must be brought before discharge of the personal representative.

(3) The legislature hereby confirms the long standing public policy of promoting the prompt and efficient resolution of matters involving trusts and estates. To further implement this policy, the legislature adopts the following statutory provisions in order to:

(a) Encourage and facilitate the participation of qualified individuals as special representatives;

(b) Serve the public's interest in having a prompt and efficient resolution of matters involving trusts or estates; and

(c) Promote complete and final resolution of proceedings involving trusts and estates.

(i) Actions against a special representative must be brought before the earlier of:

(A) Three years from the discharge of the special representative as provided in RCW 11.96A.250; or

(B) The entry of an order by a court of competent jurisdiction under RCW 11.96A.240 approving the written agreement executed by all interested parties in accord with the provisions of RCW 11.96A.220.

(ii) If a legal action is commenced against the special representative after the expiration of the period during which claims may be brought against the special representative as provided in (c)(i) of this subsection, alleging property damage, property loss, or other civil liability caused by or resulting from an alleged act or omission of the special representative arising out of or by reason of the special representative's duties or actions as special representative, the special representative (~~shall~~) must be indemnified: (A) From the assets held in the trust or comprising the estate involved in the dispute; and (B) by the persons bringing the legal action, for all expenses, attorneys' fees, judgments, settlements, decrees, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action. To the extent possible, indemnification must be made first by the persons bringing the legal action, second from that portion of the trust or estate that is held for the benefit of, or has been distributed or applied to, the persons bringing the legal action, and third

from the other assets held in the trust or comprising the estate involved in the dispute.

(4) The tolling provisions of RCW 4.16.190 apply to this chapter except that the running of a statute of limitations under subsection (1) or (2) of this section, or any other applicable statute of limitations for any matter that is the subject of dispute under this chapter, is not tolled as to an individual who had a guardian ad litem, limited or general guardian of the estate, or a special representative to represent the person during the probate or dispute resolution proceeding.

**Sec. 5.** RCW 11.96A.120 and 2011 c 327 s 9 are each amended to read as follows:

(1) ~~((With respect to a particular matter that affects a trust, probate estate, guardianship estate, or property subject to a power of attorney, in which the interests of such fiduciary estate and the beneficiaries are not in conflict:))~~ Notice to a person who may represent and bind another person under this section has the same effect as if notice were given directly to the other person.

(2) The consent of a person who may represent and bind another person under this section is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(3) The following limitations on the ability to serve as a virtual representative apply:

(a) A trustor may not represent and bind a beneficiary under this section with respect to the termination and modification of an irrevocable trust; and

(b) Representation of an incapacitated trustor with respect to his or her powers over a trust is subject to the provisions of RCW 11.103.030, and chapters 11.96A, 11.88, and 11.92 RCW.

(4) To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to the particular question or dispute:

(a) A guardian may represent and bind the estate that the guardian controls, subject to chapters 11.96A, 11.88, and 11.92 RCW;

(b) A guardian of the person may represent and bind the incapacitated person if a guardian of the incapacitated person's estate has not been appointed;

(c) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

~~((and))~~ (d) A trustee may represent and bind the beneficiaries of the trust;

~~((and))~~ (e) A personal representative of a decedent's estate may represent and bind persons interested in the estate;

~~(2) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and shall not be construed as limiting the application of that common law doctrine.~~

~~(3) Any notice requirement in this title is satisfied if:~~

~~((a)); and~~

~~(f) A parent may represent and bind the parent's minor or unborn child or children if a guardian for the child or children has not been appointed.~~

~~(5) Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably~~

ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented with regard to the particular question or dispute.

~~(6) Where an interest ((in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney)) has been given to persons who comprise a certain class upon the happening of a certain event, ((notice may be given to the living persons who would constitute the class if the event had happened immediately before the commencement of the proceeding requiring notice, and the persons shall virtually represent all other members of the class;~~

(b)) the living persons who would constitute the class as of the date the representation is to be determined may virtually represent all other members of the class as of that date, but only to the extent that there is no conflict of interest between the representative and the person(s) represented with regard to the particular question or dispute.

~~(7) Where an interest ((in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney)) has been given to a living person, and the same interest, or a share in it, is to pass to the surviving spouse or surviving domestic partner or to persons who are, or might be, the ((distributees,)) heirs, issue, or other kindred of that living person ((upon the happening of a future event, notice may be given to that living person, and the living person shall virtually represent the surviving spouse or surviving domestic partner, distributees, heirs, issue, or other kindred of the person;~~

(e)) or the distributees of the estate of that living person upon the happening of a future event, that living person may virtually represent the surviving spouse or surviving domestic partner, heirs, issue, or other kindred of the person, and the distributees of the estate of the person, but only to the extent that there is no conflict of interest between the representative and the person(s) represented with regard to the particular question or dispute.

~~(8) Except as otherwise provided in ((this)) subsection (7) of this section, where an interest ((in an estate, trust, or nonprobate asset or an interest that may be affected by a power of attorney)) has been given to a person or a class of persons, or both, upon the happening of any future event, and the same interest or a share of the interest is to pass to another person or class of persons, or both, upon the happening of an additional future event, ((notice may be given to)) the living person or persons who would take the interest upon the happening of the first event((-, and the living person or persons shall)) may virtually represent the persons and classes of persons who might take on the happening of the additional future event((-, and~~

~~(d) The holder of a general power of appointment, exercisable either during the power holder's life or by will, or a limited power of appointment, exercisable either during the power holder's life or by will, that excludes as possible appointees only the power holder, his or her estate, his or her creditors, and the creditors of his or her estate, may accept notice and virtually represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power, to the extent there is no conflict of interest between the holder of the power of appointment and the persons represented with respect to the particular question or dispute.~~

~~(4) A party is not virtually represented by a person receiving notice if a conflict of interest involving the matter is known to exist between the notified person and the party)), but only to the extent that there is no conflict of interest between the representative and the person(s) represented with regard to the particular question or dispute.~~

~~((5)) (9) To the extent there is no conflict of interest between the holder of the power of appointment and the persons represented with respect to the particular question or dispute, the holder of a lifetime or testamentary power of appointment may virtually represent and bind persons who are permissible appointees or takers in default (but only to the extent that they are permissible appointees in the case of a limited power of appointment) under the power, and who are not permissible distributees as defined in section 8 of this act.~~

~~(10) The attorney general may virtually represent and bind a charitable organization if:~~

~~(a) The charitable organization is not a qualified beneficiary as defined in section 8 of this act specified in the trust instrument or acting as trustee; or~~

~~(b) The charitable organization is a qualified beneficiary, but is not a permissible distributee, as those terms are defined in section 8 of this act, and its beneficial interest in the trust is subject to change by the trustor or by a person designated by the trustor.~~

~~(11) An action taken by the court is conclusive and binding upon each person receiving actual or constructive notice or who is otherwise represented under this section.~~

~~(12) This section is intended to adopt the common law concept of virtual representation. This section supplements the common law relating to the doctrine of virtual representation and may not be construed as limiting the application of that common law doctrine.~~

**Sec. 6.** RCW 11.96A.125 and 2011 c 327 s 11 are each amended to read as follows:

The terms of a will or trust, even if unambiguous, may be reformed by judicial proceedings ~~((or binding nonjudicial procedure))~~ under this chapter to conform the terms to the intention of the testator or trustor if it is proved by clear, cogent, and convincing evidence ~~((; or the parties to a binding nonjudicial agreement agree that there is clear, cogent, and convincing evidence.))~~ that both the intent of the testator or trustor and the terms of the will or trust were affected by a mistake of fact or law, whether in expression or inducement. This does not limit the ability to reform the will or trust using the binding nonjudicial procedures of RCW 11.96A.220.

**Sec. 7.** RCW 11.97.010 and 2011 c 327 s 12 are each amended to read as follows:

~~((4))~~ The trustor of a trust may by the provisions of the trust relieve the trustee from any or all of the duties, restrictions, and liabilities which would otherwise be imposed by chapters 11.95, 11.98, 11.100, and 11.104A RCW and RCW 11.106.020, or may alter or deny any or all of the privileges and powers conferred by those provisions; or may add duties, restrictions, liabilities, privileges, or powers to those imposed or granted by those provisions. If any specific provision of those chapters is in conflict with the provisions of a trust, the provisions of the trust control whether or not specific reference is made in

the trust to any of those chapters, except as provided in RCW 6.32.250, 11.96A.190, 19.36.020, section 8 of this act, 11.98.200 through 11.98.240, section 16(1) of this act, 11.95.100 through 11.95.150, and chapter 11.103 RCW. In no event may a trustee be relieved of the duty to act in good faith and with honest judgment (~~((or the duty to provide information to beneficiaries as required in this section))~~). Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee (~~shall~~) must exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

~~((2) Within sixty days after the date of acceptance of the position of trustee of an irrevocable trust, or the date the trustee of a formerly revocable trust acquires knowledge that the trust has become irrevocable, whether by the death of the trustor or otherwise, the trustee shall give notice of: (a) The existence of the trust, (b) the identity of the trustor or trustors, (c) the trustee's name, address, and telephone number, and (d) the right to request such information as is reasonably necessary to enable the notified person to enforce his or her rights under the trust, to all persons interested in the trust, as defined in RCW 11.96A.030, and who would be entitled to notice under RCW 11.96A.110 and 11.96A.120 if they were a party to judicial proceedings regarding the trust. If any such person is a minor and no guardian has been appointed for such person by any court, then such notice may be given to a parent of the person. If a person otherwise entitled to notice under this section is a charitable organization, and the charitable organization's only interest in the trust is a future interest that may be revoked, then such notice shall instead be given to the attorney general. A trustee who gives notice pursuant to this section satisfies the duty to inform the beneficiaries of the existence of the trust. The notice required under this subsection (2) applies only to irrevocable trusts created after December 31, 2011, and revocable trusts that become irrevocable after December 31, 2011, provided that all common law duties of a trustee to notify beneficiaries applicable to trusts created or that became irrevocable before such date are not affected.~~

~~(3) A trustee shall keep all persons interested in the trust, as defined in RCW 11.96A.030, and who would be entitled to notice under RCW 11.96A.110 and 11.96A.120 if they were a party to judicial proceedings regarding the trust, reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. A report that contains the following is presumed to satisfy the trustee's duty to keep such persons reasonably informed for the relevant period of trust administration:~~

~~(a) A statement of receipts and disbursements of principal and income that have occurred during the accounting period;~~

~~(b) A statement of the assets and liabilities of the trust and their values at the beginning and end of the period;~~

~~(c) The trustee's compensation for the period;~~

~~(d) The agents hired by the trustee, their relationship to the trustee, if any, and their compensation, for the period;~~

~~(e) Disclosure of any pledge, mortgage, option, or lease of trust property, or other agreement affecting trust property binding for a period of five years or more that was granted or entered into during the accounting period;~~



~~(f) Disclosure of all transactions during the period that are equivalent to one of the types of transactions described in RCW 11.98.078 or otherwise could have been affected by a conflict between the trustee's fiduciary and personal interests;~~

~~(g) A statement that the recipient of the account information may petition the superior court pursuant to chapter 11.106 RCW to obtain review of the statement and of acts of the trustee disclosed in the statement; and~~

~~(h) A statement that claims against the trustee for breach of trust may not be made after the expiration of three years from the date the beneficiary receives the statement.~~

~~(4) Unless unreasonable under the circumstances, a trustee shall promptly respond to any beneficiary's request for information related to the administration of the trust.~~

~~(5) If a person entitled to notice under this section requests information reasonably necessary to enable the notified person to enforce his or her rights under the trust, then the trustee must provide such information within sixty days of receipt of such request. Delivery of the entire trust instrument to the persons entitled to notice under this section who request information concerning the terms of the trust reasonably necessary to enable the notified person to enforce his or her rights under the trust is deemed to satisfy the trustee's obligations under this subsection.)~~

**NEW SECTION. Sec. 8.** A new section is added to chapter 11.98 RCW to be codified before RCW 11.98.005 to read as follows:

The definitions in this section apply throughout this chapter, and throughout this title where specifically referenced, unless the context clearly requires otherwise.

(1) "Permissible distributee" means a trust beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.

(2) "Qualified beneficiary" means a trust beneficiary who, on the date that such beneficiary's qualification is determined:

(a) Is a permissible distributee;

(b) Would be a permissible distributee if the interests of the distributees described in (a) of this subsection terminated on that date; or

(c) Would be a permissible distributee if the trust terminated on that date.

**Sec. 9.** RCW 11.98.005 and 2011 c 327 s 22 are each amended to read as follows:

(1) If provisions of a trust instrument designate Washington as the situs of the trust or designate Washington law to govern the trust or any of its terms, then the situs of the trust is Washington provided that one of the following conditions is met:

(a) A trustee has a place of business in or a trustee is a resident of Washington; or

(b) More than an insignificant part of the trust administration occurs in Washington; or

(c) The trustor resides in Washington at the time situs is being established, or resided in Washington at the time the trust became irrevocable; or

(d) One or more of the qualified beneficiaries resides in Washington; or

(e) An interest in real property located in Washington is an asset of the trust.

(2)(a) Unless the trust instrument designates a state other than Washington as the situs of the trust and does not expressly authorize transfer of situs, the trustee may register the trust as a Washington trust if any of the factors in subsection (1)(a) through (e) of this section are present. The trustee (~~(shall)~~) must register the trust by filing with the clerk of the court in any county where venue lies for the trust under RCW 11.96A.050, a statement including the following information:

(i) The name and address of the trustee;

(ii) The date of the trust, name of the trustor, and name of the trust, if any;

(iii) The factor or factors listed in subsection (1)(a) through (e) of this section that are present for the trust and which qualify the trust for registration.

(b) Within five days of filing the registration with the court, the trustee (~~(shall)~~) must mail a copy of the registration to each (~~(person who would be entitled to notice under RCW 11.97.010 and)~~) qualified beneficiary who has not waived notice of the registration, in writing, filed in the cause, together with a notice that must be in substantially the same form as set forth in this section. Persons receiving such notice (~~(shall)~~) have thirty days from the date of filing the registration to file a petition in the court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and to serve a copy of such petition upon the trustee or the trustee's lawyer. If a petition objecting to the registration is filed within thirty days of the date of filing the registration, the trustee must request the court to fix a time and place for the hearing of the petition and notify by mail, personal service or electronic transmission, if a valid consent to electronic transmission is in effect under the terms of RCW 11.96A.110, all (~~(persons who were entitled to notice of the registration)~~) qualified beneficiaries of the time and place of the hearing, not less than ten days before the hearing on the petition.

(c) Unless a person receiving notice of the registration files a petition with the court objecting to the registration within thirty days of the date of filing the registration, the registration (~~(shall)~~) will be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington. After expiration of the thirty-day period following filing of the registration, the trustee may obtain a certificate of registration signed by the clerk, and issued under the seal of the court, which may be in the form specified in (d) of this subsection.

(d) Notice of registration and certificates of registration may be in the following form:

(i) Notice form:

NOTICE OF FILING OF REGISTRATION OF [NAME AND DATE OF TRUST] AS A WASHINGTON TRUST

NOTICE IS GIVEN that the attached Registration of Trust was filed by the undersigned in the above-entitled court on the . . . day of . . . , 20. . . ; unless you file a petition in the above-entitled court objecting to such registration and requesting the court to issue an order that Washington is not the proper situs of the trust, and serve a copy thereof upon the trustee or the trustee's lawyer, within thirty days after the date of the filing, the registration will be deemed the equivalent of an order entered by the court declaring that the situs of the trust is Washington.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place thereof, by mail, or personal service, not less than ten days before the hearing on the petition.

(ii) Certificate of Registration:

State of Washington, County of . . . . .

In the superior court of the county of . . . . .

Whereas, the attached Registration of Trust was filed with this court on . . . . , the attached Notice of Filing Registration of Trust and Affidavit of Mailing Notice of Filing Registration of Trust were filed with this court on . . . . , and no objections to such Registration have been filed with this court, the trust known as . . . . , under trust agreement dated . . . . , between . . . . as Trustor and . . . . as Trustee, is hereby registered as a Washington trust.

Witness my hand and the seal of said court this . . . day of . . . . ., 20 . . . .

(3) If the instrument establishing a trust does not designate (~~Washington as the situs or designate Washington~~) any jurisdiction as the situs or designate any jurisdiction's governing law to apply to the trust, and the trustee of the trust has not registered the trust as allowed in subsection (2) of this section, the situs of the trust is Washington if (~~the~~) situs has not previously been established by any court proceeding and the additional conditions specified in this subsection (3) are met.

(a) For a testamentary trust, the situs of the trust is Washington if:

(i) The will was admitted to probate in Washington; or

(ii) The will has not been admitted to probate in Washington, but any trustee of the trust resides or has a place of business in Washington, any qualified beneficiary (~~(entitled to notice under RCW 11.97.010)~~) resides in Washington, or any real property that is an asset of the trust is located in Washington.

(b) For an inter vivos trust (~~(where the trustor is domiciled in Washington either when the trust becomes irrevocable or, in the case of a revocable trust, when judicial proceedings under chapter 11.96A RCW are commenced)~~), the situs of the trust is Washington if:

(i) The trustor is living and Washington is the trustor's domicile or any of the trustees reside in or have a place of business in Washington; or

(ii) The trustor is deceased(~~(situs has not previously been established by any court proceeding.)~~); and:

(A) The trustor's will was admitted to probate in Washington; or

(B) The trustor's will was not admitted to probate in Washington, but any (~~person entitled to notice under RCW 11.97.010~~) qualified beneficiary resides in Washington, any trustee resides or has a place of business in Washington, or any real property that is an asset of the trust is located in Washington.

(c) If the situs of the trust is not determined under (a) or (b) of this subsection, the determination regarding the situs of the trust is a matter for purposes of RCW 11.96A.030. Whether Washington is the situs (~~shall~~) must be determined by a court in a judicial proceeding conducted under RCW 11.96A.080 if:

(i) A trustee has a place of business in or a trustee is a resident of Washington; or

(ii) More than an insignificant part of the trust administration occurs in Washington; or

(iii) One or more of the qualified beneficiaries resides in Washington; or

(iv) An interest in real property located in Washington is an asset of the trust.

(d) Determination of situs under (c) of this subsection (3) cannot be made by nonjudicial agreement under RCW 11.96A.220.

**NEW SECTION. Sec. 10.** A new section is added to chapter 11.98 RCW to be codified between RCW 11.98.016 and 11.98.019 to read as follows:

(1) Except as otherwise provided in subsection (3) of this section, a person designated as trustee accepts the trusteeship:

(a) By substantially complying with a method of acceptance provided in the terms of the trust; or

(b) If the terms of the trust do not provide a method of acceptance or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

(2) A person designated as trustee who has not yet accepted the trusteeship may decline the trusteeship by delivering a written declination of the trusteeship to the trustor or, if the trustor is deceased or is incapacitated, to a successor trustee, if any, and if none, to a qualified beneficiary.

(3) A person designated as trustee, without accepting the trusteeship, may:

(a) Act to preserve the trust property if, within a reasonable time after acting, the person sends a written declination of the trusteeship to the trustor or, if the trustor is dead or is incapacitated, to a successor trustee, if any, and if none, to a qualified beneficiary; and

(b) Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

**Sec. 11.** RCW 11.98.019 and 1985 c 30 s 42 are each amended to read as follows:

Any trustee may, by written instrument delivered to any then acting co-trustee and to the ~~((current adult income beneficiaries))~~ permissible distributees of the trust, relinquish to any extent and upon any terms any or all of the trustee's powers, rights, authorities, or discretions that are or may be tax sensitive in that they cause or may cause adverse tax consequences to the trustee or the trust. Any trustee not relinquishing such a power, right, authority, or discretion and upon whom it is conferred continues to have full power to exercise it.

**Sec. 12.** RCW 11.98.039 and 2011 c 327 s 21 are each amended to read as follows:

(1) Where a vacancy occurs in the office of the trustee and there is a successor trustee who is willing to serve as trustee and (a) is named in the governing instrument as successor trustee or (b) has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, the outgoing trustee, or any other interested party, ~~((shall))~~ must give notice of such vacancy, whether arising because of the trustee's resignation or because of any other reason, and of the successor trustee's agreement to serve as trustee, to each ~~((adult distributee or permissible distributee of trust income or of trust principal or of both trust income and trust~~

~~principal. If there are no such adults, no notice need be given))~~ permissible distributee. The successor trustee named in the governing instrument or selected pursuant to the procedure thereof established in the governing instrument (~~(shall be)~~) is entitled to act as trustee except for good cause or disqualification. The successor trustee (~~(shall serve)~~) is deemed to have accepted the trusteeship as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041.

(2) Where a vacancy exists or occurs in the office of the trustee and there is no successor trustee who is named in the governing instrument or who has been selected to serve as successor trustee under the procedure established in the governing instrument for the selection of a successor trustee, and who is willing to serve as trustee, then all parties with an interest in the trust may agree to a nonjudicial change of the trustee under RCW 11.96A.220. The successor trustee (~~(shall serve)~~) is deemed to have accepted the trusteeship as of the effective date of the discharge of the predecessor trustee as provided in RCW 11.98.041 or, in circumstances where there is no predecessor trustee, as of the effective date of the trustee's appointment.

(3) When there is a desire to name one or more cotrustees to serve with the existing trustee, then all parties with an interest in the trust may agree to the nonjudicial addition of one or more cotrustees under RCW 11.96A.220. The additional cotrustee (~~(shall serve)~~) is deemed to have accepted the trusteeship as of the effective date of the cotrustee's appointment.

(4) Unless subsection (1), (2), or (3) of this section applies, any beneficiary of a trust, the trustor, if alive, or the trustee may petition the superior court having jurisdiction for the appointment or change of a trustee or cotrustee under the procedures provided in RCW 11.96A.080 through 11.96A.200: (a) Whenever the office of trustee becomes vacant; (b) upon filing of a petition of resignation by a trustee; or (c) for any other reasonable cause.

(5) For purposes of this subsection, the term fiduciary includes both trustee and personal representative.

(a) Except as otherwise provided in the governing instrument, a successor fiduciary, absent actual knowledge of a breach of fiduciary duty: (i) Is not liable for any act or omission of a predecessor fiduciary and is not obligated to inquire into the validity or propriety of any such act or omission; (ii) is authorized to accept as conclusively accurate any accounting or statement of assets tendered to the successor fiduciary by a predecessor fiduciary; and (iii) is authorized to receipt only for assets actually delivered and has no duty to make further inquiry as to undisclosed assets of the trust or estate.

(b) Nothing in this section relieves a successor fiduciary from liability for retaining improper investments, nor does this section in any way bar the successor fiduciary, trust beneficiaries, or other party in interest from bringing an action against a predecessor fiduciary arising out of the acts or omissions of the predecessor fiduciary, nor does it relieve the successor fiduciary of liability for its own acts or omissions except as specifically stated or authorized in this section.

(6) A change of trustee to a foreign trustee does not change the situs of the trust. Transfer of situs of a trust to another jurisdiction requires compliance with RCW 11.98.005 and RCW 11.98.045 through 11.98.055.

**Sec. 13.** RCW 11.98.041 and 1985 c 30 s 141 are each amended to read as follows:

Where a vacancy occurs in the office of trustee under the circumstances described in RCW 11.98.039 (1) or (2), the outgoing trustee (~~(shall be)~~) is discharged upon the agreement of all parties entitled to notice or upon the expiration of thirty days after notice is given of such vacancy as required by the applicable subsection of RCW 11.98.039, whichever occurs first, or if no notice is required under RCW 11.98.039(1), upon the date the vacancy occurs, unless before the effective date of such discharge a petition is filed under RCW 11.98.039(~~(3)~~) (4) regarding the appointment or change of a trustee of the trust. Where a petition is filed under RCW 11.98.039(~~(3)~~) (4) regarding the appointment or change of a trustee, the superior court having jurisdiction may discharge the trustee from the trust and may appoint a successor trustee upon such terms as the court may require.

**Sec. 14.** RCW 11.98.045 and 2011 c 327 s 23 are each amended to read as follows:

(1) If a trust is a Washington trust under RCW 11.98.005, a trustee may transfer the situs of the trust to a jurisdiction other than Washington if the trust instrument so provides or in accordance with RCW 11.98.051 or 11.98.055.

(2) Transfer under this section is permitted only if:

(a) The transfer would facilitate the economic and convenient administration of the trust;

(b) The transfer would not materially impair the interests of the qualified beneficiaries or others interested in the trust;

(c) The transfer does not violate the terms of the trust;

(d) The new trustee is qualified and able to administer the trust or such assets on the terms set forth in the trust; and

(e) The trust meets at least one condition for situs listed in RCW 11.98.005(1) with respect to the new jurisdiction.

(3) Acceptance of such transfer by a foreign corporate trustee or trust company under this section or RCW 11.98.051 or 11.98.055 (~~(shall)~~) may not be construed to be doing a "trust business" as described in RCW 30.08.150(9).

**Sec. 15.** RCW 11.98.051 and 2011 c 327 s 24 are each amended to read as follows:

(1) The trustee may transfer trust situs (a) in accordance with RCW 11.96A.220; or (b) by giving written notice to (~~those persons entitled to notice as provided for under RCW 11.96A.110 and to~~) the attorney general in the case of a charitable trust subject to chapter 11.110 RCW and to the qualified beneficiaries not less than sixty days before initiating the transfer. The notice must:

(a) State the name and mailing address of the trustee;

(b) Include a copy of the governing instrument of the trust;

(c) Include a statement of assets and liabilities of the trust dated within ninety days of the notice;

(d) State the name and mailing address of the trustee to whom the trust will be transferred together with evidence that the trustee has agreed to accept the trust in the manner provided by law of the new situs. The notice must also contain a statement of the trustee's qualifications and the name of the court, if

any, having jurisdiction of that trustee or in which a proceeding with respect to the administration of the trust may be heard;

(e) State the facts supporting the requirements of RCW 11.98.045(2);

(f) Advise the ~~((beneficiaries))~~ recipients of the notice of the date, not less than sixty days after the giving of the notice, by which ~~((the beneficiary))~~ such recipients must notify the trustee of an objection to the proposed transfer; and

(g) Include a form on which the recipient may ~~((indicate consent or objection))~~ object to the proposed transfer.

(2) If the date upon which the ~~((beneficiaries'))~~ right to object to the transfer expires without receipt by the trustee of any objection, the trustee may transfer the trust situs as provided in the notice. If the trust was registered under RCW 11.98.045(2), the trustee must file a notice of transfer of situs and termination of registration with the court of the county where the trust was registered.

(3) The authority of a trustee under this section to transfer a trust's situs terminates if a ~~((beneficiary))~~ recipient of the notice notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(4) A change of trust situs does not authorize a change of trustee. Change of trustee of a trust requires compliance with RCW 11.98.039.

**NEW SECTION. Sec. 16.** A new section is added to chapter 11.98 RCW between RCW 11.98.070 and 11.98.080 to read as follows:

(1) A trustee must keep all qualified beneficiaries of a trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee must promptly respond to any beneficiary's request for information related to the administration of the trust. The trustee is deemed to have satisfied the request of a qualified beneficiary who requests information concerning the terms of the trust reasonably necessary to enable such beneficiary to enforce his or her rights under the trust if the trustee provides a copy of the entire trust instrument. If a qualified beneficiary must compel production of information from the trustee by order of the court, then the court may order costs, including reasonable attorneys' fees, to be awarded to such beneficiary pursuant to RCW 11.96A.150.

(2)(a) Except to the extent waived or modified as provided in subsection (5) of this section, within sixty days after the date of acceptance of the position of trustee, the trustee must give notice to the qualified beneficiaries of the trust of:

(i) The existence of the trust;

(ii) The identity of the trustor or trustors;

(iii) The trustee's name, address, and telephone number; and

(iv) The right to request such information as is reasonably necessary to enable the notified person to enforce his or her rights under the trust.

(b) The notice required under this subsection (2) applies only to irrevocable trusts created after December 31, 2011, and revocable trusts that become irrevocable after December 31, 2011.

(3) Despite any other provision of this section, and except to the extent waived or modified as provided in subsection (5) of this section, the trustee may not be required to provide any information described in subsection (1) or (2) of this section to any beneficiary of a trust other than the trustor's spouse or domestic partner if:

(a) Such spouse or domestic partner has capacity;

(b) Such spouse or domestic partner is the only permissible distributee of the trust; and

(c) All of the other qualified beneficiaries of the trust are the descendants of the trustor and the trustor's spouse or domestic partner.

(4) While the trustor of a revocable trust is living, no beneficiary other than the trustor is entitled to receive any information under this section.

(5) The trustor may waive or modify the notification requirements of subsections (2) and (3) of this section in the trust document or in a separate writing, made at any time, that is delivered to the trustee.

**Sec. 17.** RCW 11.98.080 and 1999 c 42 s 621 are each amended to read as follows:

(1)(a) Two or more trusts may be consolidated if:

~~((a))~~ (i) The trusts so provide; or

~~((b))~~ (ii) Whether provided in the trusts or not, ~~((in accordance with subsection (2) of this section, if all interested persons consent as provided in subsection (2)(b) of this section and the requirements of subsection (1)(d) of this section are satisfied; or~~

~~(c) Whether provided in the trusts or not, in accordance with subsection (3) of this section if the requirements of subsection (1)(d) of this section are satisfied;~~

~~(d)) the requirements of subsection (2), (3), or (4) of this section are satisfied.~~

(b) Consolidation under subsection (2) ~~((or))~~, (3), or (4) of this section is permitted only if:

(i) The dispositive provisions of each trust to be consolidated are substantially similar;

(ii) Consolidation is not inconsistent with the intent of the trustor with regard to any trust to be consolidated; and

(iii) Consolidation would facilitate administration of the trusts and would not materially impair the interests of the beneficiaries(;

~~(e))~~.

(c) Trusts may be consolidated whether created inter vivos or by will, by the same or different instruments, by the same or different trustors, whether the trustees are the same, and regardless of where the trusts were created or administered.

(2) ~~((The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in RCW 11.96A.220.))~~

(a) ~~((The trustee shall give written notice of proposed consolidation by personal service or by certified mail to the))~~ A trustee must deliver sixty days in advance written notice of a proposed consolidation in the manner provided in RCW 11.96A.110 to the qualified beneficiaries of every trust affected by the consolidation ((as provided in RCW 11.96A.110)) and to any trustee of such trusts who does not join in the notice. The notice ((shall)) must: (i) State the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be consolidated; (iii) include a statement of assets and liabilities of each trust to be consolidated, dated within ninety days of the notice; (iv) fully describe the terms and manner of consolidation; and (v) state the reasons supporting the requirements of subsection (1)~~((d))~~ (b) of this section.



The notice (~~(shall)~~ must) advise the recipient of the right to petition for a judicial determination of the proposed consolidation as provided in subsection ~~((3))~~ (4) of this section ~~(— The notice shall include a form on which consent or objection to the proposed consolidation may be indicated.~~

~~(b) If the trustee receives written consent to the proposed consolidation from all persons entitled to notice as provided in RCW 11.96A.110 or from their representatives, the trustee may consolidate the trusts as provided in the notice. Any person dealing with the trustee of the resulting consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the consolidation under this section.~~

~~(3)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the principal place of administration of a trust is located for an order consolidating two or more trusts under RCW 11.96A.080 through 11.96A.200. If nonjudicial consolidation has been commenced pursuant to subsection (2) of this section, a petition may be filed under this section unless the trustee has received all necessary consents. The principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business), and must indicate that the recipient has thirty days to object to the proposed consolidation.~~

(b) If the trustee receives written objection to the proposed consolidation from any trustee or beneficiary entitled to notice or from their representatives within the objection period provided in subsection (a) of this section, the trustee(s) may not consolidate the trusts as provided in the notice, though an objection does not preclude the trustee or a beneficiary's right to petition for a judicial determination of the proposed consolidation as provided in subsection (4) of this section. If the trustee does not receive any objection within the objection period provided above, then the trustee may consolidate the trusts, and such will be deemed the equivalent of an order entered by the court declaring that the trusts were combined in the manner provided in the initial notice.

(3) The trustees of two or more trusts may consolidate the trusts on such terms and conditions as appropriate without court approval as provided in RCW 11.96A.220.

(4)(a) Any trustee, beneficiary, or special representative may petition the superior court of the county in which the situs of a trust is located for an order consolidating two or more trusts under RCW 11.96A.080 through 11.96A.200.

(b) At the conclusion of the hearing, if the court finds that the requirements of subsection ~~(1)((4))~~ (b) of this section have been satisfied, it may direct consolidation of two or more trusts on such terms and conditions as appropriate. The court in its discretion may provide for payment from one or more of the trusts of reasonable fees and expenses for any party to the proceeding.

~~((4))~~ (5) This section applies to all trusts whenever created. Any person dealing with the trustee of the resulting consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the consolidation under this section.

~~((5))~~ (6) For powers of fiduciaries to divide trusts, see RCW 11.108.025.

**NEW SECTION. Sec. 18.** RCW 11.98.090 (Nonliability of third persons without knowledge of breach) and 1985 c 30 s 52 are each repealed.

**Sec. 19.** RCW 11.103.040 and 2011 c 327 s 37 are each amended to read as follows:

While (~~a trust is revocable by the trustor,~~) the trustor of a revocable trust is living, the rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the trustor. If a revocable trust has more than one trustor, the duties of the trustee are owed to all of the living trustors having the right to revoke the trust.

**Sec. 20.** RCW 11.103.050 and 2011 c 327 s 38 are each amended to read as follows:

(1) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the trustor's death within the earlier of:

(a) Twenty-four months after the trustor's death; or

(b) Four months after the trustee sent to the person by personal service, mail, or in an electronic transmission if there is a consent of the recipient to electronic transmission then in effect under the terms of RCW 11.96A.110, a notice (~~with the information required in RCW 11.97.010, and~~) including:

(i) The name and date of the trust;

(ii) The identity of the trustor or trustors;

(iii) The trustee's name, address, and telephone number; and

(iv) Notice of the time allowed for commencing a proceeding.

(2) Upon the death of the trustor of a trust that was revocable at the trustor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust, unless:

(a) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(b) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(3) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

**Sec. 21.** RCW 11.96A.250 and 2001 c 14 s 3 are each amended to read as follows:

(1)(a) (~~The personal representative or trustee may petition the court having jurisdiction over the matter for the appointment of a special representative to represent a person who is interested in the estate or trust and~~) Any party or the parent of a minor or unborn party may petition the court for the appointment of a special representative to represent a party: (i) Who is a minor; (ii) who is (~~incompetent or disabled~~) incapacitated without an appointed guardian of his or her estate; (iii) who is yet unborn or unascertained; or (iv) whose identity or address is unknown. The petition may be heard by the court without notice.

(b) In appointing the special representative the court shall give due consideration and deference to any nomination(s) made in the petition, the special skills required in the representation, and the need for a representative who will act independently and prudently. The nomination of a person as special representative by the (~~personal representative or trustee~~) petitioner and the person's willingness to serve as special representative are not grounds by themselves for finding a lack of independence, however, the court may consider



~~(trust) and the beneficiaries)) parties, including the party requiring a special representative.~~

6. Request of Court. Petitioner requests that . . . ((~~is~~)) . . . an attorney licensed to practice in the State of Washington(~~(~~is~~)~~),

(OR)

. . . . an individual with special skill or training in the administration of estates or trusts

be appointed special representative for ~~((those beneficiaries who are not yet adults, as well as for the unborn, unknown, and unascertained beneficiaries)) . . .~~ (describe party or parties being represented), who is/are (minors), (incapacitated and without an appointed guardian), (unborn or unascertained) (whose identity or address is unknown), as provided under RCW 11.96A.250.

DATED this . . . day of . . . . .,

.....  
(Petitioner ~~((or petitioner's legal representative)))~~)

VERIFICATION

I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED . . . . ., ~~((2000))~~ 20.., at . . . . ., Washington.

.....  
(Petitioner or other person having knowledge)

CAPTION  
OF CASE

ORDER FOR APPOINTMENT  
OF SPECIAL REPRESENTATIVE

THIS MATTER having come on for hearing before this Court on Petition for Appointment of Special Representative filed herein, and it appearing that it would be in the best interests of the ~~((estate) (trust))~~ parties related to the matter described in the Petition to appoint a special representative to address the issues that have arisen ~~((concerning the (estate) (trust)))~~ in the matter and the Court finding that the facts stated in the Petition are true, now, therefore,

IT IS ORDERED that . . . is appointed under RCW 11.96A.250 as special representative ~~((for the (estate) (trust) beneficiaries who are not yet adult age, and for unborn, unknown, or unascertained beneficiaries to represent their respective interests in the (estate) (trust))~~ (describe party or parties being represented) who is/are (minors), (incapacitated and without an appointed guardian), (unborn or unascertained) (whose identity or address is unknown), to represent their respective interests in the matter as provided in RCW 11.96A.250. The special representative shall be discharged of responsibility with respect to the matter as provided in RCW 11.96A.250. The special representative ((shall be)) is discharged of responsibility with respect to the ((estate) (trust)) matter at such time as a written agreement is executed resolving the present issues, all as provided in that statute, or if an agreement is

not reached within six months from entry of this Order, the special representative appointed under this Order (~~shall be~~) is discharged of responsibility, subject to subsequent reappointment under RCW 11.96A.250.

DONE IN OPEN COURT this . . . day of . . . . ., . . . .

.....  
JUDGE/COURT COMMISSIONER

(2) Upon appointment by the court, the special representative (~~shall~~) must file a certification made under penalty of perjury in accordance with RCW 9A.72.085 that he or she (a) is not interested in the (~~estate or trust~~) matter; (b) is not related to any person interested in the (~~estate or trust~~) matter; (c) is willing to serve; and (d) will act independently, prudently, and in the best interests of the represented parties.

(3) The special representative must be a lawyer licensed to practice before the courts of this state or an individual with special skill or training in the administration of estates or trusts. The special representative may not have an interest in the (~~affected estate or trust~~) matter, and may not be related to a person interested in the (~~estate or trust~~) matter. The special representative is entitled to reasonable compensation for services that must be paid from the principal of (~~the estate or trust whose beneficiaries are represented~~) an asset involved in the matter.

(4) The special representative (~~shall be~~) is discharged from any responsibility and (~~shall~~) will have no further duties with respect to the (~~estate or trust~~) matter or with respect to any (~~person interested in the estate or trust~~) party, on the earlier of: (a) The expiration of six months from the date the special representative was appointed unless the order appointing the special representative provides otherwise, or (b) the execution of the written agreement by all parties or their virtual representatives. Any action against a special representative must be brought within the time limits provided by RCW 11.96A.070(3)(c)(i).

**Sec. 22.** RCW 11.98.015 and 2011 c 327 s 20 are each amended to read as follows:

Except as otherwise provided in chapter 11.118 RCW or by another statute, the following rules apply:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for longer than the time period specified in RCW 11.98.130 as the period during which a trust cannot be deemed to violate the rule against perpetuities;

(2) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. Such person is considered to be a permissible distributee of the trust; and

(3) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the trustor, if then living, otherwise to the trustor's successors in

interest. Successors in interest include the beneficiaries under the trustor's will, if the trustor has a will, or, in the absence of an effective will provision, the trustor's heirs.

**Sec. 23.** RCW 11.98.078 and 2011 c 327 s 32 are each amended to read as follows:

(1) A trustee (~~(shall)~~) must administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in RCW (~~(11.98.090)~~) 11.98.105, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

(a) The transaction was authorized by the terms of the trust;

(b) The transaction was approved by the court or approved in a nonjudicial binding agreement in compliance with RCW 11.96A.210 through 11.96A.250;

(c) The beneficiary did not commence a judicial proceeding within the time allowed by RCW 11.96A.070;

(d) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with RCW 11.98.108; or

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(3)(a) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be "otherwise affected" by a conflict between fiduciary and personal interests under this section if it is entered into by the trustee with:

(i) The trustee's spouse or registered domestic partner;

(ii) The trustee's descendants, siblings, parents, or their spouses or registered domestic partners;

(iii) An agent or attorney of the trustee; or

(iv) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(b) The presumption is rebutted if the trustee establishes that the conflict did not adversely affect the interests of the beneficiaries.

(4) A sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account that is voidable under subsection (2) of this section may be voided by a beneficiary without further proof.

(5) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of chapter 11.100 RCW. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the (~~persons entitled under RCW~~

~~11.106.020 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined)) permissible distributees of the rate and method by which that compensation was determined. The obligation of the trustee to provide the notice described in this section may be waived or modified by the trustor in the trust document or in a separate writing, made at any time, that is delivered to the trustee.~~

(6) The following transactions, if fair to the beneficiaries, cannot be voided under this section:

(a) An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

(b) Payment of reasonable compensation to the trustee and any affiliate providing services to the trust, provided total compensation is reasonable;

(c) A transaction between a trust and another trust, decedent's estate, or guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

(d) A deposit of trust money in a regulated financial-service institution operated by the trustee or its affiliate;

(e) A delegation and any transaction made pursuant to the delegation from a trustee to an agent that is affiliated or associated with the trustee; or

(f) Any loan from the trustee or its affiliate.

(7) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

(8) If a trust has two or more beneficiaries, the trustee (~~(shall)~~ **must**) act impartially in administering the trust and distributing the trust property, giving due regard to the beneficiaries' respective interests.

**Sec. 24.** RCW 11.103.030 and 2011 c 327 s 36 are each amended to read as follows:

(1) Unless the terms of a trust expressly provide that the trust is revocable, the trustor may not revoke or amend the trust.

(2) If a revocable trust is created or funded by more than one trustor and unless the trust agreement provides otherwise:

(a) To the extent the trust consists of community property, the trust may be revoked by either spouse or either domestic partner acting alone but may be amended only by joint action of both spouses or both domestic partners;

(b) To the extent the trust consists of property other than community property, each trustor may revoke or amend the trust with regard to the portion of the trust property attributable to that trustor's contribution;

(c) The character of community property or separate property is unaffected by its transfer to and from a revocable trust; and

(d) Upon the revocation or amendment of the trust by fewer than all of the trustors, the trustee (~~(shall)~~ **must**) promptly notify the other trustors of the revocation or amendment.

(3) The trustor may revoke or amend a revocable trust:

(a) By substantial compliance with a method provided in the terms of the trust; or

(b)(i) If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(A) A later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(B) A written instrument signed by the trustor evidencing intent to revoke or amend.

(ii) The requirements of chapter 11.11 RCW do not apply to revocation or amendment of a revocable trust under (b)(i) of this subsection.

(4) Upon revocation of a revocable trust, the trustee (~~shall~~) must deliver the trust property as the trustor directs.

(5) A trustor's powers with respect to (~~revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the power~~) the revocation or amendment of a trust or distribution of the property of a trust, may be exercised by the trustor's agent under a power of attorney only to the extent specified in the power of attorney document, as provided in RCW 11.94.050(1) and to the extent consistent with or expressly authorized by the trust agreement.

(6) A guardian of the trustor may exercise a trustor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the guardianship pursuant to RCW 11.92.140.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the trustor or trustor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

(8) This section does not limit or affect operation of RCW 11.96A.220 through 11.96A.240.

**Sec. 25.** RCW 11.106.010 and 1985 c 30 s 95 are each amended to read as follows:

This chapter does not apply to resulting trusts, constructive trusts, business trusts where certificates of beneficial interest are issued to the beneficiaries, investment trusts, voting trusts, insurance trusts prior to the death of the insured, trusts in the nature of mortgages or pledges (~~(- trusts created by judgment or decree of a federal court or of the superior court when not sitting in probate)~~), liquidation trusts or trusts for the sole purpose of paying dividends, interest or interest coupons, salaries, wages or pensions; nor does this chapter apply to personal representatives.

**Sec. 26.** RCW 11.106.020 and 1985 c 30 s 96 are each amended to read as follows:

The trustee or trustees appointed by any will, deed, or agreement executed (~~shall~~) must mail or deliver at least annually to each (~~adult income trust beneficiary~~) permissible distributee, as defined in section 8 of this act, a written itemized statement of all current receipts and disbursements made by the trustee of the funds of the trust both principal and income, and upon the request of any such beneficiary (~~shall~~) must furnish the beneficiary an itemized statement of all property then held by that trustee, and may also file any such statement in the superior court of the county in which the trustee or one of the trustees resides.

**Sec. 27.** RCW 11.118.050 and 2001 c 327 s 6 are each amended to read as follows:



The intended use of the principal or income can be enforced by a person designated for that purpose in the trust instrument, by the person having custody of an animal that is a beneficiary of the trust, or by a person appointed by a court upon application to it by any person. Such person is considered to be a permissible distributee, as defined in section 8 of this act, of the trust. A person with an interest in the welfare of the animal may petition for an order appointing or removing a person designated or appointed to enforce the trust.

**NEW SECTION. Sec. 28.** Except as otherwise provided in this act:

- (1) This act applies to all trusts created before, on, or after January 1, 2013;
- (2) This act applies to all judicial proceedings concerning trusts commenced on or after January 1, 2013;
- (3) An action taken before January 1, 2013, is not affected by this act; and
- (4) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2013, that statute continues to apply to the right even if it has been repealed or superseded.

Passed by the Senate April 22, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 273

[Senate Bill 5359]

### CHILD ABUSE AND NEGLECT—REPORTING

AN ACT Relating to mandatory reporting of child abuse or neglect by supervised persons; amending RCW 26.44.030; reenacting and amending RCW 26.44.030; providing an effective date; and providing an expiration date.

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

**Sec. 1.** RCW 26.44.030 and 2012 c 55 s 1 are each amended to read as follows:

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels

a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Organization" includes a sole proprietor, partnership, corporation, limited liability company, trust, association, financial institution, governmental entity, other than the federal government, and any other individual or group engaged in a trade, occupation, enterprise, governmental function, charitable function, or similar activity in this state whether or not the entity is operated as a nonprofit or for-profit entity.

(iii) "Reasonable cause" means a person witnesses or receives a credible written or oral report alleging abuse, including sexual contact, or neglect of a child.

(iv) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(v) "Sexual contact" has the same meaning as in RCW 9A.44.010.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, appointed under Titles 11, 13, and 26 RCW, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

(f) The reporting requirement in (a) of this subsection also applies to administrative and academic or athletic department employees, including

student employees, of institutions of higher education, as defined in RCW 28B.10.016, and of private institutions of higher education.

(g) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report

under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which:

(a) The department believes there is a serious threat of substantial harm to the child;

(b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or

(c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

(b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

(12) In conducting an investigation of alleged abuse or neglect, the department or law enforcement agency:

(a) May interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

(b) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(13) If a report of alleged abuse or neglect is founded and constitutes the third founded report received by the department within the last twelve months involving the same child or family, the department shall promptly notify the office of the family and children's ombudsman of the contents of the report. The department shall also notify the ombudsman of the disposition of the report.

(14) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(15) The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(16) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

(17) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(18) Upon receiving a report of alleged abuse or neglect involving a child under the court's jurisdiction under chapter 13.34 RCW, the department shall promptly notify the child's guardian ad litem of the report's contents. The department shall also notify the guardian ad litem of the disposition of the report. For purposes of this subsection, "guardian ad litem" has the meaning provided in RCW 13.34.030.

**Sec. 2.** RCW 26.44.030 and 2012 c 259 s 3 and 2012 c 55 s 1 are each reenacted and amended to read as follows:

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison

specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any nonprofit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Organization" includes a sole proprietor, partnership, corporation, limited liability company, trust, association, financial institution, governmental entity, other than the federal government, and any other individual or group engaged in a trade, occupation, enterprise, governmental function, charitable function, or similar activity in this state whether or not the entity is operated as a nonprofit or for-profit entity.

(iii) "Reasonable cause" means a person witnesses or receives a credible written or oral report alleging abuse, including sexual contact, or neglect of a child.

(iv) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(v) "Sexual contact" has the same meaning as in RCW 9A.44.010.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse

that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, appointed under Titles 11, 13, and 26 RCW, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

(f) The reporting requirement in (a) of this subsection also applies to administrative and academic or athletic department employees, including student employees, of institutions of higher education, as defined in RCW 28B.10.016, and of private institutions of higher education.

(g) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement

agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which:

(a) The department believes there is a serious threat of substantial harm to the child;

(b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or

(c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) Upon receiving a report of alleged abuse or neglect, the department shall use one of the following discrete responses to reports of child abuse or neglect that are screened in and accepted for departmental response:



- (i) Investigation; or
- (ii) Family assessment.

(b) In making the response in (a) of this subsection the department shall:

(i) Use a method by which to assign cases to investigation or family assessment which are based on an array of factors that may include the presence of: Imminent danger, level of risk, number of previous child abuse or neglect reports, or other presenting case characteristics, such as the type of alleged maltreatment and the age of the alleged victim. Age of the alleged victim shall not be used as the sole criterion for determining case assignment;

(ii) Allow for a change in response assignment based on new information that alters risk or safety level;

(iii) Allow families assigned to family assessment to choose to receive an investigation rather than a family assessment;

(iv) Provide a full investigation if a family refuses the initial family assessment;

(v) Provide voluntary services to families based on the results of the initial family assessment. If a family refuses voluntary services, and the department cannot identify specific facts related to risk or safety that warrant assignment to investigation under this chapter, and there is not a history of reports of child abuse or neglect related to the family, then the department must close the family assessment response case. However, if at any time the department identifies risk or safety factors that warrant an investigation under this chapter, then the family assessment response case must be reassigned to investigation;

(vi) Conduct an investigation, and not a family assessment, in response to an allegation that, the department determines based on the intake assessment:

(A) Poses a risk of "imminent harm" consistent with the definition provided in RCW 13.34.050, which includes, but is not limited to, sexual abuse and sexual exploitation as defined in this chapter;

(B) Poses a serious threat of substantial harm to a child;

(C) Constitutes conduct involving a criminal offense that has, or is about to occur, in which the child is the victim;

(D) The child is an abandoned child as defined in RCW 13.34.030;

(E) The child is an adjudicated dependent child as defined in RCW 13.34.030, or the child is in a facility that is licensed, operated, or certified for care of children by the department under chapter 74.15 RCW, or by the department of early learning.

(c) The department may not be held civilly liable for the decision to respond to an allegation of child abuse or neglect by using the family assessment response under this section unless the state or its officers, agents, or employees acted with reckless disregard.

(12)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

(b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

(13) For reports of alleged abuse or neglect that are responded to through family assessment response, the department shall:

(a) Provide the family with a written explanation of the procedure for assessment of the child and the family and its purposes;

(b) Collaborate with the family to identify family strengths, resources, and service needs, and develop a service plan with the goal of reducing risk of harm to the child and improving or restoring family well-being;

(c) Complete the family assessment response within forty-five days of receiving the report; however, upon parental agreement, the family assessment response period may be extended up to ninety days;

(d) Offer services to the family in a manner that makes it clear that acceptance of the services is voluntary;

(e) Implement the family assessment response in a consistent and cooperative manner;

(f) Have the parent or guardian sign an agreement to participate in services before services are initiated that informs the parents of their rights under family assessment response, all of their options, and the options the department has if the parents do not sign the consent form.

(14) In conducting an investigation or family assessment of alleged abuse or neglect, the department or law enforcement agency:

(a) May interview children. If the department determines that the response to the allegation will be family assessment response, the preferred practice is to request a parent's, guardian's, or custodian's permission to interview the child before conducting the child interview unless doing so would compromise the safety of the child or the integrity of the assessment. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. If the allegation is investigated, parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

(b) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(15) If a report of alleged abuse or neglect is founded and constitutes the third founded report received by the department within the last twelve months involving the same child or family, the department shall promptly notify the office of the family and children's ombudsman of the contents of the report. The department shall also notify the ombudsman of the disposition of the report.

(16) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(17)(a) The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(b) In the family assessment response, the department shall not make a finding as to whether child abuse or neglect occurred. No one shall be named as a perpetrator and no investigative finding shall be entered in the department's child abuse or neglect database.

(18) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor.

(19) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(20) Upon receiving a report of alleged abuse or neglect involving a child under the court's jurisdiction under chapter 13.34 RCW, the department shall promptly notify the child's guardian ad litem of the report's contents. The department shall also notify the guardian ad litem of the disposition of the report. For purposes of this subsection, "guardian ad litem" has the meaning provided in RCW 13.34.030.

NEW SECTION. Sec. 3. Section 1 of this act expires December 1, 2013.

NEW SECTION. Sec. 4. Section 2 of this act takes effect December 1, 2013.

Passed by the Senate April 19, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

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## CHAPTER 274

[Substitute Senate Bill 5369]

### GEOHERMAL RESOURCES

AN ACT Relating to the use of geothermal resources; amending RCW 78.60.030, 78.60.040, and 78.60.060; adding a new chapter to Title 43 RCW; creating a new section; and repealing RCW 43.140.010, 43.140.020, 43.140.030, 43.140.040, 43.140.050, 43.140.060, and 43.140.900.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) Because related geothermal resources may be present on contiguous private, state, and federal lands within the state, there is a need to provide greater conformity with the state's geothermal resources statutes and the federal statutes defining geothermal resources and clarify that ownership of geothermal resources resides with the surface owner unless the interest is otherwise reserved or conveyed.

(2) It is in the public interest to encourage and foster the development of geothermal resources in the state, and the legislature intends to align the state statutes defining geothermal resources with current federal law with which developers are familiar, and clarify the respective regulatory roles of state agencies.

(3) Geothermal resources suitable for energy development are located at much greater depths than the aquifers relied upon for other beneficial uses, but in the event that a geothermal well draws from the same source as other uses, a coordinated and streamlined permitting of geothermal development can better ensure that any interference with existing water uses will be addressed and eliminated. It is the intent of this act that no water uses associated with a geothermal well impair any water use authorized through appropriation under Title 90 RCW.

(4) Changes to federal law in 2005 require a distribution of a portion of geothermal energy revenues from leases on federal land directly to the county in which the lease activity occurs, and therefore it is appropriate that the additional distribution to the state be provided for statewide uses relating to geothermal energy assessment, exploration, and production.

**Sec. 2.** RCW 78.60.030 and 1974 ex.s. c 43 s 3 are each amended to read as follows:

~~((For the purposes of this chapter, unless the text otherwise requires, the following terms shall have the following meanings:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

~~(1)(a) "Geothermal resources" ((means only that natural heat energy of the earth from which it is technologically practical to produce electricity commercially and the medium by which such heat energy is extracted from the earth, including liquids or gases, as well as any minerals contained in any natural or injected fluids, brines and associated gas, but excluding oil, hydrocarbon gas and other hydrocarbon substances))~~ includes the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or that may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases and steam, in whatever form, found below the surface of the earth, exclusive of helium or oil, hydrocarbon gas or other hydrocarbon substances, but including, specifically:

(i) All products of geothermal processes, including indigenous steam, and hot water and hot brines;

(ii) Steam and other bases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(iii) Heat or other associated energy found in geothermal formations; and

(iv) Any by-product derived from them.

(b) "Geothermal resources" does not include heat energy used in ground source heat exchange systems for ground source heat pumps.

(2) "Waste", in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood and shall include:

(a) The inefficient, excessive, or improper use of, or unnecessary dissipation of, reservoir energy; or the locating, spacing, drilling, equipping, operating or producing of any geothermal energy well in a manner which results, or tends to

result, in reducing the quantity of geothermal energy to be recovered from any geothermal area in this state;

(b) The inefficient above-ground transporting or storage of geothermal energy; or the locating, spacing, drilling, equipping, operating, or producing of any geothermal well in a manner causing, or tending to cause, unnecessary excessive surface loss or destruction of geothermal energy;

(c) The escape into the open air, from a well of steam or hot water, in excess of what is reasonably necessary in the efficient development or production of a geothermal well.

(3) "Geothermal area" means any land that is, or reasonably appears to be, underlain by geothermal resources.

(4) "Energy transfer system" means the structures and enclosed fluids which facilitate the utilization of geothermal energy. The system includes the geothermal wells, cooling towers, reinjection wells, equipment directly involved in converting the heat energy associated with geothermal resources to mechanical or electrical energy or in transferring it to another fluid, the closed piping between such equipment, wells and towers and that portion of the earth which facilitates the transfer of a fluid from reinjection wells to geothermal wells: PROVIDED, That the system shall not include any geothermal resources which have escaped into or have been released into the nongeothermal ground or surface waters from either man-made containers or through leaks in the structure of the earth caused by or to which access was made possible by any drilling, redrilling, reworking or operating of a geothermal or reinjection well.

(5) "Operator" means the person supervising or in control of the operation of a geothermal resource well, whether or not such person is the owner of the well.

(6) "Owner" means the person who possesses the legal right to drill, convert or operate any well or other facility subject to the provisions of this chapter.

(7) "Person" means any individual, corporation, company, association of individuals, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative, or public agency that is the subject of legal rights and duties.

(8) "Pollution" means any damage or injury to ground or surface waters, soil or air resulting from the unauthorized loss, escape, or disposal of any substances at any well subject to the provisions of this chapter.

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

(10) "Well" means any excavation made for the discovery or production of geothermal resources, or any special facility, converted producing facility, or reactivated or converted abandoned facility used for the reinjection of geothermal resources, or the residue thereof underground.

(11) "Core holes" are holes drilled or excavations made expressly for the acquisition of geological or geophysical data for the purpose of finding and delineating a favorable geothermal area prior to the drilling of a well.

(12) A "completed well" is a well that has been drilled to its total depth, has been adequately cased, and is ready to be either plugged and abandoned, shut-in, or put into production.

(13) "Plug and abandon" means to place permanent plugs in the well in such a way and at such intervals as are necessary to prevent future leakage of fluid from the well to the surface or from one zone in the well to the other, and to

remove all drilling and production equipment from the site, and to restore the surface of the site to its natural condition or contour or to such condition as may be prescribed by the department.

(14) "Shut-in" means to adequately cap or seal a well to control the contained geothermal resources for an interim period.

(15) "By-product" means any mineral or minerals, not including oil, hydrocarbon gas, or helium, which are found in solution or in association with geothermal steam and that have a value of less than seventy-five percent of the value of the geothermal resource or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves.

**Sec. 3.** RCW 78.60.040 and 1979 ex.s. c 2 s 1 are each amended to read as follows:

Notwithstanding any other provision of law, geothermal resources are found and hereby determined to be sui generis, being neither a mineral resource nor a water resource and as such are ~~((hereby))~~ declared to be the private property of the holder of the title to the surface land above the resource, unless the geothermal resources have been otherwise reserved by or conveyed to another person or entity. Nothing in this section divests the people of the state of any rights, title, or interest in geothermal resources owned by the state.

**Sec. 4.** RCW 78.60.060 and 2003 c 39 s 40 are each amended to read as follows:

(1) This chapter is intended to preempt local regulation of the drilling and operation of wells for geothermal resources but shall not be construed to permit the locating of any well or drilling when such well or drilling is prohibited under state or local land use law or regulations promulgated thereunder. Geothermal resources, by-products ~~((and/or))~~, or waste products which have escaped or been released from the energy transfer system ~~((and/or))~~ or a mineral recovery process shall be subject to provisions of state law relating to the pollution of ground or surface waters (Title 90 RCW), provisions of the state fisheries law and the state game laws (Title 77 RCW), and any other state environmental pollution control laws.

~~(2) Authorization for ((use of by-product water resources for all beneficial uses))~~ a consumptive or nonconsumptive use of water associated with a geothermal well, for purposes including but not limited to power production, greenhouse heating, warm water fish propagation, space heating plants, irrigation, swimming pools, and hot springs baths, shall be subject to the appropriation procedure as provided in Title 90 RCW, except for the following:

(a) Water that is removed from an aquifer or geothermal reservoir to develop and obtain geothermal resources if the water is returned to or reinjected into the same aquifer or reservoir; or

(b) The reasonable loss of water:

(i) During a test of a geothermal well; or

(ii) From the temporary failure of all or part of a system that removes water from an aquifer or geothermal reservoir, transfers the heat from that water, and reinjects that water into the same aquifer or reservoir.

(3) The department and the department of ecology shall cooperate to avoid duplication and to promote efficiency in issuing permits and other approvals for these uses.

(4) Nothing in this act shall affect or operate to impair any existing water rights.

**NEW SECTION. Sec. 5.** The purpose of this chapter is to provide for the allocation of revenues distributed to the state under section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. Sec. 191), with respect to activities of the United States bureau of land management undertaken pursuant to the Geothermal Steam Act of 1970 (30 U.S.C. Sec. 1001 et seq.) in order to accomplish the following general objectives:

(1) Reduction of dependence on nonrenewable energy and stimulation of the state's economy through development of geothermal energy.

(2) Mitigation of the social, economic, and environmental impacts of geothermal development.

(3) Maintenance of the productivity of renewable resources through the investment of proceeds from these resources.

**NEW SECTION. Sec. 6.** (1) There is created the geothermal account in the state treasury. All expenditures from this account are subject to appropriation and chapter 43.88 RCW.

(2) All revenues received by the state treasurer under section 35 of the Mineral Lands Leasing Act of 1920, as amended (30 U.S.C. Sec. 191), with respect to activities of the United States bureau of land management undertaken pursuant to the Geothermal Steam Act of 1970 (30 U.S.C. Sec. 1001 et seq.) shall be deposited in the geothermal account in the state treasury immediately upon receipt.

(3) Expenditures from the account may only be used as provided in section 7 of this act.

**NEW SECTION. Sec. 7.** Distribution of funds from the geothermal account created in section 6 of this act shall be subject to the following limitations:

(1) Seventy percent to the department of natural resources for geothermal exploration and assessment; and

(2) Thirty percent to Washington State University or its statutory successor for the purpose of encouraging the development of geothermal energy.

**NEW SECTION. Sec. 8.** Sections 5 through 7 of this act constitute a new chapter in Title 43 RCW.

**NEW SECTION. Sec. 9.** The following acts or parts of acts are each repealed:

(1) RCW 43.140.010 (Purpose) and 1981 c 158 s 1;

(2) RCW 43.140.020 (Definitions) and 1981 c 158 s 2;

(3) RCW 43.140.030 (Geothermal account—Deposit of revenues) and 1991 sp.s. c 13 s 7, 1985 c 57 s 58, & 1981 c 158 s 3;

(4) RCW 43.140.040 (Geothermal account—Limitations on distributions) and 1996 c 186 s 510 & 1981 c 158 s 4;

(5) RCW 43.140.050 (Distribution of funds to county of origin) and 1996 c 186 s 511, 1996 c 186 s 107, & 1981 c 158 s 5;

(6) RCW 43.140.060 (Appropriation for exploration and assessment of geothermal energy—Reimbursement) and 1981 c 158 s 7; and

(7) RCW 43.140.900 (Termination of chapter) and 2001 c 215 s 1, 1991 c 76 s 1, & 1981 c 158 s 8.

Passed by the Senate April 23, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 275

[Substitute Senate Bill 5399]

### GROWTH MANAGEMENT ACT—PENALTIES

AN ACT Relating to the timing of penalties under the growth management act; and amending RCW 36.70A.300, 43.17.250, 43.155.070, 70.146.070, and 36.70A.200.

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

**Sec. 1.** RCW 36.70A.300 and 1997 c 429 s 14 are each amended to read as follows:

(1) The board shall issue a final order that shall be based exclusively on whether or not a state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW.

(2)(a) Except as provided in (b) of this subsection, the final order shall be issued within one hundred eighty days of receipt of the petition for review, or, if multiple petitions are filed, within one hundred eighty days of receipt of the last petition that is consolidated.

(b) The board may extend the period of time for issuing a decision to enable the parties to settle the dispute if additional time is necessary to achieve a settlement, and (i) an extension is requested by all parties, or (ii) an extension is requested by the petitioner and respondent and the board determines that a negotiated settlement between the remaining parties could resolve significant issues in dispute. The request must be filed with the board not later than seven days before the date scheduled for the hearing on the merits of the petition. The board may authorize one or more extensions for up to ninety days each, subject to the requirements of this section.

(3) In the final order, the board shall either:

(a) Find that the state agency, county, or city is in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW; or

(b) Find that the state agency, county, or city is not in compliance with the requirements of this chapter, chapter 90.58 RCW as it relates to the adoption or amendment of shoreline master programs, or chapter 43.21C RCW as it relates to adoption of plans, development regulations, and amendments thereto, under RCW 36.70A.040 or chapter 90.58 RCW, in which case the board shall remand



the matter to the affected state agency, county, or city. The board shall specify a reasonable time not in excess of one hundred eighty days, or such longer period as determined by the board in cases of unusual scope or complexity, within which the state agency, county, or city shall comply with the requirements of this chapter. The board may require periodic reports to the board on the progress the jurisdiction is making towards compliance.

(4)(a) ~~Unless the board makes a determination of invalidity ((as provided in))~~ under RCW 36.70A.302, a finding of noncompliance and an order of remand shall not affect the validity of comprehensive plans and development regulations during the period of remand.

(b) Unless the board makes a determination of invalidity, state agencies, commissions, and governing boards may not determine a county, city, or town to be ineligible or otherwise penalized in the acceptance of applications or the awarding of state agency grants or loans during the period of remand. This subsection (4)(b) applies only to counties, cities, and towns that have: (i) Delayed the initial effective date of the action subject to the petition before the board until after the board issues a final determination; or (ii) within thirty days of receiving notice of a petition for review by the board, delayed or suspended the effective date of the action subject to the petition before the board until after the board issues a final determination.

(5) Any party aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in RCW 34.05.514 or 36.01.050 within thirty days of the final order of the board. Unless the board makes a determination of invalidity under RCW 36.70A.302, state agencies, commissions, or governing boards shall not penalize counties, cities, or towns during the pendency of an appeal as provided in RCW 43.17.250.

**Sec. 2.** RCW 43.17.250 and 1999 c 164 s 601 are each amended to read as follows:

(1) Whenever a state agency is considering awarding grants or loans for a county, city, or town planning under RCW 36.70A.040 to finance public facilities, it shall consider whether the county, city, or town requesting the grant or loan has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(2) If a comprehensive plan, development regulation, or amendment thereto adopted by a county, city, or town has been appealed to the growth management hearings board under RCW 36.70A.280, the county, city, or town may not be determined to be ineligible or otherwise penalized in the acceptance of applications or the awarding of state agency grants or loans during the pendency of the appeal before the board or subsequent judicial appeals. This subsection (2) applies only to counties, cities, and towns that have: (a) Delayed the initial effective date of the action subject to the petition before the board until after the board issues a final determination; or (b) within thirty days of receiving notice of a petition for review by the board, delayed or suspended the effective date of the action subject to the petition before the board until after the board issues a final determination.

(3) When reviewing competing requests from counties, cities, or towns planning under RCW 36.70A.040, a state agency considering awarding grants or loans for public facilities shall accord additional preference to those counties, cities, or towns that have adopted a comprehensive plan and development

regulations as required by RCW 36.70A.040. For the purposes of the preference accorded in this section, a county, city, or town planning under RCW 36.70A.040 is deemed to have satisfied the requirements for adopting a comprehensive plan and development regulations specified in RCW 36.70A.040 if the county, city, or town:

(a) Adopts or has adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040;

(b) Adopts or has adopted a comprehensive plan and development regulations before ~~((submitting a request for a grant or loan))~~ the state agency makes a decision regarding award recipients of the grants or loans if the county, city, or town failed to adopt a comprehensive plan and/or development regulations within the time periods specified in RCW 36.70A.040; or

(c) Demonstrates substantial progress toward adopting a comprehensive plan or development regulations within the time periods specified in RCW 36.70A.040. A county, city, or town that is more than six months out of compliance with the time periods specified in RCW 36.70A.040 shall not be deemed to demonstrate substantial progress for purposes of this section.

~~((3))~~ (4) The preference specified in subsection ~~((2))~~ (3) of this section applies only to competing requests for grants or loans from counties, cities, or towns planning under RCW 36.70A.040. A request from a county, city, or town planning under RCW 36.70A.040 shall be accorded no additional preference based on subsection ~~((2))~~ (3) of this section over a request from a county, city, or town not planning under RCW 36.70A.040.

~~((4))~~ (5) Whenever a state agency is considering awarding grants or loans for public facilities to a special district requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040 and shall apply the standards in subsection (2) of this section and the preference specified in subsection ~~((2))~~ (3) of this section and restricted in subsection ~~((3))~~ (4) of this section.

**Sec. 3.** RCW 43.155.070 and 2012 c 196 s 9 are each amended to read as follows:

(1) To qualify for ~~((loans or pledges))~~ financial assistance 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 capital facility plan; and

(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.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 ~~((must have))~~ may not receive financial assistance under this chapter unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before

requesting or receiving ~~((a loan or loan guarantee))~~ financial assistance under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 ~~((which))~~ that has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 ~~((is not prohibited from receiving a loan or loan guarantee))~~ may apply for and receive financial assistance under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before ~~((submitting a request for a loan or loan guarantee))~~ executing a contractual agreement for financial assistance with the board.

(3) In considering awarding ~~((loans))~~ financial assistance for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, the board must consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4) The board must 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 must attempt to assure a geographical balance in assigning priorities to projects. The board must 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) Except as otherwise conditioned by RCW 43.155.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;

(c) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;

(d) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(e) Whether the applicant's permitting process has been certified as streamlined by the office of regulatory assistance;

(f) Whether the applicant has developed and adhered to guidelines regarding its permitting process for those applying for development permits consistent with section 1(2), chapter 231, Laws of 2007;

(g) The cost of the project compared to the size of the local government and amount of loan money available;

(h) The number of communities served by or funding the project;

(i) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(j) 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;

(k) Except as otherwise conditioned by RCW 43.155.120, and effective one calendar year following the development of model evergreen community management plans and ordinances under RCW 35.105.050, whether the entity

receiving assistance has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030;

(l) 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

(m) Other criteria that the board considers advisable.

(5) Existing debt or financial obligations of local governments may not be refinanced under this chapter. Each local government applicant must 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.

(6) Before November 1st of each even-numbered year, the board must 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 (9) 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 must 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 must 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.

(7) The board may 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 may not change the order of the priorities recommended for funding by the board.

(8) Subsection (7) of this section does not apply to loans made under RCW 43.155.065, 43.155.068, and subsection (9) of this section.

(9) Loans made for the purpose of capital facilities plans are exempted from subsection (7) of this section.

(10) 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.

(11) After January 1, 2010, any project designed to address the effects of storm water or wastewater on Puget Sound may be funded under this section only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

**Sec. 4.** RCW 70.146.070 and 2008 c 299 s 26 are each amended to read as follows:

(1) When making grants or loans for water pollution control facilities, the department shall consider the following:

- (a) The protection of water quality and public health;
- (b) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;
- (c) Actions required under federal and state permits and compliance orders;
- (d) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;
- (e) Except as otherwise conditioned by RCW 70.146.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;
- (f) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;
- (g) Except as otherwise provided in RCW 70.146.120, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under RCW 35.105.050, whether the project is sponsored by an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030;
- (h) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and
- (i) The recommendations of the Puget Sound partnership, created in RCW 90.71.210, and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. A county, city, or town that has adopted a comprehensive plan and development regulations as provided in RCW 36.70A.040 may request a grant or loan for water pollution control facilities. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting (~~or receiving~~) a grant or loan under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 (~~which~~) that has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a grant or loan under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before (~~submitting a request for a~~) the department executes a contractual agreement for the grant or loan.

(3) Whenever the department is considering awarding grants or loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town planning under RCW 36.70A.040 in

whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4) After January 1, 2010, any project designed to address the effects of water pollution on Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

**Sec. 5.** RCW 36.70A.200 and 2011 c 60 s 17 are each amended to read as follows:

(1) The comprehensive plan of each county and city that is planning under RCW 36.70A.040 shall include a process for identifying and siting essential public facilities. Essential public facilities include those facilities that are typically difficult to site, such as airports, state education facilities and state or regional transportation facilities as defined in RCW 47.06.140, regional transit authority facilities as defined in RCW 81.112.020, state and local correctional facilities, solid waste handling facilities, and inpatient facilities including substance abuse facilities, mental health facilities, group homes, and secure community transition facilities as defined in RCW 71.09.020.

(2) Each county and city planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process, or amend its existing process, for identifying and siting essential public facilities and adopt or amend its development regulations as necessary to provide for the siting of secure community transition facilities consistent with statutory requirements applicable to these facilities.

(3) Any city or county not planning under RCW 36.70A.040 shall, not later than September 1, 2002, establish a process for siting secure community transition facilities and adopt or amend its development regulations as necessary to provide for the siting of such facilities consistent with statutory requirements applicable to these facilities.

(4) The office of financial management shall maintain a list of those essential state public facilities that are required or likely to be built within the next six years. The office of financial management may at any time add facilities to the list.

(5) No local comprehensive plan or development regulation may preclude the siting of essential public facilities.

(6) No person may bring a cause of action for civil damages based on the good faith actions of any county or city to provide for the siting of secure community transition facilities in accordance with this section and with the requirements of chapter 12, Laws of 2001 2nd sp. sess. For purposes of this subsection, "person" includes, but is not limited to, any individual, agency as defined in RCW 42.17A.005, corporation, partnership, association, and limited liability entity.

(7) Counties or cities siting facilities pursuant to subsection (2) or (3) of this section shall comply with RCW 71.09.341.

(8) The failure of a county or city to act by the deadlines established in subsections (2) and (3) of this section is not:

(a) A condition that would disqualify the county or city for grants, loans, or pledges under RCW 43.155.070 or 70.146.070;

(b) A consideration for grants or loans provided under RCW 43.17.250(~~(2)~~) (3); or

(c) A basis for any petition under RCW 36.70A.280 or for any private cause of action.

Passed by the Senate April 23, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

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## CHAPTER 276

[Substitute Senate Bill 5416]

### PRESCRIPTION INFORMATION

AN ACT Relating to prescription information; amending RCW 69.41.010, 69.50.308, and 69.50.312; and reenacting and amending RCW 69.50.101.

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

**Sec. 1.** RCW 69.41.010 and 2012 c 10 s 44 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) "Community-based care settings" include: Community residential programs for ~~((the developmentally disabled)) persons with developmental disabilities~~, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and assisted living facilities licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(3) "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.

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

(5) "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.

(6) "Dispenser" means a practitioner who dispenses.

(7) "Distribute" means to deliver other than by administering or dispensing a legend drug.

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

(9) "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 human beings or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of human beings or animals; and

(d) Substances intended for use as a component of any article specified in (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(10) "Electronic communication of prescription information" means the ~~((communication of prescription information by computer, or the))~~ transmission of ~~((an exact visual image of))~~ a prescription ~~((by facsimile,))~~ or ~~((other electronic means for original prescription information or prescription))~~ refill ~~((information))~~ authorization for a ~~((legend))~~ drug ~~((between an authorized))~~ of a practitioner ~~((and a pharmacy or the transfer of prescription information for a legend drug from one pharmacy to another pharmacy))~~ using computer systems. The term does not include a prescription or refill authorization transmitted verbally by telephone nor a facsimile manually signed by the practitioner.

(11) "In-home care settings" include an individual's place of temporary and permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings.

(12) "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.

(13) "Legible prescription" means a prescription or medication order issued by a practitioner that is capable of being read and understood by the pharmacist filling the prescription or the nurse or other practitioner implementing the medication order. A prescription must be hand printed, typewritten, or electronically generated.

(14) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department. A nonpractitioner may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications, except prefilled insulin syringes.

(15) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(16) "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, a naturopath licensed under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or, when acting under the required supervision of a dentist licensed under chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 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 osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

(17) "Secretary" means the secretary of health or the secretary's designee.

**Sec. 2.** RCW 69.50.101 and 2013 c 3 s 2 (Initiative Measure No. 502) and 2012 c 8 s 1 are each reenacted and 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 69.50.104~~) subsection (x)(5) of this section, RCW 69.50.204(a) (12) and (34), and 69.50.206(b)(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) "Lot" means a definite quantity of marijuana, useable marijuana, or marijuana-infused product identified by a lot number, every portion or package of which is uniform within recognized tolerances for the factors that appear in the labeling.

(q) "Lot number" shall identify the licensee by business or trade name and Washington state unified business identifier number, and the date of harvest or processing for each lot of marijuana, useable marijuana, or marijuana-infused product.

(r) "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.

(s) "Marijuana" or "marihuana" means all parts of the plant Cannabis, whether growing or not, with a THC concentration greater than 0.3 percent on a dry weight basis; 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.

(t) "Marijuana processor" means a person licensed by the state liquor control board to process marijuana into useable marijuana and marijuana-infused products, package and label useable marijuana and marijuana-infused products for sale in retail outlets, and sell useable marijuana and marijuana-infused products at wholesale to marijuana retailers.

(u) "Marijuana producer" means a person licensed by the state liquor control board to produce and sell marijuana at wholesale to marijuana processors and other marijuana producers.

(v) "Marijuana-infused products" means products that contain marijuana or marijuana extracts and are intended for human use. The term "marijuana-infused products" does not include useable marijuana.

(w) "Marijuana retailer" means a person licensed by the state liquor control board to sell useable marijuana and marijuana-infused products in a retail outlet.

(x) "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).

(y) "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.

(z) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(aa) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(bb) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(cc) "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; an osteopathic physician assistant under chapter 18.57A RCW who is licensed under RCW 18.57A.020 subject to any limitations in RCW 18.57A.040; an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010; 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 naturopathic physician under chapter 18.36A RCW who is licensed under RCW 18.36A.030 subject to any limitations in RCW 18.36A.040; 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 osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, an advanced registered nurse practitioner licensed to prescribe controlled substances, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(dd) "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.

(ee) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(ff) "Retail outlet" means a location licensed by the state liquor control board for the retail sale of useable marijuana and marijuana-infused products.

(gg) "Secretary" means the secretary of health or the secretary's designee.

(hh) "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.

(ii) "THC concentration" means percent of delta-9 tetrahydrocannabinol content per dry weight of any part of the plant *Cannabis*, or per volume or weight of marijuana product.

(jj) "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.

(kk) "Useable marijuana" means dried marijuana flowers. The term "useable marijuana" does not include marijuana-infused products.

(ll) "Electronic communication of prescription information" means the ~~((communication of prescription information by computer, or the))~~ transmission of ~~((an exact visual image of))~~ a prescription ~~((by facsimile,))~~ or ~~((other electronic means for original prescription information or prescription))~~ refill ~~((information))~~ authorization for a ~~((Schedule III-V controlled substance between an authorized practitioner and a pharmacy or the transfer of prescription information for a controlled substance from one pharmacy to another pharmacy))~~ drug of a practitioner using computer systems. The term does not include a prescription or refill authorization verbally transmitted by telephone nor a facsimile manually signed by the practitioner.

**Sec. 3.** RCW 69.50.308 and 2012 c 10 s 46 are each amended to read as follows:

(a) A controlled substance may be dispensed only as provided in this section. Prescriptions electronically communicated must also meet the requirements under RCW 69.50.312.

(b) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule II may not be dispensed without the written or electronically communicated prescription of a practitioner.

(1) Schedule II narcotic substances may be dispensed by a pharmacy pursuant to a facsimile prescription under the following circumstances:

(i) The facsimile prescription is transmitted by a practitioner to the pharmacy; and

(ii) The facsimile prescription is for a patient in a long-term care facility or a hospice program certified or paid by medicare under Title XVIII of the federal social security act. "Long-term care facility" means nursing homes licensed under chapter 18.51 RCW, assisted living facilities licensed under chapter 18.20 RCW, and adult family homes licensed under chapter 70.128 RCW; or

~~(iii) ((The facsimile prescription is for a patient of a hospice program certified or paid for by medicare under Title XVIII; or~~

~~(iv)))~~ The facsimile prescription is for a patient of a hospice program licensed by the state; and

~~((iv)))~~ (iv) The practitioner or the practitioner's agent notes on the facsimile prescription that the patient is a long-term care or hospice patient.

(2) Injectable Schedule II narcotic substances that are to be compounded for patient use may be dispensed by a pharmacy pursuant to a facsimile prescription if the facsimile prescription is transmitted by a practitioner to the pharmacy.

(3) Under (1) and (2) of this subsection the facsimile prescription shall serve as the original prescription and shall be maintained as other Schedule II narcotic substances prescriptions.

(c) In emergency situations, as defined by rule of the state board of pharmacy, a substance included in Schedule II may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of RCW 69.50.306. ~~((A prescription for a substance included in Schedule II may not be refilled.))~~

(d) A prescription for a substance included in Schedule II may not be refilled. A prescription for a substance included in Schedule II may not be filled more than six months after the date the prescription was issued.

(e) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule III ~~((or)),~~ IV, or V, which is a prescription drug as determined under RCW 69.04.560, may not be dispensed without a written ~~((or)),~~ oral, or electronically communicated prescription of a practitioner. Any oral prescription must be promptly reduced to writing. ~~((The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.~~

~~(e))~~ (f) The prescription for a substance included in Schedule III, IV, or V may not be filled or refilled more than six months after the date issued by the practitioner or be refilled more than five times, unless renewed by the practitioner.

(g) A valid prescription or lawful order of a practitioner, in order to be effective in legalizing the possession of controlled substances, must be issued in good faith for a legitimate medical purpose by one authorized to prescribe the use of such controlled substance. An order purporting to be a prescription not in the course of professional treatment is not a valid prescription or lawful order of a practitioner within the meaning and intent of this chapter; and the person who knows or should know that the person is filling such an order, as well as the person issuing it, can be charged with a violation of this chapter.

~~((f))~~ (h) A substance included in Schedule V must be distributed or dispensed only for a medical purpose.

~~((g))~~ (i) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession. Medical treatment includes dispensing or administering a narcotic drug for pain, including intractable pain.

~~((h))~~ (j) No administrative sanction, or civil or criminal liability, authorized or created by this chapter may be imposed on a pharmacist for action taken in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

~~((i))~~ (k) An individual practitioner may not dispense a substance included in Schedule II, III, or IV for that individual practitioner's personal use.

**Sec. 4.** RCW 69.50.312 and 1998 c 222 s 4 are each amended to read as follows:

(1) Information concerning ~~((an original))~~ a prescription for a controlled substance included in Schedules II through V, or information concerning a ~~((prescription))~~ refill authorization for a controlled substance included in Schedules III through V may be electronically communicated to a pharmacy of the patient's choice pursuant to the provisions of this chapter if the electronically communicated prescription information complies with the following:

(a) Electronically communicated prescription information must comply with all applicable statutes and rules regarding the form, content, recordkeeping, and processing of a prescription for a legend drug;

(b) The system used for transmitting electronically communicated prescription information ~~((and the system used for receiving electronically communicated prescription information))~~ must be approved by the board and in accordance with federal rules for electronically communicated prescriptions for controlled substance included in Schedules II through V, as set forth in Title 21 C.F.R. Parts 1300, 1304, 1306, and 1311. This subsection does not apply to currently used facsimile equipment transmitting an exact visual image of the prescription. The board shall maintain and provide, upon request, a list of systems used for electronically communicating prescription information currently approved by the board;

(c) An explicit opportunity for practitioners must be made to indicate their preference on whether a therapeutically equivalent generic drug may be substituted;

(d) Prescription drug orders are confidential health information, and may be released only to the patient or the patient's authorized representative, the prescriber or other authorized practitioner then caring for the patient, or other persons specifically authorized by law to receive such information;

(e) To maintain confidentiality of prescription records, the electronic system shall have adequate security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of these records. The pharmacist in charge shall establish or verify the existence of policies and procedures which ensure the integrity and confidentiality of prescription information transmitted to the pharmacy by electronic means. All managers, employees, and agents of the pharmacy are required to read, sign, and comply with the established policies and procedures; and

(f) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order received by way of electronic transmission, consistent with federal and state laws and rules and guidelines of the board.

(2) The board may adopt rules implementing this section.

Passed by the Senate March 7, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 277

[Substitute Senate Bill 5434]

### HEALTH CARE PROVIDERS—COMPENSATION—PUBLIC DISCLOSURE

AN ACT Relating to the filing and public disclosure of health care provider compensation; amending RCW 48.44.070, 48.46.243, 48.46.030, and 42.56.400; adding a new section to chapter 48.43 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 48.43 RCW to read as follows:

(1) For the purposes of this section:

(a) "Carrier" means a:

(i) Health carrier as defined in RCW 48.43.005; and

(ii) Limited health care service contractor that offers limited health care service as defined in RCW 48.44.035.

(b) "Provider" means:

(i) A health care provider as defined in RCW 48.43.005;

(ii) A participating provider as defined in RCW 48.44.010;

(iii) A health care facility, as defined in RCW 48.43.005; and

(iv) Intermediaries that have agreed in writing with a carrier to provide access to providers under this subsection (1)(b) who render covered services to enrollees of a carrier.

(c) "Provider compensation agreement" means any written agreement that includes specific information about payment methodology, payment rates, and other terms that determine the remuneration a carrier will pay to a provider.

(d) "Provider contract" means a written contract between a carrier and a provider for any health care services rendered to an enrollee.

(2) A carrier must file all provider contracts and provider compensation agreements with the commissioner thirty calendar days before use. When a carrier and provider negotiate a provider contract or provider compensation agreement that deviates from a filed agreement, the carrier must also file that specific contract or agreement with the commissioner thirty calendar days before use.

(a) Any provider contract and related provider compensation agreements not affirmatively disapproved by the commissioner are deemed approved, except the commissioner may extend the approval date an additional fifteen calendar days upon giving notice before the expiration of the initial thirty-day period.

(b) Changes to previously filed and approved provider compensation agreements modifying the compensation amount or related terms that help



determine the compensation amount must be filed and are deemed approved upon filing if no other changes are made to the previously approved provider contract or compensation agreement.

(3) The commissioner may not base a disapproval of a provider compensation agreement on the amount of compensation or other financial arrangements between the carrier and the provider, unless that compensation amount causes the underlying health benefit plan to otherwise be in violation of state or federal law. This subsection does not grant the commissioner the authority to regulate provider reimbursement amounts.

(4) The commissioner may withdraw approval of a provider contract or provider compensation agreement at any time for cause.

(5) Provider compensation agreements are confidential and not subject to public inspection under RCW 48.02.120(2), or public disclosure under chapter 42.56 RCW, if filed in accordance with the procedures for submitting confidential filings through the system for electronic rate and form filings and the general filing instructions as set forth by the commissioner. In the event the referenced filing fails to comply with the filing instructions setting forth the process to withhold the compensation agreement from public inspection, and the carrier indicates that the compensation agreement is to be withheld from public inspection, the commissioner shall reject the filing and notify the carrier through the system for electronic rate and form filings to amend its filing to comply with the confidentiality filing instructions.

(6) In the event a provider contract or provider compensation agreement is disapproved or withdrawn from use by the commissioner, the carrier has the right to demand and receive a hearing under chapters 48.04 and 34.05 RCW.

(7) The commissioner may adopt rules to implement this section.

**Sec. 2.** RCW 48.44.070 and 1990 c 120 s 9 are each amended to read as follows:

(1) Forms of contracts between health care service contractors and participating providers shall be filed with the insurance commissioner prior to use.

(2) Any contract form not affirmatively disapproved within fifteen days of filing shall be deemed approved, except that the commissioner may extend the approval period an additional fifteen days upon giving notice before the expiration of the initial fifteen-day period. The commissioner may approve such a contract form for immediate use at any time. Approval may be subsequently withdrawn for cause.

(3) Subject to the right of the health care service contractor to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove such a contract form if it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW.

(4) This section is suspended, and shall have no effect, until July 1, 2017.

**Sec. 3.** RCW 48.46.243 and 2008 c 217 s 56 are each amended to read as follows:

(1) Subject to subsection (2) of this section, every contract between a health maintenance organization and its participating providers of health care services shall be in writing and shall set forth that in the event the health maintenance

organization fails to pay for health care services as set forth in the agreement, the enrolled participant shall not be liable to the provider for any sums owed by the health maintenance organization. Every such contract shall provide that this requirement shall survive termination of the contract.

(2) The provisions of subsection (1) of this section shall not apply to emergency care from a provider who is not a participating provider, to out-of-area services or, in exceptional situations approved in advance by the commissioner, if the health maintenance organization is unable to negotiate reasonable and cost-effective participating provider contracts.

~~(3)((a) Each participating provider contract form shall be filed with the commissioner fifteen days before it is used.~~

~~(b) Any contract form not affirmatively disapproved within fifteen days of filing shall be deemed approved, except that the commissioner may extend the approval period an additional fifteen days upon giving notice before the expiration of the initial fifteen day period. The commissioner may approve such a contract form for immediate use at any time. Approval may be subsequently withdrawn for cause.~~

~~(c) Subject to the right of the health maintenance organization to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove such a contract form if it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW.~~

~~(4)) No participating provider, or insurance producer, trustee, or assignee thereof, may maintain an action against an enrolled participant to collect sums owed by the health maintenance organization.~~

**Sec. 4.** RCW 48.46.030 and 2012 c 211 s 23 are each amended to read as follows:

Any corporation, cooperative group, partnership, individual, association, or groups of health professionals licensed by the state of Washington, public hospital district, or public institutions of higher education shall be entitled to a certificate of registration from the insurance commissioner as a health maintenance organization if it:

(1) Provides comprehensive health care services to enrolled participants on a group practice per capita prepayment basis or on a prepaid individual practice plan and provides such health services either directly or through arrangements with institutions, entities, and persons which its enrolled population might reasonably require as determined by the health maintenance organization in order to be maintained in good health; and

(2) Is governed by a board elected by enrolled participants, or otherwise provides its enrolled participants with a meaningful role in policy making procedures of such organization, as defined in RCW 48.46.020(18)(~~;~~) and 48.46.070; and

(3) Affords enrolled participants with a meaningful appeal procedure aimed at settlement of disputes between such persons and such health maintenance organization, as defined in RCW 48.46.020(17) and 48.46.100; and

(4) Provides enrolled participants, or makes available for inspection at least annually, financial statements pertaining to health maintenance agreements, disclosing income and expenses, assets and liabilities, and the bases for

proposed rate adjustments for health maintenance agreements relating to its activity as a health maintenance organization; and

(5) Demonstrates to the satisfaction of the commissioner that its facilities and personnel are reasonably adequate to provide comprehensive health care services to enrolled participants and that it is financially capable of providing such members with, or has made adequate contractual arrangements through insurance or otherwise to provide such members with, such health services; and

(6) Substantially complies with administrative rules and regulations of the commissioner for purposes of this chapter; and

(7) Submits an application for a certificate of registration which shall be verified by an officer or authorized representative of the applicant, being in form as the commissioner prescribes, and setting forth:

(a) A copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(b) A copy of the bylaws, rules and regulations, or similar documents, if any, which regulate the conduct of the internal affairs of the applicant, and all amendments thereto;

(c) A list of the names, addresses, members of the board of directors, board of trustees, executive committee, or other governing board or committee and the principal officers, partners, or members;

(d) A full and complete disclosure of any financial interests held by any officer, or director in any provider associated with the applicant or any provider of the applicant;

(e) A description of the health maintenance organization, its facilities and its personnel, and the applicant's most recent financial statement showing such organization's assets, liabilities, income, and other sources of financial support;

(f) A description of the geographic areas and the population groups to be served and the size and composition of the anticipated enrollee population;

(g) A copy of each type of health maintenance agreement to be issued to enrolled participants;

(h) A schedule of all proposed rates of reimbursement to contracting health care facilities or providers, if any, and a schedule of the proposed charges for enrollee coverage for health care services, accompanied by data relevant to the formulation of such schedules;

(i) A description of the proposed method and schedule for soliciting enrollment in the applicant health maintenance organization and the basis of compensation for such solicitation services;

(j) A copy of the solicitation document to be distributed to all prospective enrolled participants in connection with any solicitation;

(k) A financial projection which sets forth the anticipated results during the initial two years of operation of such organization, accompanied by a summary of the assumptions and relevant data upon which the projection is based. The projection should include the projected expenses, enrollment trends, income, enrollee utilization patterns, and sources of working capital;

(l) A detailed description of the procedures and programs to be implemented to assure that the health care services delivered to enrolled participants will be of professional quality;

(m) A detailed description of procedures to be implemented to meet the requirements to protect against insolvency in RCW 48.46.245;

(n) Documentation that the health maintenance organization has an initial net worth of one million dollars and shall thereafter maintain the minimum net worth required under RCW 48.46.235; and

(o) Such other information as the commissioner shall require by rule or regulation which is reasonably necessary to carry out the provisions of this section.

A health maintenance organization shall, unless otherwise provided for in this chapter, file a notice describing any modification of any of the information required by subsection (7) of this section. Such notice shall be filed with the commissioner. With respect to provider compensation; however, such notice shall be filed in compliance with the requirements regarding provider compensation filing in chapter 48.43 RCW.

**Sec. 5.** RCW 42.56.400 and 2012 2nd sp.s. c 3 s 8 are each amended to read as follows:

The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

(1) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110;

(2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;

(3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;

(4) Information provided under RCW 48.30A.045 through 48.30A.060;

(5) Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625;

(6) Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595;

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii);

(17) Documents, materials, or information obtained by the insurance commissioner in the commissioner's capacity as receiver under RCW 48.31.025 and 48.99.017, which are records under the jurisdiction and control of the receivership court. The commissioner is not required to search for, log, produce, or otherwise comply with the public records act for any records that the commissioner obtains under chapters 48.31 and 48.99 RCW in the commissioner's capacity as a receiver, except as directed by the receivership court;

(18) Documents, materials, or information obtained by the insurance commissioner under RCW 48.13.151;

(19) Data, information, and documents provided by a carrier pursuant to section 1, chapter 172, Laws of 2010;

(20) Information in a filing of usage-based insurance about the usage-based component of the rate pursuant to RCW 48.19.040(5)(b); ~~(and)~~

(21) Data, information, and documents, other than those described in RCW 48.02.210(2), that are submitted to the office of the insurance commissioner by an entity providing health care coverage pursuant to RCW 28A.400.275 and 48.02.210; and

(22) Information not subject to public inspection or public disclosure under section 1(5) of this act.

**NEW SECTION. Sec. 6.** This act expires July 1, 2017.

Passed by the Senate April 19, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 278

[Substitute Senate Bill 5437]

## BOATING SAFETY

AN ACT Relating to boating safety; amending RCW 79A.60.040, 10.31.100, and 79A.60.150; reenacting and amending RCW 7.80.120; adding new sections to chapter 79A.60 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 79A.60.040 and 1998 c 213 s 7 are each amended to read as follows:

(1) It (~~shall be~~) is unlawful for any person to operate a vessel in a reckless manner.

(2) It (~~shall be a violation~~) is unlawful for a person to operate a vessel while under the influence of intoxicating liquor, marijuana, or any drug. A person is considered to be under the influence of intoxicating liquor, marijuana, or any drug if, within two hours of operating a vessel:

(a) The person has an alcohol concentration of 0.08 (~~(grams)~~) or (~~more of alcohol per two hundred ten liters of breath,~~) higher as shown by analysis of the person's breath or blood made under RCW 46.61.506; or

(b) The person has (~~0.08 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's blood made under RCW 46.61.506~~) a THC concentration of 5.00 or higher as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) The person is under the influence of or affected by intoxicating liquor, marijuana, or any drug; or

(d) The person is under the combined influence of or affected by intoxicating liquor, marijuana, and any drug.

(3) The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of violating this section. (~~A person cited under this subsection may upon request be given a breath test for breath alcohol or may request to have a blood sample taken for blood alcohol analysis. An arresting officer shall administer field sobriety tests when circumstances permit.~~

~~(3))~~ (4) Any person who operates a vessel within this state is deemed to have given consent, subject to the provisions of RCW 46.61.506, to a test or tests of the person's breath or blood for the purpose of determining the alcohol concentration, THC concentration, or presence of any drug in the person's breath or blood if arrested for any offense where, at the time of the arrest, the arresting officer has reasonable grounds to believe the person was operating a vessel while under the influence of intoxicating liquor, marijuana, or any drug. Neither consent nor this section precludes a police officer from obtaining a search warrant for a person's breath or blood. An arresting officer may administer field sobriety tests when circumstances permit.

(5) The test or tests of breath must be administered pursuant to RCW 46.20.308. Where the officer has reasonable grounds to believe that the person is under the influence of a drug, or where the person is incapable due to physical injury, physical incapacity, or other physical limitation, of providing a breath sample, or where the person is being treated in a hospital, clinic, doctor's office, emergency medical vehicle, ambulance, or other similar facility, a blood test must be administered by a qualified person as provided in RCW 46.61.506(5).

The officer shall warn the person that if the person refuses to take the test, the person will be issued a class 1 civil infraction under RCW 7.80.120.

(6) A violation of subsection (1) of this section is a misdemeanor(~~;~~ punishable as provided under RCW 9.92.030)). A violation of subsection (2) of this section is a gross misdemeanor. In addition to the statutory penalties imposed, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense.

**NEW SECTION. Sec. 2.** A new section is added to chapter 79A.60 RCW to read as follows:

(1) The refusal of a person to submit to a test of the alcohol concentration, THC concentration, or presence of any drug in the person's blood or breath is not admissible into evidence at a subsequent criminal trial.

(2) A person's refusal to submit to a test or tests pursuant to RCW 79A.60.040 constitutes a class 1 civil infraction under RCW 7.80.120.

**Sec. 3.** RCW 7.80.120 and 2003 c 365 s 3 and 2003 c 337 s 4 are each reenacted and amended to read as follows:

(1) A person found to have committed a civil infraction shall be assessed a monetary penalty.

(a) The maximum penalty and the default amount for a class 1 civil infraction shall be two hundred fifty dollars, not including statutory assessments, except for an infraction of state law involving (i) potentially dangerous litter as specified in RCW 70.93.060(4) (~~(and an infraction of state law involving)~~) or violent video or computer games under RCW 9.91.180, in which case the maximum penalty and default amount is five hundred dollars; or (ii) a person's refusal to submit to a test or tests pursuant to RCW 79A.60.040 and section 2 of this act, in which case the maximum penalty and default amount is one thousand dollars;

(b) The maximum penalty and the default amount for a class 2 civil infraction shall be one hundred twenty-five dollars, not including statutory assessments;

(c) The maximum penalty and the default amount for a class 3 civil infraction shall be fifty dollars, not including statutory assessments; and

(d) The maximum penalty and the default amount for a class 4 civil infraction shall be twenty-five dollars, not including statutory assessments.

(2) The supreme court shall prescribe by rule the conditions under which local courts may exercise discretion in assessing fines for civil infractions.

(3) Whenever a monetary penalty is imposed by a court under this chapter it is immediately payable. If the person is unable to pay at that time the court may grant an extension of the period in which the penalty may be paid. If the penalty is not paid on or before the time established for payment, the court may proceed to collect the penalty in the same manner as other civil judgments and may notify the prosecuting authority of the failure to pay.

(4) The court may also order a person found to have committed a civil infraction to make restitution.

**Sec. 4.** RCW 10.31.100 and 2010 c 274 s 201 are each amended to read as follows:

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person

without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through ~~((10))~~ (11) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

(2) A police officer shall arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that:

(a) An order has been issued of which the person has knowledge under RCW 26.44.063, or chapter 7.90, 10.99, 26.09, 26.10, 26.26, 26.50, or 74.34 RCW restraining the person and the person has violated the terms of the order restraining the person from acts or threats of violence, or restraining the person from going onto the grounds of or entering a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location or, in the case of an order issued under RCW 26.44.063, imposing any other restrictions or conditions upon the person; or

(b) A foreign protection order, as defined in RCW 26.52.010, has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order prohibiting the person under restraint from contacting or communicating with another person, or excluding the person under restraint from a residence, workplace, school, or day care, or prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime; or

(c) The person is sixteen years or older and within the preceding four hours has assaulted a family or household member as defined in RCW 10.99.020 and the officer believes: (i) A felonious assault has occurred; (ii) an assault has occurred which has resulted in bodily injury to the victim, whether the injury is observable by the responding officer or not; or (iii) that any physical action has occurred which was intended to cause another person reasonably to fear imminent serious bodily injury or death. Bodily injury means physical pain, illness, or an impairment of physical condition. When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor. In making this determination, the officer shall make every reasonable effort to consider: (i) The intent to protect victims of domestic violence under RCW 10.99.010; (ii) the comparative extent of injuries inflicted or serious threats creating fear of physical injury; and (iii) the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse.



(3) Any police officer having probable cause to believe that a person has committed or is committing a violation of any of the following traffic laws shall have the authority to arrest the person:

(a) RCW 46.52.010, relating to duty on striking an unattended car or other property;

(b) RCW 46.52.020, relating to duty in case of injury to or death of a person or damage to an attended vehicle;

(c) RCW 46.61.500 or 46.61.530, relating to reckless driving or racing of vehicles;

(d) RCW 46.61.502 or 46.61.504, relating to persons under the influence of intoxicating liquor or drugs;

(e) RCW 46.20.342, relating to driving a motor vehicle while operator's license is suspended or revoked;

(f) RCW 46.61.5249, relating to operating a motor vehicle in a negligent manner.

(4) A law enforcement officer investigating at the scene of a motor vehicle accident may arrest the driver of a motor vehicle involved in the accident if the officer has probable cause to believe that the driver has committed in connection with the accident a violation of any traffic law or regulation.

(5)(a) A law enforcement officer investigating at the scene of a motor vessel accident may arrest the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a criminal violation of chapter 79A.60 RCW.

(b) A law enforcement officer investigating at the scene of a motor vessel accident may issue a citation for an infraction to the operator of a motor vessel involved in the accident if the officer has probable cause to believe that the operator has committed, in connection with the accident, a violation of any boating safety law of chapter 79A.60 RCW.

~~(6)~~ (7) Any police officer having probable cause to believe that a person has committed or is committing a violation of RCW 79A.60.040 shall have the authority to arrest the person.

~~((6))~~ (7) An officer may act upon the request of a law enforcement officer in whose presence a traffic infraction was committed, to stop, detain, arrest, or issue a notice of traffic infraction to the driver who is believed to have committed the infraction. The request by the witnessing officer shall give an officer the authority to take appropriate action under the laws of the state of Washington.

~~((7))~~ (8) Any police officer having probable cause to believe that a person has committed or is committing any act of indecent exposure, as defined in RCW 9A.88.010, may arrest the person.

~~((8))~~ (9) A police officer may arrest and take into custody, pending release on bail, personal recognizance, or court order, a person without a warrant when the officer has probable cause to believe that an order has been issued of which the person has knowledge under chapter 10.14 RCW and the person has violated the terms of that order.

~~((9))~~ (10) Any police officer having probable cause to believe that a person has, within twenty-four hours of the alleged violation, committed a violation of RCW 9A.50.020 may arrest such person.

~~((40))~~ (11) A police officer having probable cause to believe that a person illegally possesses or illegally has possessed a firearm or other dangerous weapon on private or public elementary or secondary school premises shall have the authority to arrest the person.

For purposes of this subsection, the term "firearm" has the meaning defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

~~((44))~~ (12) Except as specifically provided in subsections (2), (3), (4), and ~~((6))~~ (7) of this section, nothing in this section extends or otherwise affects the powers of arrest prescribed in Title 46 RCW.

~~((42))~~ (13) No police officer may be held criminally or civilly liable for making an arrest pursuant to subsection (2) or ~~((8))~~ (9) of this section if the police officer acts in good faith and without malice.

**NEW SECTION. Sec. 5.** A new section is added to chapter 79A.60 RCW to read as follows:

(1) No person who has vessels for hire, or the agent or employee thereof, shall rent, lease, charter, or otherwise permit the use of a vessel, unless the person:

(a) Displays the vessel registration numbers and a valid decal on the vessel hull as required by RCW 88.02.550(1);

(b) Keeps a copy of the vessel registration certificate aboard the vessel, in compliance with RCW 88.02.340;

(c) Displays a carbon monoxide decal on the vessel as required by RCW 88.02.390(2) if the vessel is motor-driven and is not a personal watercraft;

(d) Provides a copy of the rental agreement to be kept aboard during the rental, lease, charter, or use period for vessels required under chapter 88.02 RCW to be registered;

(e) Ensures that the vessel, if motor-propelled, meets the muffler or underwater exhaust system requirement in RCW 79A.60.130;

(f) Outfits the vessel with the quantity and type of personal floatation devices required by RCW 79A.60.140 and 79A.60.160 for the number and ages of the people who will use the vessel;

(g) Explains the personal floatation device requirements to the person renting, leasing, chartering, or otherwise using the vessel;

(h) Equips the vessel with a skier-down flag, and explains observer and personal floatation requirements of RCW 79A.60.170, if the persons renting, leasing, chartering, or otherwise using the vessel will be waterskiing;

(i) If the vessel is a personal watercraft, provides a personal floatation device and a lanyard attached to an engine cutoff switch for the operator to wear at all times when operating the personal watercraft, as required by RCW 79A.60.190;

(j) Reviews with the person operating the vessel, and all other persons who the operator may permit to operate the vessel, all the information contained in the motor vessel safety operating and equipment checklist prescribed by the Washington state parks and recreation commission and required under RCW 79A.60.640(6); and

(k) Provides all other safety equipment required by RCW 79A.60.110 and referenced in the motor vessel safety operating and equipment checklist

prescribed by the Washington state parks and recreation commission and required under RCW 79A.60.640(6).

(2) This section does not apply to fishing guides and charter boat operators who have a United States coast guard operator's license and are operating on navigable waters, and people who act in the capacity of a paid whitewater river outfitter or guide, or who operate a vessel carrying passengers for hire on whitewater rivers in this state.

(3) As provided in RCW 79A.60.020, a violation of this section is a civil infraction punishable under chapter 7.84 RCW, unless:

(a) The violation is a violation of RCW 88.02.550, which is punished as a class 2 civil infraction; or

(b) The current violation is the person's third violation of the same provision of this chapter during the past three hundred sixty-five days. If it is the person's third violation, then it must be punished as a misdemeanor under RCW 9.92.030.

**Sec. 6.** RCW 79A.60.150 and 1993 c 244 s 13 are each amended to read as follows:

~~If ((an infraction is issued under this chapter because a vessel does not contain the required equipment and if the operator is not the owner of the vessel, but is operating the vessel with the express or implied permission of the owner, then either or both operator or owner may be cited for the infraction))~~ a vessel does not contain the safety equipment required under this chapter and the rules of the commission, and the operator is not the owner of the vessel but is operating the vessel with the express or implied permission of the owner, then either the owner or the operator, or both, may be cited for the applicable infraction or charged with the applicable crime.

Passed by the Senate April 22, 2013.

Passed by the House April 17, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 279

[Engrossed Substitute Senate Bill 5449]

### INSURANCE—STATE HEALTH INSURANCE POOL

AN ACT Relating to modification of the Washington state health insurance pool; amending RCW 48.41.060, 48.41.160, and 48.41.240; reenacting and amending RCW 48.41.100; 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 federal patient protection and affordable care act of 2010, P.L. 111-148, as amended, prohibits the imposition of any preexisting condition coverage exceptions in the individual market for insurance coverage beginning January 1, 2014. The affordable care act also extends opportunities for individuals to enroll in comprehensive coverage in a health benefit exchange beginning January 1, 2014. The legislature finds that some individuals may still be barred from enrolling in the new comprehensive coverage options and it is the intent of the legislature to continue some limited access to the Washington state health insurance pool for a transitional period,

and to provide for modification to the pool to reflect changes in federal law and insurance availability.

**Sec. 2.** RCW 48.41.060 and 2011 c 314 s 13 are each amended to read as follows:

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

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

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

~~(c) Approve the standard health questionnaire and any modifications needed to comply with this chapter. The standard health questionnaire shall be submitted to an actuary for certification, modified as necessary, and approved at least every thirty six months unless at the time when certification is required the pool will be discontinued before the end of the succeeding thirty six month period. The designation and approval of the standard health questionnaire by the board shall not be subject to review and approval by the commissioner. The standard health questionnaire or any modification thereto shall not be used until ninety days after public notice of the approval of the questionnaire or any modification thereto, except that the initial standard health questionnaire approved for use by the board after March 23, 2000, may be used immediately following public notice of such approval;~~

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

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

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

(iii) If there has not been a final determination of the legality of these assessments, then beginning on the earlier of (A) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (B) April 1, 2006, the arrangement shall deposit the assessments imposed by this subsection into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the assessments are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account shall be transferred to the board;

~~((#))~~ (c) Issue policies of health coverage in accordance with the requirements of this chapter;

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

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

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

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

(2) In addition thereto, the board may:

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

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

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

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

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

**Sec. 3.** RCW 48.41.100 and 2011 c 315 s 5 and 2011 c 314 s 15 are each reenacted and amended to read as follows:

(1)(a) The following persons who are residents of this state are eligible for pool coverage:

~~(i) ((Any person who provides evidence of a carrier's decision not to accept him or her for enrollment in an individual health benefit plan as defined in RCW 48.43.005 based upon, and within ninety days of the receipt of, the results of the standard health questionnaire designated by the board and administered by health carriers under RCW 48.43.018;~~

~~(ii) Any person who continues to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator pursuant to subsection (3) of this section;~~

~~(iii) Any person who resides in a county of the state where no carrier or insurer eligible under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool, and who makes direct application to the pool)) Any resident of the state not eligible for medicare coverage or medicaid coverage, and residing in a county where an individual health plan other than a catastrophic health plan as defined in RCW 48.43.005 is not offered to the resident during defined open enrollment or special enrollment periods at the time of application to the pool, whether through the health benefit exchange operated pursuant to chapter 43.71 RCW or in the private insurance market, and who makes application to the pool for coverage prior to December 31, 2017;~~

~~(ii) Any resident of the state not eligible for medicare coverage, enrolled in the pool prior to December 31, 2013, shall remain eligible for pool coverage except as provided in subsections (2) and (3) of this section through December 31, 2017;~~

~~((iv\*)) (iii) Any person becoming eligible for medicare before August 1, 2009, who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application; and~~

~~((v\*)) (iv) Any person becoming eligible for medicare on or after August 1, 2009, who does not have access to a reasonable choice of comprehensive medicare part C plans, as defined in (b) of this subsection, and who provides evidence of (A) a rejection for medical reasons, (B) a requirement of restrictive riders, (C) an up-rated premium, (D) a preexisting conditions limitation, or (E) lack of access to or for a comprehensive medicare supplemental insurance policy under chapter 48.66 RCW, the effect of any of which is to substantially reduce coverage from that received by a person considered a standard risk by at least one member within six months of the date of application(~~and~~~~

~~(vi) Any person under the age of nineteen who does not have access to individual plan open enrollment or special enrollment, as defined in RCW 48.43.005, or the federal preexisting condition insurance pool, at the time of application to the pool is eligible for the pool coverage)).~~

(b) For purposes of (a)(i) of this subsection, by December 1, 2013, the board shall develop and implement a process to determine an applicant's eligibility based on the criteria specified in (a)(i) of this subsection.

(c) For purposes of (a)((v))~~(iv)~~ of this subsection (1), a person does not have access to a reasonable choice of plans unless the person has a choice of health maintenance organization or preferred provider organization medicare part C plans offered by at least three different carriers that have had provider networks in the person's county of residence for at least five years. The plan options must include coverage at least as comprehensive as a plan F medicare supplement plan combined with medicare parts A and B. The plan options must also provide access to adequate and stable provider networks that make up-to-date provider directories easily accessible on the carrier web site, and will provide them in hard copy, if requested. In addition, if no health maintenance organization or preferred provider organization plan includes the health care provider with whom the person has an established care relationship and from whom he or she has received treatment within the past twelve months, the person does not have reasonable access.

(2) The following persons are not eligible for coverage by the pool:

(a) Any person having terminated coverage in the pool unless (i) twelve months have lapsed since termination, or (ii) that person can show continuous other coverage which has been involuntarily terminated for any reason other than nonpayment of premiums. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b));

(b) Inmates of public institutions and those persons who become eligible for medical assistance after June 30, 2008, as defined in RCW 74.09.010. However, these exclusions do not apply to eligible individuals as defined in section 2741(b) of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg-41(b))~~(c)~~;

~~(c) Any person who resides in a county of the state where any carrier or insurer regulated under chapter 48.15 RCW offers to the public an individual health benefit plan other than a catastrophic health plan as defined in RCW 48.43.005 at the time of application to the pool and who does not qualify for pool coverage based upon the results of the standard health questionnaire, or pursuant to subsection (1)(a)(iv) of this section).~~

(3) When a carrier or insurer regulated under chapter 48.15 RCW begins to offer an individual health benefit plan in a county where no carrier had been offering an individual health benefit plan:

(a) If the health benefit plan offered is other than a catastrophic health plan as defined in RCW 48.43.005, any person enrolled in a pool plan pursuant to subsection (1)(a)~~((iii))~~ (i) of this section in that county shall no longer be eligible for coverage under that plan pursuant to subsection (1)(a)~~((iii))~~ (i) of this section~~(, but may continue to be eligible for pool coverage based upon the results of the standard health questionnaire designated by the board and administered by the pool administrator. The pool administrator shall offer to administer the questionnaire to each person no longer eligible for coverage under subsection (1)(a)(iii) of this section within thirty days of determining that he or she is no longer eligible;~~

~~(b) Losing eligibility for pool coverage under this subsection (3) does not affect a person's eligibility for pool coverage under subsection (1)(a)(i), (ii), or (iv) of this section); and~~

~~((e))~~ (b) The pool administrator shall provide written notice to any person who is no longer eligible for coverage under a pool plan under this subsection (3) within thirty days of the administrator's determination that the person is no longer eligible. The notice shall: (i) Indicate that coverage under the plan will cease ninety days from the date that the notice is dated; (ii) describe any other coverage options, either in or outside of the pool, available to the person; and (iii) describe the ~~((procedures for the administration of the standard health questionnaire to determine the person's continued eligibility for coverage under subsection (1)(a)(ii) of this section; and (iv) describe the))~~ enrollment process for the available options outside of the pool.

~~((4) The board shall ensure that an independent analysis of the eligibility standards for the pool coverage is conducted, including examining the eight percent eligibility threshold, eligibility for medicaid enrollees and other publicly sponsored enrollees, and the impacts on the pool and the state budget. The board shall report the findings to the legislature by December 1, 2007.))~~

**Sec. 4.** RCW 48.41.160 and 2007 c 259 s 27 are each amended to read as follows:

(1) On or before December 31, 2007, the pool shall cancel all existing pool policies and replace them with policies that are identical to the existing policies except for the inclusion of a provision providing for a guarantee of the continuity of coverage consistent with this section. As a means to minimize the number of policy changes for enrollees, replacement policies provided under this subsection also may include the plan modifications authorized in RCW 48.41.100, 48.41.110, and 48.41.120.

(2) A pool policy shall contain a guarantee of the individual's right to continued coverage, subject to the provisions of subsections (4) ~~((and)), (5), (7), and (8))~~ of this section.

(3) The guarantee of continuity of coverage required by this section shall not prevent the pool from canceling or nonrenewing a policy for:

(a) Nonpayment of premium;

(b) Violation of published policies of the pool;

(c) Failure of a covered person who becomes eligible for medicare benefits by reason of age to apply for a pool medical supplement plan, or a medicare supplement plan or other similar plan offered by a carrier pursuant to federal laws and regulations;

(d) Failure of a covered person to pay any deductible or copayment amount owed to the pool and not the provider of health care services;

(e) Covered persons committing fraudulent acts as to the pool;

(f) Covered persons materially breaching the pool policy; or

(g) Changes adopted to federal or state laws when such changes no longer permit the continued offering of such coverage.

(4)(a) The guarantee of continuity of coverage provided by this section requires that if the pool replaces a plan, it must make the replacement plan available to all individuals in the plan being replaced. The replacement plan must include all of the services covered under the replaced plan, and must not significantly limit access to the kind of services covered under the replacement



plan through unreasonable cost-sharing requirements or otherwise. The pool may also allow individuals who are covered by a plan that is being replaced an unrestricted right to transfer to a fully comparable plan.

(b) The guarantee of continuity of coverage provided by this section requires that if the pool discontinues offering a plan: (i) The pool must provide notice to each individual of the discontinuation at least ninety days prior to the date of the discontinuation; (ii) the pool must offer to each individual provided coverage under the discontinued plan the option to enroll in any other plan currently offered by the pool for which the individual is otherwise eligible; and (iii) in exercising the option to discontinue a plan and in offering the option of coverage under (b)(ii) of this subsection, the pool must act uniformly without regard to any health status-related factor of enrolled individuals or individuals who may become eligible for this coverage.

(c) The pool cannot replace or discontinue a plan under this subsection (4) until it has completed an evaluation of the impact of replacing the plan upon:

- (i) The cost and quality of care to pool enrollees;
- (ii) Pool financing and enrollment;
- (iii) The board's ability to offer comprehensive and other plans to its enrollees;
- (iv) Other items identified by the board.

In its evaluation, the board must request input from the constituents represented by the board members.

(d) The guarantee of continuity of coverage provided by this section does not apply if the pool has zero enrollment in a plan.

(5) The pool may not change the rates for pool policies except on a class basis, with a clear disclosure in the policy of the pool's right to do so.

(6) A pool policy offered under this chapter shall provide that, upon the death of the individual in whose name the policy is issued, every other individual then covered under the policy may elect, within a period specified in the policy, to continue coverage under the same or a different policy.

(7) All pool policies issued on or after January 1, 2014, must reflect the new eligibility requirements of RCW 48.41.100 and contain a statement of the intent to discontinue the pool coverage on December 31, 2017, under pool nonmedicare plans.

(8) Pool policies issued prior to January 1, 2014, shall be modified effective January 1, 2013, consistent with subsection (3)(g) of this section, and contain a statement of the intent to discontinue pool coverage on December 31, 2017, under pool nonmedicare plans.

(9) The pool shall discontinue all nonmedicare pool plans effective December 31, 2017.

**Sec. 5.** RCW 48.41.240 and 2012 c 87 s 17 are each amended to read as follows:

(1) The board shall review populations that may need ongoing access to coverage through the pool, with specific attention to those persons who may be excluded from or may receive inadequate coverage beginning January 1, 2014, such as persons with end-stage renal disease or HIV/AIDS, or persons not eligible for coverage in the exchange.

(2) If the review under subsection (1) of this section indicates a continued need for coverage through the pool after December 31, 2013, the board shall

submit recommendations regarding any modifications to pool eligibility requirements for new and ongoing enrollment after December 31, 2013. The recommendations must address any needed modifications to the standard health questionnaire or other eligibility screening tool that could be used in a manner consistent with federal law to determine eligibility for enrollment in the pool.

(3) The board shall complete an analysis of current pool assessment requirements in relation to assessments that will fund the reinsurance program and recommend changes to pool assessments or any credits against assessments that may be considered for the reinsurance program. The analysis shall recommend whether the categories of members paying assessments should be adjusted to make the assessment fair and equitable among all payers.

(4) The board shall report its recommendations to the governor and the legislature by December 1, 2012.

(5) The board shall revisit the study of eligibility completed in 2012 with another review of the populations that may need ongoing access to coverage through the pool, to be submitted to the governor and legislature by November 1, 2015. The eligibility study shall include the nonmedicare populations scheduled to lose coverage and medicare populations, and consider whether the enrollees have access to comprehensive coverage alternatives that include appropriate pharmacy coverage. The study shall include recommendations to address any barriers in eligibility that remain in accessing other coverage such as medicare supplemental coverage or comprehensive pharmacy coverage, as well as suggestions for financing changes and recommendations on a future expiration of the pool.

**NEW SECTION, Sec. 6.** Sections 2 and 3 of this act take effect January 1, 2014.

Passed by the Senate April 24, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 280

[Senate Bill 5465]

### PHYSICAL THERAPY—LICENSURE—EXEMPTIONS

AN ACT Relating to exemptions from licensure as a physical therapist; and amending RCW 18.74.150 and 18.74.180.

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

**Sec. 1.** RCW 18.74.150 and 2007 c 98 s 13 are each amended to read as follows:

(1) It is unlawful for any person to practice or in any manner hold himself or herself out to practice physical therapy or designate himself or herself as a physical therapist or physical therapist assistant, unless he or she is licensed in accordance with this chapter.

(2) This chapter does not restrict persons licensed under any other law of this state from engaging in the profession or practice for which they are licensed, if they are not representing themselves to be physical therapists, physical therapist assistants, or providers of physical therapy.

(3) The following persons are exempt from licensure as physical therapists under this chapter when engaged in the following activities:

(a) A person who is pursuing a course of study leading to a degree as a physical therapist in an approved professional education program and is satisfying supervised clinical education requirements related to his or her physical therapy education while under direct supervision of a licensed physical therapist;

(b) A physical therapist while practicing in the United States armed services, United States public health service, or veterans administration as based on requirements under federal regulations for state licensure of health care providers; and

(c) A physical therapist licensed in another United States jurisdiction, or a foreign-educated physical therapist credentialed in another country, performing physical therapy as part of teaching or participating in an educational seminar of no more than sixty days in a calendar year.

(4) The following persons are exempt from licensure as physical therapist assistants under this chapter when engaged in the following activities:

(a) A person who is pursuing a course of study leading to a degree as a physical therapist assistant in an approved professional education program and is satisfying supervised clinical education requirements related to his or her physical therapist assistant education while under direct supervision of a licensed physical therapist or licensed physical therapist assistant;

(b) A physical therapist assistant while practicing in the United States armed services, United States public health service, or veterans administration as based on requirements under federal regulations for state licensure of health care providers; and

(c) A physical therapist assistant licensed in another United States jurisdiction, or a foreign-educated physical therapist assistant credentialed in another country, or a physical therapist assistant who is teaching or participating in an educational seminar of no more than sixty days in a calendar year.

**Sec. 2.** RCW 18.74.180 and 2007 c 98 s 16 are each amended to read as follows:

A physical therapist is professionally and legally responsible for patient care given by assistive personnel under his or her supervision. If a physical therapist fails to adequately supervise patient care given by assistive personnel, the board may take disciplinary action against the physical therapist.

(1) Regardless of the setting in which physical therapy services are provided, only the licensed physical therapist may perform the following responsibilities:

(a) Interpretation of referrals;

(b) Initial examination, problem identification, and diagnosis for physical therapy;

(c) Development or modification of a plan of care that is based on the initial examination and includes the goals for physical therapy intervention;

(d) Determination of which tasks require the expertise and decision-making capacity of the physical therapist and must be personally rendered by the physical therapist, and which tasks may be delegated;

(e) Assurance of the qualifications of all assistive personnel to perform assigned tasks through written documentation of their education or training that is maintained and available at all times;

(f) Delegation and instruction of the services to be rendered by the physical therapist, physical therapist assistant, or physical therapy aide including, but not limited to, specific tasks or procedures, precautions, special problems, and contraindicated procedures;

(g) Timely review of documentation, reexamination of the patient, and revision of the plan of care when indicated;

(h) Establishment of a discharge plan.

(2) Supervision requires that the patient reevaluation is performed:

(a) Every fifth visit, or if treatment is performed more than five times per week, reevaluation must be performed at least once a week;

(b) When there is any change in the patient's condition not consistent with planned progress or treatment goals.

(3) Supervision of assistive personnel means:

(a) Physical therapist assistants may function under direct or indirect supervision;

(b) Physical therapy aides must function under direct supervision;

(c)(i) The physical therapist may supervise a total of two assistive personnel at any one time.

(ii) In addition to the two assistive personnel authorized in (c)(i) of this subsection, the physical therapist may supervise a total of two persons who are pursuing a course of study leading to a degree as a physical therapist or a physical therapist assistant.

Passed by the Senate April 23, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

**CHAPTER 281**

[Senate Bill 5472]

WESTERN WASHINGTON UNIVERSITY—AUDIOLOGY—DOCTORATE DEGREES

AN ACT Relating to applied doctorate level degrees in audiology at Western Washington University; and adding a new section to chapter 28B.35 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 28B.35 RCW to read as follows:

The board of trustees of Western Washington University may offer applied, but not research, doctorate level degrees in audiology.

Passed by the Senate April 22, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 282

[Engrossed Substitute Senate Bill 5491]

## K-12 SCHOOLS—EDUCATIONAL SYSTEM HEALTH

AN ACT Relating to statewide indicators of educational health; adding a new section to chapter 28A.150 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** (1) The legislature acknowledges that multiple entities, including the state board of education, the office of the superintendent of public instruction, the workforce training and education coordinating board, the quality education council, and the student achievement council, are actively working on efforts to identify measurable goals and priorities, road maps, and strategic plans for the entire educational system. It is not the legislature's intent to undermine or curtail the ongoing work of these groups. However, the legislature believes that a coordinated single set of statewide goals would help focus these efforts.

(2) It is, therefore, the intent of the legislature to establish a discrete set of statewide data points that will serve as snapshots of the overall health of the educational system and as a means for evaluating progress in achieving the outcomes set for the system and the students it serves. By monitoring these statewide indicators over time, it is the intent of the legislature to understand whether reform efforts and investments are making positive progress in the overall education of students and whether adjustments are necessary. Finally, it is the intent of the legislature to align the education reform efforts of each state education agency in order to hold each part of the system – statewide leaders, school personnel, and students – accountable to the same definitions of success.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.150 RCW to read as follows:

(1) The following statewide indicators of educational system health are established:

(a) The percentage of students demonstrating the characteristics of entering kindergartners in all six areas identified by the Washington kindergarten inventory of developing skills administered in accordance with RCW 28A.655.080;

(b) The percentage of students meeting the standard on the fourth grade statewide reading assessment administered in accordance with RCW 28A.655.070;

(c) The percentage of students meeting the standard on the eighth grade statewide mathematics assessment administered in accordance with RCW 28A.655.070;

(d) The four-year cohort high school graduation rate;

(e) The percentage of high school graduates who during the second quarter after graduation are either enrolled in postsecondary education or training or are employed, and the percentage during the fourth quarter after graduation who are either enrolled in postsecondary education or training or are employed; and

(f) The percentage of students enrolled in precollege or remedial courses in college.

(2) The statewide indicators established in subsection (1) of this section shall be disaggregated as provided under RCW 28A.300.042.

(3) The state board of education, with assistance from the office of the superintendent of public instruction, the workforce training and education coordinating board, the educational opportunity gap oversight and accountability committee, and the student achievement council, shall establish a process for identifying realistic but challenging system-wide performance goals and measurements, if necessary, for each of the indicators established in subsection (1) of this section, including for subcategories of students as provided under subsection (2) of this section. The performance goal for each indicator must be set on a biennial basis, and may only be adjusted upward.

(4) The state board of education, the office of the superintendent of public instruction, and the student achievement council shall each align their strategic planning and education reform efforts with the statewide indicators and performance goals established under this section.

(5)(a) The state board of education, with assistance from the office of the superintendent of public instruction, the workforce training and education coordinating board, the educational opportunity gap oversight and accountability committee, and the student achievement council, shall submit a report on the status of each indicator in subsection (1) of this section and recommend revised performance goals and measurements, if necessary, by December 1st of each even-numbered year, except that the initial report establishing baseline values and initial goals shall be delivered to the education committees of the legislature by December 1, 2013.

(b) If the educational system is not on target to meet the performance goals on any individual indicator, the report must recommend evidence-based reforms intended to improve student achievement in that area.

(c) To the extent data is available, the performance goals for each indicator must be compared with national data in order to identify whether Washington student achievement results are within the top ten percent nationally or are comparable to results in peer states with similar characteristics as Washington. If comparison data show that Washington students are falling behind national peers on any indicator, the report must recommend evidence-based reforms targeted at addressing the indicator in question.

Passed by the Senate April 22, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 283

[Substitute Senate Bill 5507]

### ELECTIONS AND BALLOT MEASURES—DONOR TRANSPARENCY

AN ACT Relating to increasing transparency of donors to candidates and ballot measures; amending RCW 29A.32.031 and 29A.36.161; and creating a new section.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that the voters of the state of Washington have overwhelmingly affirmed the public's right to know about the financing of political activity. Recognizing that Initiative 276, which created the public disclosure commission and serves as the foundation of

Washington's disclosure and campaign finance laws, was approved with over seventy-two percent of voters in support, the legislature also finds that maintaining the tradition of transparency in campaigns and political activities in the state of Washington is a top priority for citizens throughout Washington state.

(2) Therefore, it is the intent of the legislature to increase transparency and ensure that voters be provided easy access to accurate information about the sources of money supporting or opposing candidates and ballot measures by printing the public disclosure commission's web site on voters' pamphlets and ballots for each primary and general election.

**Sec. 2.** RCW 29A.32.031 and 2011 c 60 s 13 are each amended to read as follows:

The voters' pamphlet published or distributed under RCW 29A.32.010 must contain:

(1) Information about each measure for an advisory vote of the people and each ballot measure initiated by or referred to the voters for their approval or rejection as required by RCW 29A.32.070;

(2) In even-numbered years, statements, if submitted, from candidates for the office of president and vice president of the United States, United States senator, United States representative, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, commissioner of public lands, superintendent of public instruction, insurance commissioner, state senator, state representative, justice of the supreme court, judge of the court of appeals, or judge of the superior court. Candidates may also submit campaign contact information and a photograph not more than five years old in a format that the secretary of state determines to be suitable for reproduction in the voters' pamphlet;

(3) In odd-numbered years, if any office voted upon statewide appears on the ballot due to a vacancy, then statements and photographs for candidates for any vacant office listed in subsection (2) of this section must appear;

(4) Contact information for the public disclosure commission established under RCW 42.17A.100, including the following statement: "For a list of the people and organizations that donated to state and local candidates and ballot measure campaigns, visit [www.pdc.wa.gov](http://www.pdc.wa.gov)." The statement must be placed in a prominent position, such as on the cover or on the first two pages of the voters' pamphlet. The secretary of state may substitute such language as is necessary for accuracy and clarity and consistent with the intent of this section;

(5) Contact information for major political parties;

(6) A brief statement explaining the deletion and addition of language for proposed measures under RCW 29A.32.080; and

(7) Any additional information pertaining to elections as may be required by law or in the judgment of the secretary of state is deemed informative to the voters.

**Sec. 3.** RCW 29A.36.161 and 2011 c 10 s 33 are each amended to read as follows:

(1) On the top of each ballot must be printed:

(a) Clear and concise instructions directing the voter how to mark the ballot, including write-in votes; and

(b) The following statement: "For a list of the people and organizations that donated to state and local candidates and ballot measure campaigns, visit [www.pdc.wa.gov](http://www.pdc.wa.gov)." The secretary of state may substitute such language as is necessary for accuracy and clarity and consistent with the intent of this section. Alternately, at the discretion of the county auditor or local election official, the statement required by this subsection (1)(b) may be printed in a prominent position on the ballot envelope and in the materials that accompany the ballot.

~~((On the top of each primary ballot must be printed the instructions required by this chapter.))~~

(2) The ballot must have a clear delineation between the ballot instructions and the first ballot measure or office through the use of white space, illustration, shading, color, symbol, font size, or bold type. The secretary of state shall establish standards for ballot design and layout consistent with this section and RCW 29A.04.611.

(3) The questions of adopting constitutional amendments or any other state measure authorized by law to be submitted to the voters at that election must appear after the instructions and before any offices.

(4) In a year that president and vice president appear on the general election ballot, the names of candidates for president and vice president for each political party must be grouped together with a single response position for a voter to indicate his or her choice.

~~((5) On a general election ballot, the candidate or candidates of))~~ The major political party that received the highest number of votes from the electors of this state for the office of president of the United States at the last presidential election must appear first ~~((following the appropriate office heading)). ((The candidate or candidates of the))~~ Other major political parties ~~((will))~~ must follow according to the votes cast for their nominees for president at the last presidential election ~~((, and))~~ Independent candidates and ~~((the candidate or candidates of all other))~~ minor parties ~~((will))~~ must follow major parties and be listed in the order of their qualification with the secretary of state.

Passed by the Senate April 23, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 284

[Engrossed Substitute Senate Bill 5551]

### COMPETENCY TO STAND TRIAL EVALUATIONS

AN ACT Relating to competency to stand trial evaluations; adding a new section to chapter 10.77 RCW; creating a new section; providing an expiration 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 10.77 RCW to read as follows:

(1) If, at the time of a referral for an evaluation of competency to stand trial in a jail for an in-custody defendant, the department has not met the performance target for timely completion of competency evaluations under RCW 10.77.068(1)(a)(ii) during the most recent quarter in fifty percent of cases



submitted by the referring county, as documented in the most recent quarterly report under RCW 10.77.068(3) or confirmed by records maintained by the department, the department shall reimburse the county for the cost of appointing a qualified expert or professional person under RCW 10.77.060(1)(a) subject to subsections (2) and (3) of this section.

(2) Appointment of a qualified expert or professional person under this section must be from a list of qualified experts or professional persons assembled with participation by representatives of the prosecuting attorney and the defense bar of the county. The qualified expert or professional person shall complete an evaluation and report that includes the components specified in RCW 10.77.060(3).

(3) The county shall provide a copy of the evaluation report to the applicable state hospital upon referral of the defendant for admission to the state hospital. The county shall maintain data on the timeliness of competency evaluations completed under this section.

(4) A qualified expert or professional person appointed by a court under this section must be compensated for competency evaluations in an amount that will encourage in-depth evaluation reports. Subject to the availability of amounts appropriated for this specific purpose, the department shall reimburse the county in an amount determined by the department to be fair and reasonable with the county paying any excess costs. The amount of reimbursement established by the department must at least meet the equivalent amount for evaluations conducted by the department.

(4) [(5)] Nothing in this section precludes either party from objecting to the appointment of an evaluator on the basis that an inpatient evaluation is appropriate under RCW 10.77.060(1)(d).

(5) [(6)] This section expires June 30, 2016.

**NEW SECTION. Sec. 2.** Within current resources, the office of the state human resources director shall gather market salary data related to psychologists and psychiatrists employed by the department of social and health services and department of corrections and report to the governor and relevant committees of the legislature by June 30, 2013.

**NEW SECTION. Sec. 3.** Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate April 24, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 285

[Substitute Senate Bill 5556]

### MISSING ENDANGERED PERSONS

AN ACT Relating to missing endangered persons; and amending RCW 13.60.010 and 13.60.020.

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

**Sec. 1.** RCW 13.60.010 and 2009 c 20 s 1 are each amended to read as follows:

(1) The Washington state patrol shall establish a missing children and endangered person clearinghouse which shall include the maintenance and operation of a toll-free(~~(, twenty four hour)~~) telephone hotline. The clearinghouse shall distribute information to local law enforcement agencies, school districts, the department of social and health services, and the general public regarding missing children and endangered persons. The information shall include pictures, bulletins, training sessions, reports, and biographical materials that will assist in local law enforcement efforts to locate missing children and endangered persons. The state patrol shall also maintain a regularly updated computerized link with national and other statewide missing person systems or clearinghouses, and within existing resources, shall develop and implement a plan, commonly known as an "amber alert plan" or an "endangered missing person advisory plan," for voluntary cooperation between local, state, tribal, and other law enforcement agencies, state government agencies, radio and television stations, (~~and~~) cable and satellite systems, and social media pages and sites to enhance the public's ability to assist in recovering abducted children and missing endangered persons consistent with the state endangered missing person advisory plan.

(2) For the purposes of this chapter:

(a) "Child" or "children(~~(;)~~)" (~~(as used in this chapter,)~~) means an individual under eighteen years of age.

(b) "Missing endangered person" means a person with a developmental disability as defined in RCW 71A.10.020(4) or a vulnerable adult as defined in RCW 74.34.020(17), believed to be in danger because of age, health, mental or physical disability, in combination with environmental or weather conditions, or is believed to be unable to return to safety without assistance.

**Sec. 2.** RCW 13.60.020 and 1985 c 443 s 23 are each amended to read as follows:

Local law enforcement agencies shall file an official missing person report and enter biographical information into the state missing person computerized network within (~~(twelve)~~) six hours after notification of a missing child or endangered person is received under RCW 13.32A.050 (1)(~~a~~), (~~((c))~~) (c), or (~~((d))~~) (d), or an endangered missing person received pursuant to the state endangered missing person advisory plan. The patrol shall collect such information as will enable it to retrieve immediately the following information about a missing child or endangered person: Name, date of birth, social security number, fingerprint classification, relevant physical descriptions, and known associates and locations. Access to the preceding information shall be available to appropriate law enforcement agencies, and to parents and legal guardians, when appropriate.

Passed by the Senate April 23, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 16, 2013.

Filed in Office of Secretary of State May 17, 2013.

CHAPTER 286

[Substitute Senate Bill 5152]

LICENSE PLATES—SPECIAL—SEAHAWKS AND SOUNDERS

AN ACT Relating to Seattle Sounders FC and Seattle Seahawks special license plates; amending RCW 46.18.200, 46.17.220, 46.68.420, 46.18.100, and 46.18.060; adding new sections to chapter 46.04 RCW; and providing an effective date.

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

**Sec. 1.** RCW 46.18.200 and 2012 c 65 s 1 are each amended to read as follows:

(1) Special license plate series reviewed and approved by the department:

(a) May be issued in lieu of standard issue or personalized license plates for vehicles required to display one and two license plates unless otherwise specified;

(b) Must be issued under terms and conditions established by the department;

(c) Must not be issued for vehicles registered under chapter 46.87 RCW; and

(d) Must display a symbol or artwork approved by the department.

(2) The department approves and shall issue the following special license plates:

LICENSE PLATE	DESCRIPTION, SYMBOL, OR ARTWORK
4-H	Displays the "4-H" logo.
Armed forces collection	Recognizes the contribution of veterans, active duty military personnel, reservists, and members of the national guard, and includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and national guard.
Endangered wildlife	Displays a symbol or artwork <del>((approved by the special license plate review board and the legislature))</del> <u>symbolizing endangered wildlife in Washington state.</u>
Gonzaga University alumni association	Recognizes the Gonzaga University alumni association.
Helping kids speak	Recognizes an organization that supports programs that provide no-cost speech pathology programs to children.
Keep kids safe	Recognizes efforts to prevent child abuse and neglect.
Law enforcement memorial	Honors law enforcement officers in Washington killed in the line of duty.
Music matters	Displays the "Music Matters" logo.

Professional firefighters and paramedics	Recognizes professional firefighters and paramedics who are members of the Washington state council of firefighters.
<u>Seattle Seahawks</u>	<u>Displays the "Seattle Seahawks" logo.</u>
<u>Seattle Sounders FC</u>	<u>Displays the "Seattle Sounders FC" logo.</u>
Share the road	Recognizes an organization that promotes bicycle safety and awareness education.
Ski & ride Washington	Recognizes the Washington snowsports industry.
State flower	Recognizes the Washington state flower.
Volunteer firefighters	Recognizes volunteer firefighters.
Washington lighthouses	Recognizes an organization that supports selected Washington state lighthouses and provides environmental education programs.
Washington state parks	Recognizes Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources.
Washington's national park fund	Builds awareness of Washington's national parks and supports priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.
Washington's wildlife collection	Recognizes Washington's wildlife.
We love our pets	Recognizes an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets to reduce pet overpopulation.
Wild on Washington	Symbolizes wildlife viewing in Washington state.

(3) Applicants for initial and renewal professional firefighters and paramedics special license plates must show proof eligibility by providing a certificate of current membership from the Washington state council of firefighters.

(4) Applicants for initial volunteer firefighters special license plates must (a) have been a volunteer firefighter for at least ten years or be a volunteer firefighter for one or more years and (b) have documentation of service from the district of the appropriate fire service. If the volunteer firefighter leaves firefighting service before ten years of service have been completed, the volunteer firefighter shall surrender the license plates to the department on the registration renewal date. If the volunteer firefighter stays in service for at least

ten years and then leaves, the license plate may be retained by the former volunteer firefighter and as long as the license plate is retained for use the person will continue to pay the future registration renewals. A qualifying volunteer firefighter may have no more than one set of license plates per vehicle, and a maximum of two sets per applicant, for their personal vehicles. If the volunteer firefighter is convicted of a violation of RCW 46.61.502 or a felony, the license plates must be surrendered upon conviction.

**Sec. 2.** RCW 46.17.220 and 2012 c 65 s 4 are each amended to read as follows:

(1) In addition to all fees and taxes required to be paid upon application for a vehicle registration in chapter 46.16A RCW, the holder of a special license plate shall pay the appropriate special license plate fee as listed in this section.

PLATE TYPE	INITIAL FEE	RENEWAL FEE	DISTRIBUTED UNDER
(a) 4-H	\$ 40.00	\$ 30.00	RCW 46.68.420
(b) Amateur radio license	\$ 5.00	N/A	RCW 46.68.070
(c) Armed forces	\$ 40.00	\$ 30.00	RCW 46.68.425
(d) Baseball stadium	\$ 40.00	\$ 30.00	Subsection (2) of this section
(e) Collector vehicle	\$ 35.00	N/A	RCW 46.68.030
(f) Collegiate	\$ 40.00	\$ 30.00	RCW 46.68.430
(g) Endangered wildlife	\$ 40.00	\$ 30.00	RCW 46.68.425
(h) Gonzaga University alumni association	\$ 40.00	\$ 30.00	RCW 46.68.420
(i) Helping kids speak	\$ 40.00	\$ 30.00	RCW 46.68.420
(j) Horseless carriage	\$ 35.00	N/A	RCW 46.68.030
(k) Keep kids safe	\$ 45.00	\$ 30.00	RCW 46.68.425
(l) Law enforcement memorial	\$ 40.00	\$ 30.00	RCW 46.68.420
(m) Military affiliate radio system	\$ 5.00	N/A	RCW 46.68.070
(n) Music matters	\$ 40.00	\$ 30.00	RCW 46.68.420
(o) Professional firefighters and paramedics	\$ 40.00	\$ 30.00	RCW 46.68.420
(p) Ride share	\$ 25.00	N/A	RCW 46.68.030
(q) <u>Seattle Seahawks</u>	<u>\$40.00</u>	<u>\$30.00</u>	<u>RCW 46.68.420</u>
(r) <u>Seattle Sounders FC</u>	<u>\$40.00</u>	<u>\$30.00</u>	<u>RCW 46.68.420</u>
(s) Share the road	\$ 40.00	\$ 30.00	RCW 46.68.420
( <del>(t)</del> ) (t) Ski & ride Washington	\$ 40.00	\$ 30.00	RCW 46.68.420
( <del>(u)</del> ) (u) Square dancer	\$ 40.00	N/A	RCW 46.68.070
( <del>(v)</del> ) (v) State flower	\$ 40.00	\$ 30.00	RCW 46.68.420
( <del>(w)</del> ) (w) Volunteer firefighters	\$ 40.00	\$ 30.00	RCW 46.68.420

<del>((w))</del> <u>(x)</u> Washington lighthouses	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((w))</del> <u>(y)</u> Washington state parks	\$ 40.00	\$ 30.00	RCW 46.68.425
<del>((x))</del> <u>(z)</u> Washington's national parks	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((y))</del> <u>(aa)</u> Washington's wildlife collection	\$ 40.00	\$ 30.00	RCW 46.68.425
<del>((z))</del> <u>(bb)</u> We love our pets	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((aa))</del> <u>(cc)</u> Wild on Washington	\$ 40.00	\$ 30.00	RCW 46.68.425

(2) After deducting administration and collection expenses for the sale of baseball stadium license plates, the remaining proceeds must 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.

**Sec. 3.** RCW 46.68.420 and 2012 c 65 s 5 are each amended to read as follows:

(1) The department shall:

(a) Collect special license plate fees established under RCW 46.17.220;

(b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and

(c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.

(2) The state treasurer shall credit the proceeds to the motor vehicle account until the department determines that the state has been reimbursed for the cost of implementing the special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fee amounts for each special license plate to the following appropriate account as created in this section in the custody of the state treasurer:

ACCOUNT	CONDITIONS FOR USE OF FUNDS
4-H programs	Support Washington 4-H programs
Gonzaga University alumni association	Scholarship funds to needy and qualified students attending or planning to attend Gonzaga University
Helping kids speak	Provide free diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development

Law enforcement memorial	Provide support and assistance to survivors and families of law enforcement officers in Washington killed in the line of duty and to organize, finance, fund, construct, utilize, and maintain a memorial on the state capitol grounds to honor those fallen officers
Lighthouse environmental programs	Support selected Washington state lighthouses that are accessible to the public and staffed by volunteers; provide environmental education programs; provide grants for other Washington lighthouses to assist in funding infrastructure preservation and restoration; encourage and support interpretive programs by lighthouse docents
Music matters awareness	Promote music education in schools throughout Washington
<u>Seattle Seahawks</u>	<u>Provide funds to InvestED to encourage secondary students who have economic needs to stay in school, return to school, or get involved within their learning community</u>
<u>Seattle Sounders FC</u>	<u>Provide funds to Washington state mentors and the association of Washington generals created in RCW 43.15.030 in the following manner: (a) Seventy percent and the remaining proceeds, if any, to Washington state mentors, to increase the number of mentors in the state by offering mentoring grants throughout Washington state that foster positive youth development and academic success, with up to twenty percent of these proceeds authorized for program administration costs; and (b) up to thirty percent, not to exceed forty-thousand dollars annually as adjusted for inflation by the office of financial management, to the association of Washington generals, to develop Washington state educational, veterans, international relations, and civics projects and to recognize the outstanding public service of individuals or groups in the state of Washington</u>
Share the road	Promote bicycle safety and awareness education in communities throughout Washington
Ski & ride Washington	Promote winter snowsports, such as skiing and snowboarding, and related programs, such as ski and ride safety programs, underprivileged youth ski and ride programs, and active, healthy lifestyle programs

State flower	Support Meerkerk Rhododendron Gardens and provide for grants to other qualified nonprofit organizations' efforts to preserve rhododendrons
Volunteer firefighters	Receive and disseminate funds for purposes on behalf of volunteer firefighters, their families, and others deemed in need
Washington state council of firefighters benevolent fund	Receive and disseminate funds for charitable purposes on behalf of members of the Washington state council of firefighters, their families, and others deemed in need
Washington's national park fund	Build awareness of Washington's national parks and support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks
We love our pets	Support and enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets in order to reduce pet population

(3) Only the director or the director's designee may authorize expenditures from the accounts described in subsection (2) of this section. The accounts are subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) Funds in the special license plate accounts described in subsection (2) of this section must be disbursed subject to the conditions described in subsection (2) of this section and under contract between the department and qualified nonprofit organizations that provide the services described in subsection (2) of this section.

(5) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation operating in Washington that has received a determination of tax exempt status under 26 U.S.C. Sec. 501(c)(3). The qualified nonprofit organization must meet all the requirements under RCW 46.18.100(1).

**Sec. 4.** RCW 46.18.100 and 2010 c 161 s 605 are each amended to read as follows:

(1) For an organization to qualify for a special license plate under the special license plate approval program created in this chapter, the sponsoring organization must submit documentation ~~((in conjunction with the application))~~ to the department that verifies that the organization is:

(a)(i) A nonprofit organization, as defined in 26 U.S.C. Sec. 501(c)(3). The department may request a copy of an Internal Revenue Service ruling to verify an organization's nonprofit status; and

~~((b))~~ (ii) Located in Washington state and has registered as a charitable organization with the secretary of state's office as required by law; or



(b)(i) A professional sports franchise located in Washington state; and  
(ii) Using the proceeds from a special license plate in conjunction with a nonprofit organization, as defined in 26 U.S.C. Sec. 501(c)(3), solely for the purposes outlined under RCW 46.68.420.

(2) For a governmental body to qualify for a special license plate under the special license plate approval program created in this chapter, a governmental body must be:

(a) A political subdivision including, but not limited to, any county, city, town, municipal corporation, or special purpose taxing district that has the express permission of the political subdivision's executive body to sponsor a special license plate;

(b) A federally recognized tribal government that has received the approval of the executive body of that government to sponsor a special license plate;

(c) A state agency that has received approval from the director of the agency or the department head; or

(d) A community or technical college that has the express permission of the college's board of trustees to sponsor a special license plate.

**Sec. 5.** RCW 46.18.060 and 2012 c 65 s 6 are each amended to read as follows:

(1) The department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(2) Duties of the department include, but are not limited to, the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the joint transportation committee;

(b) Report annually to the joint transportation committee on the special license plate applications that were considered by the department;

(c) Issue approval and rejection notification letters to sponsoring organizations, the executive committee of the joint transportation committee, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The department may submit a recommendation to discontinue a special plate series to the executive committee of the joint transportation committee.

(3) (~~Except as provided in RCW 46.18.245,)~~ In order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, 2013. During this period of time, the department is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005.

(4) The limitations under subsection (3) of this section do not apply to the following special license plates:

(a) 4-H license plates created under RCW 46.18.200;

(b) Gold star license plates created under RCW 46.18.245;

(c) Music Matters license plates created under RCW 46.18.200;

- ~~((e))~~ (d) Seattle Seahawks license plates created under RCW 46.18.200;  
 (e) Seattle Sounders FC license plates created under RCW 46.18.200;  
 (f) State flower license plates created under RCW 46.18.200;  
~~((d))~~ (g) Volunteer firefighter license plates created under RCW 46.18.200.

NEW SECTION. Sec. 6. A new section is added to chapter 46.04 RCW to read as follows:

"Seattle Sounders FC license plates" means special license plates issued under RCW 46.18.200 that display a symbol or artwork recognizing Seattle Sounders FC.

NEW SECTION. Sec. 7. A new section is added to chapter 46.04 RCW to read as follows:

"Seattle Seahawks license plates" means special license plates issued under RCW 46.18.200 that display a symbol or artwork recognizing the Seattle Seahawks.

NEW SECTION. Sec. 8. This act takes effect January 1, 2014.

Passed by the Senate February 6, 2013.

Passed by the House April 18, 2013.

Approved by the Governor May 17, 2013.

Filed in Office of Secretary of State May 17, 2013.

## CHAPTER 287

[Substitute House Bill 1868]

### LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS—HEALTH INSURANCE

AN ACT Relating to providing access to health insurance for certain law enforcement officers' and firefighters' plan 2 members catastrophically disabled in the line of duty; amending RCW 41.26.470; and creating a new section.

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

NEW SECTION. Sec. 1. This act may be known as the Wynn Loiland act.

**Sec. 2.** RCW 41.26.470 and 2010 c 259 s 2 are each amended to read as follows:

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW 41.26.410 through 41.26.550. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three, except under subsection (7) of this section.

(2) Any member who receives an allowance under the provisions of this section shall be subject to such comprehensive medical examinations as required by the department. If such medical examinations reveal that such a member has recovered from the incapacitating disability and the member is no longer entitled to benefits under Title 51 RCW, the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the member at the time of retirement or, if unable to perform the duties of the rank, then, at the member's request, in such other like or lesser rank as may be or

become open and available, the duties of which the member is then able to perform. In no event shall a member previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the member at the date of the retirement for disability. If the department determines that the member is able to return to service, the member is entitled to notice and a hearing. Both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, the administrative procedure act.

(3) Those members subject to this chapter who became disabled in the line of duty on or after July 23, 1989, and who receive benefits under RCW 41.04.500 through 41.04.530 or similar benefits under RCW 41.04.535 shall receive or continue to receive service credit subject to the following:

(a) No member may receive more than one month's service credit in a calendar month.

(b) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(c) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(d) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(e) State contributions shall be as provided in RCW 41.45.060 and 41.45.067.

(f) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred.

(g) The service and compensation credit under this section shall be granted for a period not to exceed six consecutive months.

(h) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

(4)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no such designated person or persons still living at the time of the recipient's death, then to the surviving spouse or domestic partner, or, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse or domestic partner, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of the accumulated

contributions at the time of retirement over all payments made on his or her behalf under this chapter.

(6) A member who becomes disabled in the line of duty, and who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent. A person in receipt of this benefit is a retiree.

(7) A member who becomes disabled in the line of duty shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(8) A member who became disabled in the line of duty before January 1, 2001, and is receiving an allowance under RCW 41.26.430 or subsection (1) of this section shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five, and shall have the allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-three. An additional benefit shall not result in a total monthly benefit greater than that provided in subsection (1) of this section.

(9) A member who is totally disabled in the line of duty is entitled to receive a retirement allowance equal to seventy percent of the member's final average salary. The allowance provided under this subsection shall be offset by:

(a) Temporary disability wage-replacement benefits or permanent total disability benefits provided to the member under Title 51 RCW; and

(b) Federal social security disability benefits, if any;  
so that such an allowance does not result in the member receiving combined benefits that exceed one hundred percent of the member's final average salary. However, the offsets shall not in any case reduce the allowance provided under this subsection below the member's accrued retirement allowance.

A member is considered totally disabled if he or she is unable to perform any substantial gainful activity due to a physical or mental condition that may be expected to result in death or that has lasted or is expected to last at least twelve months. Substantial gainful activity is defined as average earnings in excess of eight hundred sixty dollars a month in 2006 adjusted annually as determined by the director based on federal social security disability standards. The department may require a person in receipt of an allowance under this subsection to provide any financial records that are necessary to determine continued eligibility for such an allowance. A person in receipt of an allowance under this subsection whose earnings exceed the threshold for substantial gainful activity shall have their benefit converted to a line-of-duty disability retirement allowance as provided in subsection (7) of this section.

Any person in receipt of an allowance under the provisions of this section is subject to comprehensive medical examinations as may be required by the department under subsection (2) of this section in order to determine continued eligibility for such an allowance.

(10)(a) In addition to the retirement allowance provided in subsection (9) of this section, the retirement allowance of a member who is totally disabled in the line of duty shall include reimbursement for any payments made by the member after June 10, 2010, for premiums on employer-provided medical insurance, insurance authorized by the consolidated omnibus budget reconciliation act of 1985 (COBRA), medicare part A (hospital insurance), and medicare part B (medical insurance). A member who is entitled to medicare must enroll and maintain enrollment in both medicare part A and medicare part B in order to remain eligible for the reimbursement provided in this subsection. The legislature reserves the right to amend or repeal the benefits provided in this subsection in the future and no member or beneficiary has a contractual right to receive any distribution not granted prior to that time.

(b) The retirement allowance of a member who is not eligible for reimbursement provided in (a) of this subsection shall include reimbursement for any payments made after June 30, 2013, for premiums on other medical insurance. However, in no instance shall the reimbursement exceed the amount reimbursed for premiums authorized by the consolidated omnibus budget reconciliation act of 1985 (COBRA).

Passed by the House March 4, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

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## CHAPTER 288

[Substitute House Bill 1075]

### FISHING—PUGET SOUND DUNGENESS CRAB FISHERY LICENSES

AN ACT Relating to the number of Puget Sound Dungeness crab fishery licenses that one vessel may be designated to carry; and amending RCW 77.65.100 and 77.65.130.

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

**Sec. 1.** RCW 77.65.100 and 2005 c 82 s 1 are each amended to read as follows:

(1) This section applies to all commercial fishery licenses, delivery licenses, and charter licenses.

~~((+))~~ (2) An applicant for a license subject to this section may designate a vessel to be used with the license. Except for emergency salmon delivery licenses, the director may issue a license regardless of whether the applicant designates a vessel. An applicant may designate no more than one vessel on a license subject to this section.

~~((2))~~ (3) A license for a fishery that requires a vessel authorizes no taking or delivery of food fish or shellfish unless a vessel is designated on the license. A delivery license authorizes no delivery of food fish or shellfish unless a vessel is designated on the license.

~~((3))~~ (4) No vessel may be designated on more than one commercial fishery license unless the licenses are for different fisheries, except:

(a) The same vessel may be designated on two of the following licenses, provided the licenses are owned by the same licensee:

(i) Shrimp pot-Puget Sound fishery license;

- (ii) Sea cucumber dive fishery license; and
- (iii) Sea urchin dive fishery license.

(b) Subject to the provisions of RCW 77.65.130, the same vessel may be designated on ~~((two))~~ three Puget Sound Dungeness crab fishery licenses (~~(subject to the provision of RCW 77.65.130))~~ issued pursuant to RCW 77.70.110.

~~((4))~~ (5) No vessel may be designated on more than one delivery license, on more than one salmon charter license, or on more than one nonsalmon charter license.

**Sec. 2.** RCW 77.65.130 and 2005 c 82 s 2 are each amended to read as follows:

(1) A person who holds a commercial fishery license or a delivery license may operate the vessel designated on the license. A person who is not the license holder may operate the vessel designated on the license only if:

- (a) The person holds an alternate operator license issued by the director; and
- (b) The person is designated as an alternate operator on the underlying commercial fishery license or delivery license under RCW 77.65.110.

(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) No individual may hold more than one alternate operator license. An individual who holds an alternate operator license may be designated as an alternate operator on an unlimited number of commercial fishery licenses or delivery licenses under RCW 77.65.110.

(4) An individual who holds ~~((two))~~ multiple Dungeness crab—Puget Sound fishery licenses issued pursuant to RCW 77.70.110 may operate the licenses on one vessel if the license holder or alternate operator is on the vessel. The department shall allow a license holder to operate up to one hundred crab pots for each license.

(5) Two persons owning separate Dungeness crab—Puget Sound fishery licenses may operate ~~((both))~~ their licenses on one vessel if the license holders or their alternate operators are on the vessel.

(6) As used in this section, to "operate" means to control the deployment or removal of fishing gear from state waters while aboard a vessel or to operate a vessel delivering food fish or shellfish taken in offshore waters to a port within the state.

Passed by the House March 6, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

## CHAPTER 289

[Engrossed Second Substitute House Bill 1114]

### CRIMINAL INCOMPETENCY—CIVIL COMMITMENT—CRIMINAL INSANITY

AN ACT Relating to criminal incompetency, civil commitment, and commitments based on criminal insanity; amending RCW 10.77.086, 10.77.270, 71.05.280, 71.05.320, 71.05.425, and 10.77.200; and creating new sections.

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

**NEW SECTION. Sec. 1.** The legislature finds that persons with a mental illness or developmental disability are more likely to be victimized by crime than to be perpetrators of crime. The legislature further finds that there are a small number of individuals who commit repeated violent acts against others while suffering from the effects of a mental illness and/or developmental disability that both contributes to their criminal behaviors and renders them legally incompetent to be held accountable for those behaviors. The legislature further finds that the primary statutory mechanisms designed to protect the public from violent behavior, either criminal commitment to a corrections institution, or long-term commitment as not guilty by reason of insanity, are unavailable due to the legal incompetence of these individuals to stand trial. The legislature further finds that the existing civil system of short-term commitments under the Washington's involuntary treatment act is insufficient to protect the public from these violent acts. Finally, the legislature finds that changes to the involuntary treatment act to account for this small number of individuals is necessary in order to serve Washington's compelling interest in public safety and to provide for the proper care of these individuals.

**Sec. 2.** RCW 10.77.086 and 2012 c 256 s 6 are each amended to read as follows:

(1)(a) If the defendant is charged with a felony and determined to be incompetent, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense, or has been determined unlikely to regain competency pursuant to RCW 10.77.084(1)(b), but in any event for a period of no longer than ninety days, the court:

(i) Shall commit the defendant to the custody of the secretary who shall place such defendant in an appropriate facility of the department for evaluation and treatment; or

(ii) May alternatively order the defendant to undergo evaluation and treatment at some other facility as determined by the department, or under the guidance and control of a professional person.

(b) For a defendant whose highest charge is a class C felony, or a class B felony that is not classified as violent under RCW 9.94A.030, the maximum time allowed for the initial period of commitment for competency restoration is forty-five days.

(2) On or before expiration of the initial period of commitment under subsection (1) of this section the court shall conduct a hearing, at which it shall determine whether or not the defendant is incompetent.

(3) If the court finds by a preponderance of the evidence that a defendant charged with a felony is incompetent, the court shall have the option of extending the order of commitment or alternative treatment for an additional period of ninety days, but the court must at the time of extension set a date for a prompt hearing to determine the defendant's competency before the expiration of the second restoration period. The defendant, the defendant's attorney, or the prosecutor has the right to demand that the hearing be before a jury. No extension shall be ordered for a second or third restoration period as provided in subsection (4) of this section if the defendant's incompetence has been determined by the secretary to be solely the result of a developmental disability

which is such that competence is not reasonably likely to be regained during an extension.

(4) For persons charged with a felony, at the hearing upon the expiration of the second restoration period or at the end of the first restoration period, in the case of a defendant with a developmental disability, if the jury or court finds that the defendant is incompetent, the charges shall be dismissed without prejudice, and the court shall ~~((either order the release of the defendant or))~~ order the defendant be committed to a state hospital ~~((or secure mental health facility))~~ as defined in RCW 72.23.010 for up to seventy-two hours starting from admission to the facility, excluding Saturdays, Sundays, and holidays, for evaluation for the purpose of filing a civil commitment petition under chapter 71.05 RCW. The criminal charges shall not be dismissed if the court or jury finds that: (a) The defendant (i) is a substantial danger to other persons; or (ii) presents a substantial likelihood of committing criminal acts jeopardizing public safety or security; and (b) there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for up to an additional six months.

**Sec. 3.** RCW 10.77.270 and 2010 c 263 s 1 are each amended to read as follows:

(1) The secretary shall establish an independent public safety review panel for the purpose of advising the secretary and the courts with respect to persons who have been found not guilty by reason of insanity, or persons committed under the involuntary treatment act where the court has made a special finding under RCW 71.05.280(3)(b). The panel shall provide advice regarding all recommendations to the secretary, decisions by the secretary, or actions pending in court: (a) For a change in commitment status; (b) to allow furloughs or temporary leaves accompanied by staff; (c) not to seek further commitment terms under RCW 71.05.320; or ~~((e))~~ (d) to permit movement about the grounds of the treatment facility, with or without the accompaniment of staff.

(2) The members of the public safety review panel shall be appointed by the governor for a renewable term of three years and shall include the following:

- (a) A psychiatrist;
- (b) A licensed clinical psychologist;
- (c) A representative of the department of corrections;
- (d) A prosecutor or a representative of a prosecutor's association;
- (e) A representative of law enforcement or a law enforcement association;
- (f) A consumer and family advocate representative; and
- (g) A public defender or a representative of a defender's association.

(3) Thirty days prior to issuing a recommendation for conditional release under RCW 10.77.150 or forty-five days prior to issuing a recommendation for release under RCW 10.77.200, the secretary shall submit its recommendation with the committed person's application and the department's risk assessment to the public safety review panel. The public safety review panel shall complete an independent assessment of the public safety risk entailed by the secretary's proposed conditional release recommendation or release recommendation and provide this assessment in writing to the secretary. The public safety review panel may, within funds appropriated for this purpose, request additional evaluations of the committed person. The public safety review panel may



indicate whether it is in agreement with the secretary's recommendation, or whether it would issue a different recommendation. The secretary shall provide the panel's assessment when it is received along with any supporting documentation, including all previous reports of evaluations of the committed person in the person's hospital record, to the court, prosecutor in the county that ordered the person's commitment, and counsel for the committed person.

(4) The secretary shall notify the public safety review panel at appropriate intervals concerning any changes in the commitment or custody status of persons found not guilty by reason of insanity, or persons committed under the involuntary treatment act where the court has made a special finding under RCW 71.05.280(3)(b). The panel shall have access, upon request, to a committed person's complete hospital record, and any other records deemed necessary by the public safety review panel.

(5) The department shall provide administrative and financial support to the public safety review panel. The department, in consultation with the public safety review panel, may adopt rules to implement this section.

(6) By December 1, 2014, the public safety review panel shall report to the appropriate legislative committees the following:

(a) Whether the public safety review panel has observed a change in statewide consistency of evaluations and decisions concerning changes in the commitment status of persons found not guilty by reason of insanity;

(b) Whether the public safety review panel should be given the authority to make release decisions and monitor release conditions;

(c) Whether further changes in the law are necessary to enhance public safety when incompetency prevents operation of the criminal justice system and long-term commitment of the criminally insane; and

(d) Any other issues the public safety review panel deems relevant.

**Sec. 4.** RCW 71.05.280 and 2008 c 213 s 6 are each amended to read as follows:

At the expiration of the fourteen-day period of intensive treatment, a person may be confined for further treatment pursuant to RCW 71.05.320 if:

(1) Such person after having been taken into custody for evaluation and treatment has threatened, attempted, or inflicted: (a) Physical harm upon the person of another or himself or herself, or substantial damage upon the property of another, and (b) as a result of mental disorder presents a likelihood of serious harm; or

(2) Such person was taken into custody as a result of conduct in which he or she attempted or inflicted physical harm upon the person of another or himself or herself, or substantial damage upon the property of others, and continues to present, as a result of mental disorder, a likelihood of serious harm; or

(3) Such person has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.086(4), and has committed acts constituting a felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts.

(a) In any proceeding pursuant to this subsection it shall not be necessary to show intent, willfulness, or state of mind as an element of the crime;

(b) For any person subject to commitment under this subsection where the charge underlying the finding of incompetence is for a felony classified as

violent under RCW 9.94A.030, the court shall determine whether the acts the person committed constitute a violent offense under RCW 9.94A.030; or

(4) Such person is gravely disabled.

**Sec. 5.** RCW 71.05.320 and 2009 c 323 s 2 are each amended to read as follows:

(1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment in a facility certified for one hundred eighty day treatment by the department.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment.

(3) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated mental health professional, files a new petition for involuntary treatment on the grounds that the committed person:

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of mental disorder or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder or developmental disability a likelihood of serious harm; or

(c)(i) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability continues to present((s)) a substantial likelihood of repeating ((similar)) acts ((~~considering~~)) similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety. (ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty day period whenever the petition presents prima facie evidence that the person continues to suffer from a mental disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert

opinion that the person's condition has so changed such that the mental disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge from the state hospital; or

(d) Continues to be gravely disabled.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

(4) For a person committed under subsection (2) of this section who has been remanded to a period of less restrictive treatment, in addition to the grounds specified in subsection (3) of this section, the designated mental health professional may file a new petition for continued less restrictive treatment if:

(a) The person was previously committed by a court to detention for involuntary mental health treatment during the thirty-six months that preceded the person's initial detention date during the current involuntary commitment cycle, excluding any time spent in a mental health facility or in confinement as a result of a criminal conviction;

(b) In view of the person's treatment history or current behavior, the person is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive treatment; and

(c) Outpatient treatment that would be provided under a less restrictive treatment order is necessary to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time.

(5) A new petition for involuntary treatment filed under subsection (3) or (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment. At the end of the one hundred eighty day period of commitment, the committed person shall be released unless a petition for another one hundred eighty day period of continued treatment is filed and heard in the same manner as provided in this section. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment. However, a commitment is not permissible under subsection (4) of this section if thirty-six months have passed since the last date of discharge from detention for inpatient treatment that preceded the current less restrictive alternative order, nor shall a commitment under subsection (4) of this section be permissible if the likelihood of serious harm in subsection (4)(c) of this section is based solely on harm to the property of others.

(7) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length.

**Sec. 6.** RCW 71.05.425 and 2011 c 305 s 5 are each amended to read as follows:

(1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) to the following:

(i) The chief of police of the city, if any, in which the person will reside; ~~((and))~~

(ii) The sheriff of the county in which the person will reside; and

(iii) The prosecuting attorney of the county in which the criminal charges against the committed person were dismissed.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3)(c) or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings;

(iii) Any person specified in writing by the prosecuting attorney. Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter; and

(iv) The chief of police of the city, if any, and the sheriff of the county, if any, which had jurisdiction of the person on the date of the applicable offense.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person escaped and in which the person resided immediately before the person's arrest and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding

commitment under RCW 71.05.280(3) or 71.05.320(3) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.390(18). If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, state registered domestic partner, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony.

**Sec. 7.** RCW 10.77.200 and 2010 c 263 s 8 are each amended to read as follows:

(1) Upon application by the committed or conditionally released person, the secretary shall determine whether or not reasonable grounds exist for release. In making this determination, the secretary may consider the reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and other reports and evaluations provided by professionals familiar with the case. If the secretary approves the release he or she then shall authorize the person to petition the court.

(2) In instances in which persons have not made application for release, but the secretary believes, after consideration of the reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and other reports and evaluations provided by professionals familiar with the case, that reasonable grounds exist for release, the secretary may petition the court. If the secretary petitions the court for release under this subsection, notice of the petition must be provided to the person who is the subject of the petition and to his or her attorney.

(3) The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for release, shall within forty-five days order a hearing. Continuance of the hearing date shall only be allowed for good cause shown. The prosecuting attorney shall represent the state, and shall have the right to have the ~~((petitioner))~~ person who is the subject of the petition examined by an expert or professional person of the prosecuting attorney's choice. If the secretary is the petitioner, the attorney general shall represent the secretary. If the ~~((petitioner))~~ person who is the subject of the petition is indigent, and the person so requests, the court shall appoint a qualified expert or professional person to examine him or her. If the ~~((petitioner))~~ person who is the subject of the petition has a developmental disability, the examination shall be performed by a developmental disabilities professional. The hearing shall be

before a jury if demanded by either the petitioner or the prosecuting attorney. The burden of proof shall be upon the petitioner to show by a preponderance of the evidence that the ~~((petitioner))~~ person who is the subject of the petition no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions. If the person who is the subject of the petition will be transferred to a state correctional institution or facility upon release to serve a sentence for any class A felony, the petitioner must show that the person's mental disease or defect is manageable within a state correctional institution or facility, but must not be required to prove that the person does not present either a substantial danger to other persons, or a substantial likelihood of committing criminal acts jeopardizing public safety or security, if released.

(4) For purposes of this section, a person affected by a mental disease or defect in a state of remission is considered to have a mental disease or defect requiring supervision when the disease may, with reasonable medical probability, occasionally become active and, when active, render the person a danger to others. Upon a finding that the ~~((petitioner))~~ person who is the subject of the petition has a mental disease or defect in a state of remission under this subsection, the court may deny release, or place or continue such a person on conditional release.

(5) Nothing contained in this chapter shall prohibit the patient from petitioning the court for release or conditional release from the institution in which he or she is committed. The petition shall be served upon the court, the prosecuting attorney, and the secretary. Upon receipt of such petition, the secretary shall develop a recommendation as provided in subsection (1) of this section and provide the secretary's recommendation to all parties and the court. The issue to be determined on such proceeding is whether the ~~((petitioner))~~ patient, as a result of a mental disease or defect, is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(6) Nothing contained in this chapter shall prohibit the committed person from petitioning for release by writ of habeas corpus.

NEW SECTION. Sec. 8. 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. 9. If specific funding for the purposes of sections 3 through 5 of this act, referencing sections 3 through 5 of this act by bill or chapter number and section number, is not provided by June 30, 2013, in the omnibus appropriations act, sections 3 through 5 of this act are null and void.

Passed by the House April 22, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

CHAPTER 290

[Substitute House Bill 1200]

SEAFOOD LABELING

AN ACT Relating to labeling of seafood; amending RCW 69.04.060, 69.04.928, 69.04.932, 69.04.933, 69.04.934, and 69.04.935; reenacting and amending RCW 9.94A.515; adding a new section to chapter 69.04 RCW; repealing RCW 69.04.315; and prescribing penalties.

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

**Sec. 1.** RCW 69.04.060 and 2003 c 53 s 314 are each amended to read as follows:

Except as otherwise provided in this chapter, any person who violates any provision of RCW 69.04.040 is guilty of a misdemeanor and shall on conviction thereof be subject to the following penalties:

(1) A fine of not more than two hundred dollars; or

(2) If the violation is committed after a conviction of such person under this section has become final, imprisonment for not more than thirty days, or a fine of not more than five hundred dollars, or both such imprisonment and fine.

**Sec. 2.** RCW 69.04.928 and 2002 c 301 s 11 are each amended to read as follows:

The department of agriculture (~~must~~) may:

(1) Develop a pamphlet that generally describes the labeling requirements for seafood as set forth in this chapter;

(2) Provide ~~(an adequate quantity of)~~ to the department of fish and wildlife a website link to the pamphlet ~~(s to the department of fish and wildlife to distribute with the issuance of a direct retail endorsement under RCW 77.65.510); and~~

(3) Make the pamphlet available to holders of any license associated with buying and selling fish or shellfish under chapter 77.65 RCW.

**Sec. 3.** RCW 69.04.932 and 1993 c 282 s 2 are each amended to read as follows:

~~((Unless the context clearly requires otherwise,))~~ The definitions in this section apply throughout ~~(RCW 69.04.933 through 69.04.935))~~ this chapter unless the context clearly requires otherwise.

(1) "Commercially caught" means wild or hatchery-raised salmon harvested in the wild by commercial fishers. The term does not apply to farmed fish raised exclusively by private sector aquaculture.

(2) "Food fish" means fresh or saltwater finfish and other forms of aquatic animal life other than crustaceans, mollusks, birds, and mammals where the animal life is intended for human consumption.

(3) "Salmon" means all species of the genus Oncorhynchus, except those classified as game fish in ~~(Title 77)~~ RCW 77.08.020, and includes:

SCIENTIFIC NAME	COMMON NAME
Oncorhynchus tshawytscha	Chinook salmon or king salmon
Oncorhynchus kisutch	Coho salmon or silver salmon
Oncorhynchus keta	Chum or "keta" salmon
Oncorhynchus gorbuscha	Pink salmon
Oncorhynchus nerka	Sockeye or "red" salmon
Salmo salar (in other than its landlocked form)	Atlantic salmon

~~((2) "Commercially caught" means salmon harvested by commercial fishers.)) (4) "Shellfish" means crustaceans and all mollusks where the animal life is intended for human consumption.~~

**Sec. 4.** RCW 69.04.933 and 1993 c 282 s 3 are each amended to read as follows:

~~((With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell)) (1) It is unlawful to knowingly sell or offer for sale at wholesale or retail any fresh ~~((or)),~~ frozen ~~((salmon)),~~ or processed food fish or ~~((cultured aquatic salmon))~~ shellfish without identifying for the buyer at the point of sale the species of ~~((salmon))~~ food fish or shellfish by its common name ~~((to the buyer at the point of sale)),~~ such that the buyer can make an informed purchasing decision ~~((in purchasing))~~ for his or her protection, health, and safety. ~~((A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about the species of salmon and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded.))~~~~

(2) It is unlawful to knowingly label or offer for sale any food fish designated as halibut, with or without additional descriptive words, unless the food fish product is *Hippoglossus hippoglossus* or *Hippoglossus stenolepis*.

(3) This section does not apply to salmon that is minced, pulverized, coated with batter, or breaded.

(4) This section does not apply to a commercial fisher properly licensed under chapter 77.65 RCW and engaged in sales of fish to a fish buyer.

(5) A violation of this section constitutes misbranding under section 7 of this act and is punishable as a misdemeanor, gross misdemeanor, or felony depending on the fair market value of the fish or shellfish involved in the violation.

(6)(a) The common names for salmon species are as listed in RCW 69.04.932.

(b) The common names for all other food fish and shellfish are the common names for food fish and shellfish species as defined by rule of the director. If the common name for a species is not defined by rule of the director, then the common name is the acceptable market name or common name as provided in the United States food and drug administration's publication "Seafood list - FDA's guide to acceptable market names for seafood sold in interstate commerce," as the publication existed on the effective date of this section.

(7) For the purposes of this section, "processed" means food fish or shellfish processed by heat for human consumption, such as food fish or shellfish that is kippered, smoked, boiled, canned, cleaned, portioned, or prepared for sale or attempted sale for human consumption.

(8) Nothing in this section precludes using additional descriptive language or trade names to describe food fish or shellfish as long as the labeling requirements in this section are met.

**Sec. 5.** RCW 69.04.934 and 2003 c 39 s 29 are each amended to read as follows:

~~((With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen:))~~



(1) It is unlawful to knowingly sell or offer for sale at wholesale or retail any fresh, frozen, or processed salmon without identifying private sector cultured aquatic salmon (~~((without identifying the))~~) or salmon products as farm-raised salmon(~~(or~~

~~(2))~~, or identifying commercially caught salmon (~~((designated as food fish under Title 77 RCW without identifying the))~~) or salmon products as commercially caught salmon.

(2) Identification of the products under subsection~~((s))~~ (1) ~~((and (2)))~~ of this section ~~((shall))~~ must be made to the buyer at the point of sale such that the buyer can make an informed purchasing decision ~~((in purchasing))~~ for his or her protection, health, and safety.

(3) A ~~((person knowingly violating))~~ violation of this section ((is guilty of)) constitutes misbranding under ((this chapter. A person who receives misleading or erroneous information about whether the salmon is farm-raised or commercially caught, and subsequently inaccurately identifies salmon shall not be guilty of misbranding)) section 7 of this act and is punishable as a misdemeanor, gross misdemeanor, or felony depending on the fair market value of the fish or shellfish involved in the violation.

(4) This section ~~((shall))~~ does not apply to salmon that is minced, pulverized, coated with batter, or breaded.

(5) This section does not apply to a commercial fisher properly licensed under chapter 77.65 RCW and lawfully engaged in the sale of fish to a fish buyer.

(6) Nothing in this section precludes using additional descriptive language or trade names to describe food fish or shellfish as long as the labeling requirements of this section are met.

**Sec. 6.** RCW 69.04.935 and 1994 c 264 s 39 are each amended to read as follows:

To promote honesty and fair dealing for consumers and to protect public health and safety, the director, in consultation with the director of the department of fish and wildlife, ~~((shall))~~ may adopt rules as necessary to:

(1) ~~((Fixing and establishing))~~ Establish and implement a reasonable definition and identification standard ~~((of identity for salmon for purposes of identifying and selling salmon))~~ for species of food fish and shellfish that are sold for human consumption;

(2) ~~((Enforcing RCW 69.04.933 and 69.04.934))~~ Provide procedures for enforcing this chapter's food fish and shellfish labeling requirements and misbranding prohibitions.

**NEW SECTION. Sec. 7.** A new section is added to chapter 69.04 RCW to read as follows:

(1) A person is guilty of unlawful misbranding of food fish or shellfish in the third degree if the person commits an act that violates RCW 69.04.933 or 69.04.934, and the misbranding involves food fish or shellfish with a fair market value up to five hundred dollars. Unlawful misbranding of food fish or shellfish in the third degree is a misdemeanor.

(2) A person is guilty of unlawful misbranding of food fish or shellfish in the second degree if the person commits an act that violates RCW 69.04.933 or 69.04.934, and the misbranding involves food fish or shellfish with a fair market

value of five hundred dollars or more, up to five thousand dollars. Unlawful misbranding of food fish or shellfish in the second degree is a gross misdemeanor.

(3) A person is guilty of unlawful misbranding of food fish or shellfish in the first degree if the person commits an act that violates RCW 69.04.933 or 69.04.934, and the misbranding involves food fish or shellfish with a fair market value of five thousand dollars or more. Unlawful misbranding of food fish or shellfish in the first degree is a class C felony.

**Sec. 8.** RCW 9.94A.515 and 2012 c 176 s 3 and 2012 c 162 s 1 are each reenacted and amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- XVI Aggravated Murder 1 (RCW 10.95.020)
- XV Homicide by abuse (RCW 9A.32.055)
  - Malicious explosion 1 (RCW 70.74.280(1))
  - Murder 1 (RCW 9A.32.030)
- XIV Murder 2 (RCW 9A.32.050)
  - Trafficking 1 (RCW 9A.40.100(1))
- XIII Malicious explosion 2 (RCW 70.74.280(2))
  - Malicious placement of an explosive 1 (RCW 70.74.270(1))
- XII Assault 1 (RCW 9A.36.011)
  - Assault of a Child 1 (RCW 9A.36.120)
  - Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
  - Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
  - Rape 1 (RCW 9A.44.040)
  - Rape of a Child 1 (RCW 9A.44.073)
  - Trafficking 2 (RCW 9A.40.100(2))
- XI Manslaughter 1 (RCW 9A.32.060)
  - Rape 2 (RCW 9A.44.050)
  - Rape of a Child 2 (RCW 9A.44.076)
  - Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- X Child Molestation 1 (RCW 9A.44.083)

- Criminal Mistreatment 1 (RCW 9A.42.020)
- Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
- Kidnapping 1 (RCW 9A.40.020)
- Leading Organized Crime (RCW 9A.82.060(1)(a))
- Malicious explosion 3 (RCW 70.74.280(3))
- Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Abandonment of Dependent Person 1 (RCW 9A.42.060)
- Assault of a Child 2 (RCW 9A.36.130)
- Explosive devices prohibited (RCW 70.74.180)
- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- VIII Arson 1 (RCW 9A.48.020)
- Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Theft of Ammonia (RCW 69.55.010)

- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.060(1))
- Unlawful Possession of a Firearm in the first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW 9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)

- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of Dependent Person 2 (RCW 9A.42.070)
  - Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
  - Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
  - Child Molestation 3 (RCW 9A.44.089)
  - Criminal Mistreatment 2 (RCW 9A.42.030)
  - Custodial Sexual Misconduct 1 (RCW 9A.44.160)
  - Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))
  - Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
  - Driving While Under the Influence (RCW 46.61.502(6))
  - Extortion 1 (RCW 9A.56.120)
  - Extortionate Extension of Credit (RCW 9A.82.020)
  - Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
  - Incest 2 (RCW 9A.64.020(2))

- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)

- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Malicious Harassment (RCW 9A.36.080)
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(2))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))

Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)

Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))

Willful Failure to Return from Furlough (RCW 72.66.060)

III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))

Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))

Assault of a Child 3 (RCW 9A.36.140)

Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))

Burglary 2 (RCW 9A.52.030)

Communication with a Minor for Immoral Purposes (RCW 9.68A.090)

Criminal Gang Intimidation (RCW 9A.46.120)

Custodial Assault (RCW 9A.36.100)

Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))

Escape 2 (RCW 9A.76.120)

Extortion 2 (RCW 9A.56.130)

Harassment (RCW 9A.46.020)

Intimidating a Public Servant (RCW 9A.76.180)

Introducing Contraband 2 (RCW 9A.76.150)

Malicious Injury to Railroad Property (RCW 81.60.070)

Mortgage Fraud (RCW 19.144.080)



- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
- Organized Retail Theft 1 (RCW 9A.56.350(2))
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Retail Theft with Extenuating Circumstances 1 (RCW 9A.56.360(2))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Theft with the Intent to Resell 1 (RCW 9A.56.340(2))
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b))
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful Misbranding of Food Fish or Shellfish 1 (section 7(3) of this act)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b))

- Unlawful Trafficking in Fish, Shellfish,  
or Wildlife 1 (RCW  
77.15.260(3)(b))
- Unlawful Use of a Nondesignated  
Vessel (RCW 77.15.530(4))
- Vehicular Assault, by the operation or  
driving of a vehicle with disregard  
for the safety of others (RCW  
46.61.522)
- Willful Failure to Return from Work  
Release (RCW 72.65.070)
- II Commercial Fishing Without a License  
1 (RCW 77.15.500(3)(b))
- Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Engaging in Fish Dealing Activity  
Unlicensed 1 (RCW 77.15.620(3))
- Escape from Community Custody  
(RCW 72.09.310)
- Failure to Register as a Sex Offender  
(second or subsequent offense)  
(RCW 9A.44.132)
- Health Care False Claims (RCW  
48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial  
Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW  
9A.48.070)
- Organized Retail Theft 2 (RCW  
9A.56.350(3))
- Possession of Stolen Property 1 (RCW  
9A.56.150)
- Possession of a Stolen Vehicle (RCW  
9A.56.068)
- Retail Theft with Extenuating  
Circumstances 2 (RCW  
9A.56.360(3))
- Theft 1 (RCW 9A.56.030)

- Theft of a Motor Vehicle (RCW 9A.56.065)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Theft with the Intent to Resell 2 (RCW 9A.56.340(3))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Unlawful Purchase or Use of a License (RCW 77.15.650(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a))
- Voyeurism (RCW 9A.44.115)
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)

- Spotlighting Big Game 1 (RCW 77.15.450(3)(b))
- Suspension of Department Privileges 1 (RCW 77.15.670(3)(b))
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))
- Transaction of insurance business beyond the scope of licensure (RCW 48.17.063)
- Unlawful Fish and Shellfish Catch Accounting (RCW 77.15.630(3)(b))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment Instruments (RCW 9A.56.320)
- Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
- Unlawful Production of Payment Instruments (RCW 9A.56.320)
- Unlawful Release of Deleterious Exotic Wildlife (RCW 77.15.250(2)(b))
- Unlawful Trafficking in Food Stamps (RCW 9.91.142)
- Unlawful Use of Food Stamps (RCW 9.91.144)
- Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b))

Unlawful Use of Prohibited Aquatic  
Animal Species (RCW  
77.15.253(3))

Vehicle Prowl 1 (RCW 9A.52.095)

Violating Commercial Fishing Area or  
Time 1 (RCW 77.15.550(3)(b))

**NEW SECTION. Sec. 9.** RCW 69.04.315 (Halibut—Misbranding by failure to show proper name) and 1967 ex.s. c 79 s 1 are each repealed.

Passed by the House February 18, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

**CHAPTER 291**

[Engrossed Substitute House Bill 1245]

**VESSELS—STATE WATERS—DERELICT AND ABANDONED VESSELS**

AN ACT Relating to derelict and abandoned vessels in state waters; amending RCW 88.02.640, 79.100.100, 79A.65.020, 79.100.130, 43.19.1919, 28B.10.029, 88.02.380, 88.02.340, 88.02.550, 79.100.120, 90.56.410, 79.100.040, 79.100.060, 88.26.020, and 43.21B.305; reenacting and amending RCW 43.21B.110 and 43.21B.110; adding a new section to chapter 43.19 RCW; adding new sections to chapter 43.30 RCW; adding new sections to chapter 77.12 RCW; adding new sections to chapter 79A.05 RCW; adding new sections to chapter 47.01 RCW; adding new sections to chapter 35.21 RCW; adding new sections to chapter 35A.21 RCW; adding new sections to chapter 36.32 RCW; adding new sections to chapter 53.08 RCW; adding new sections to chapter 43.21A RCW; adding new sections to chapter 28B.10 RCW; adding new sections to chapter 79.100 RCW; creating new sections; prescribing penalties; providing effective dates; and providing expiration dates.

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

**Sec. 1.** RCW 88.02.640 and 2012 c 74 s 16 are each amended to read as follows:

(1) In addition to any other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge the following vessel fees and surcharge:

FEE	AMOUNT	AUTHORITY	DISTRIBUTION
(a) Dealer temporary permit	\$5.00	RCW 88.02.800(2)	General fund
(b) Derelict vessel and invasive species removal	Subsection (3) of this section	Subsection (3) of this section	Subsection (3) of this section
(c) Derelict vessel removal surcharge	\$1.00	Subsection (4) of this section	Subsection (4) of this section
(d) Duplicate certificate of title	\$1.25	RCW 88.02.530(1)(c)	General fund
(e) Duplicate registration	\$1.25	RCW 88.02.590(1)(c)	General fund
(f) Filing	RCW 46.17.005	RCW 88.02.560(2)	RCW 46.68.400
(g) License plate technology	RCW 46.17.015	RCW 88.02.560(2)	RCW 46.68.370

(h) License service	RCW 46.17.025	RCW 88.02.560(2)	RCW 46.68.220
(i) Nonresident vessel permit	\$25.00	RCW 88.02.620(3)	Subsection (5) of this section
(j) Quick title service	\$50.00	RCW 88.02.540(3)	Subsection (7) of this section
(k) Registration	\$10.50	RCW 88.02.560(2)	RCW 88.02.650
(l) Replacement decal	\$1.25	RCW 88.02.595(1)(c)	General fund
(m) Title application	\$5.00	RCW 88.02.515	General fund
(n) Transfer	\$1.00	RCW 88.02.560(7)	General fund
(o) Vessel visitor permit	\$30.00	RCW 88.02.610(3)	Subsection (6) of this section

(2) The five dollar dealer temporary permit fee required in subsection (1) of this section must be credited to the payment of registration fees at the time application for registration is made.

~~(3)((a))~~ The derelict vessel and invasive species removal fee required in subsection (1) of this section is five dollars and must be distributed as follows:

~~((b)) (a)~~ One dollar and fifty cents must be deposited in the aquatic invasive species prevention account created in RCW 77.12.879;

~~((b)) (b)~~ One dollar must be deposited into the aquatic algae control account created in RCW 43.21A.667;

~~((b)) (c)~~ Fifty cents must be deposited into the aquatic invasive species enforcement account created in RCW 43.43.400; and

~~((b)) (d)~~ Two dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100.

~~((b) If the department of natural resources indicates that the balance of the derelict vessel removal account, not including any transfer or appropriation of funds into the account or funds deposited into the account collected under subsection (5) of this section reaches one million dollars as of March 1st of any year, the collection of the two dollars of the derelict vessel and invasive species removal fee that is deposited into the derelict vessel removal account as authorized in (a)(iv) of this subsection must be suspended for the following fiscal year.))~~

~~(4) ((Until January 1, 2014))~~ In addition to other fees required in this section, an annual derelict vessel removal surcharge of one dollar must be charged with each vessel registration. The surcharge(~~(=~~

~~(a))~~ is to address the significant backlog of derelict vessels accumulated in Washington (~~(state)~~) waters that pose a threat to the health and safety of the people and to the environment(~~(=~~

~~(b) Is to be used only for the removal of vessels that are less than seventy-five feet in length;))~~ and

~~((c))~~ must be deposited into the derelict vessel removal account created in RCW 79.100.100.

(5) The twenty-five dollar nonresident vessel permit fee must be paid by the vessel owner to the department for the cost of providing the identification document by the department. Any moneys remaining from the fee after the payment of costs must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650.

(6) The thirty dollar vessel visitor permit fee must be distributed as follows:

(a) Five dollars must be deposited in the derelict vessel removal account created in RCW 79.100.100;

(b) The department may keep an amount to cover costs for providing the vessel visitor permit;

(c) Any moneys remaining must be allocated to counties by the state treasurer for approved boating safety programs under RCW 88.02.650; and

(d) Any fees required for licensing agents under RCW 46.17.005 are in addition to any other fee or tax due for the titling and registration of vessels.

(7)(a) The fifty dollar quick title service fee must be distributed as follows:

(i) If the fee is paid to the director, the fee must be deposited to the general fund.

(ii) If the fee is paid to the participating county auditor or other agent or subagent appointed by the director, twenty-five dollars must be deposited to the general fund. The remainder must be retained by the county treasurer in the same manner as other fees collected by the county auditor.

(b) For the purposes of this subsection, "quick title" has the same meaning as in RCW 88.02.540.

**Sec. 2.** RCW 79.100.100 and 2010 c 161 s 1161 are each amended to read as follows:

(1)(a) The derelict vessel removal account is created in the state treasury. All receipts from RCW 79.100.050 and 79.100.060 and those moneys specified in RCW 88.02.640 must be deposited into the account. The account is authorized to receive fund transfers and appropriations from the general fund, deposits from the derelict vessel removal surcharge under RCW 88.02.640(4), as well as gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this chapter and expend the same or any income according to the terms of the gifts, grants, or endowments provided those terms do not conflict with any provisions of this section or any guidelines developed to prioritize reimbursement of removal projects associated with this chapter.

(b) Moneys in the account may only be spent after appropriation. Expenditures from the account (~~((must))~~ may only be used by the department for developing and administering the vessel turn-in program created in section 42 of this act and to reimburse authorized public entities for up to ninety percent of the total reasonable and auditable administrative, removal, disposal, and environmental damage costs of abandoned or derelict vessels when the previous owner is either unknown after a reasonable search effort or insolvent. Reimbursement may not be made unless the department determines that the public entity has made reasonable efforts to identify and locate the party responsible for the vessel, or any other person or entity that has incurred secondary liability under section 38 of this act, regardless of the title of owner of the vessel.

(c) Funds in the account resulting from transfers from the general fund or from the deposit of funds from the watercraft excise tax as provided for under RCW 82.49.030 must be used to reimburse one hundred percent of (~~((these))~~) costs and should be prioritized for the removal of large vessels.

(d) Costs associated with the removal and disposal of an abandoned or derelict vessel under the authority granted in RCW 53.08.320 also qualify for reimbursement from the derelict vessel removal account.

(e) In each biennium, up to twenty percent of the expenditures from the derelict vessel removal account may be used for administrative expenses of the department of licensing and department of natural resources in implementing this chapter.

~~(2) ((If the balance of the account reaches one million dollars as of March 1st of any year, exclusive of any transfer or appropriation of funds into the account or funds deposited into the account collected under RCW 88.02.640(5), the department must notify the department of licensing and the collection of any fees associated with this account must be suspended for the following fiscal year.~~

~~(3))~~ Priority for use of this account is for the removal of derelict and abandoned vessels that are in danger of sinking, breaking up, or blocking navigation channels, or that present environmental risks such as leaking fuel or other hazardous substances. The department must develop criteria, in the form of informal guidelines, to prioritize removal projects associated with this chapter, but may not consider whether the applicant is a state or local entity when prioritizing. The guidelines must also include guidance to the authorized public entities as to what removal activities and associated costs are reasonable and eligible for reimbursement.

~~((4))~~ (3) The department must keep all authorized public entities ~~((apprized))~~ apprised of the balance of the derelict vessel removal account and the funds available for reimbursement. The guidelines developed by the department must also be made available to the other authorized public entities. This subsection ~~((4))~~ (3) must be satisfied by utilizing the least costly method, including maintaining the information on the department's internet web site, or any other cost-effective method.

~~((5))~~ (4) An authorized public entity may contribute its ten percent of costs that are not eligible for reimbursement by using in-kind services, including the use of existing staff, equipment, and volunteers.

~~((6))~~ (5) This chapter does not guarantee reimbursement for an authorized public entity. Authorized public entities seeking certainty in reimbursement prior to taking action under this chapter may first notify the department of their proposed action and the estimated total costs. Upon notification by an authorized public entity, the department must make the authorized public entity aware of the status of the fund and the likelihood of reimbursement being available. The department may offer technical assistance and assure reimbursement for up to two years following the removal action if an assurance is appropriate given the balance of the fund and the details of the proposed action.

**Sec. 3.** RCW 79A.65.020 and 2002 c 286 s 21 are each amended to read as follows:

(1) The commission may take reasonable measures, including but not limited to the use of anchors, chains, ropes, and locks, or removal from the water, to secure unauthorized vessels located at or on a commission facility so that the unauthorized vessels are in the possession and control of the commission. At least ten days before securing any unauthorized registered vessel, the commission shall send notification by registered mail to the last registered owner or registered owners of the vessel at their last known address or addresses.



(2) The commission may take reasonable measures, including but not limited to the use of anchors, chains, ropes, locks, or removal from the water, to secure any vessel if the vessel, in the opinion of the commission, is a nuisance, is in danger of sinking or creating other damage to a commission facility, or is otherwise a threat to the health, safety, or welfare of the public or environment at a commission facility. The costs of any such procedure shall be paid by the vessel's owner.

(3) At the time of securing any vessel under subsection (1) or (2) of this section, the commission shall attach to the vessel a readily visible notice or, when practicable, shall post such notice in a conspicuous location at the commission facility in the event the vessel is removed from the premises. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached or posted;

(b) A statement that the vessel has been secured by the commission and that if the commission's charges, if any, are not paid and the vessel is not removed by . . . . . (the thirty-fifth consecutive day following the date of attachment or posting of the notice), the vessel will be considered abandoned and will be sold at public auction to satisfy the charges;

(c) The address and telephone number where additional information may be obtained concerning the securing of the vessel and conditions for its release; and

(d) A description of the owner's or secured party's rights under this chapter.

(4) With respect to registered vessels: Within five days of the date that notice is attached or posted under subsection (3) of this section, the commission shall send such notice, by registered mail, to each registered owner.

(5) If a vessel is secured under subsection (1) or (2) of this section, the owner, or any person with a legal right to possess the vessel, may claim the vessel by:

(a) Making arrangements satisfactory to the commission for the immediate removal of the vessel from the commission's control or for authorized storage or moorage; and

(b) Making payment to the commission of all reasonable charges incurred by the commission in securing the vessel under subsections (1) and (2) of this section and of all moorage fees owed to the commission.

(6) A vessel is considered abandoned if, within the thirty-five day period following the date of attachment or posting of notice in subsection (3) of this section, the vessel has not been claimed under subsection (5) of this section.

(7) If the owner or owners of a vessel are unable to reimburse the commission for all reasonable charges under subsections (1) and (2) of this section within a reasonable time, the commission may seek reimbursement of ~~((seventy-five))~~ ninety percent of all reasonable and auditable costs from the derelict vessel removal account established in RCW 79.100.100.

**Sec. 4.** RCW 79.100.130 and 2011 c 247 s 2 are each amended to read as follows:

(1) A ((marina)) private moorage facility owner, as those terms are defined in RCW 88.26.010, may contract with a local government for the purpose of participating in the derelict vessel removal program.

(2) If a contract is completed under this section, the local government shall serve as the authorized public entity for the removal of ((the)) a derelict or abandoned vessel from the ((marina-owner's)) property of the private moorage

facility owner. The contract must provide for the (~~marina owner~~) private moorage facility owner to be financially responsible for the removal and disposal costs that are not reimbursed by the department as provided under RCW 79.100.100, and any additional reasonable administrative costs incurred by the local government during the removal of the derelict or abandoned vessel.

(3) Prior to the commencement of any removal which will seek reimbursement from the derelict vessel removal program, the contract and the proposed vessel removal shall be submitted to the department for review and approval. The local government shall use the procedure specified under RCW 79.100.100(6).

(4) If the private moorage facility owner has already seized the vessel under chapter 88.26 RCW and title has reverted to the moorage facility, the moorage facility is not considered the owner under this chapter for purposes of cost recovery for actions taken under this section.

**Sec. 5.** RCW 43.19.1919 and 2011 1st sp.s. c 43 s 215 are each amended to read as follows:

(1) The department shall sell or exchange personal property belonging to the state for which the agency, office, department, or educational institution having custody thereof has no further use, at public or private sale, and cause the moneys realized from the sale of any such property to be paid into the fund from which such property was purchased or, if such fund no longer exists, into the state general fund. This requirement is subject to the following exceptions and limitations:

((1)) (a) This section does not apply to property under RCW 27.53.045, 28A.335.180, or 43.19.1920;

((2)) (b) Sales of capital assets may be made by the department and a credit established for future purchases of capital items as provided for in RCW 43.19.190 through 43.19.1939;

((3)) (c) Personal property, excess to a state agency, including educational institutions, shall not be sold or disposed of prior to reasonable efforts by the department to determine if other state agencies have a requirement for such personal property. Such determination shall follow sufficient notice to all state agencies to allow adequate time for them to make their needs known. Surplus items may be disposed of without prior notification to state agencies if it is determined by the director to be in the best interest of the state. The department shall maintain a record of disposed surplus property, including date and method of disposal, identity of any recipient, and approximate value of the property;

((4)) (d) This section does not apply to personal property acquired by a state organization under federal grants and contracts if in conflict with special title provisions contained in such grants or contracts;

((5)) (e) A state agency having a surplus personal property asset with a fair market value of less than five hundred dollars may transfer the asset to another state agency without charging fair market value. A state agency conducting this action must maintain adequate records to comply with agency inventory procedures and state audit requirements.

(2)(a) Prior to transferring ownership of a department-owned vessel, the department shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(b) If the department determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the department may: (i) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (ii) permanently dispose of the vessel by landfill, deconstruction, or other related method.

**NEW SECTION. Sec. 6.** A new section is added to chapter 43.19 RCW to read as follows:

(1) Following the inspection required under section 5 of this act and prior to transferring ownership of a department-owned vessel, the department shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the department.

(2)(a) The department shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the department may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the department's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the department, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The department may consult with the department of ecology in carrying out the requirements of this subsection (2).

(3) Prior to sale, and unless the vessel has a title or valid marine document, the department is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550.

**NEW SECTION. Sec. 7.** A new section is added to chapter 43.30 RCW to read as follows:

(1) Prior to transferring ownership of a department-owned vessel, the department shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the department determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the department may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or section 8 of this act.

**NEW SECTION. Sec. 8.** A new section is added to chapter 43.30 RCW to read as follows:

(1) Following the inspection required under section 7 of this act and prior to transferring ownership of a department-owned vessel, the department shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the department.

(2)(a) The department shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the department may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the department's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the department, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The department may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the department is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550.

**NEW SECTION. Sec. 9.** A new section is added to chapter 77.12 RCW to read as follows:

(1) Prior to transferring ownership of a department-owned vessel, the department shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the department determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the department may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or section 10 of this act.

**NEW SECTION. Sec. 10.** A new section is added to chapter 77.12 RCW to read as follows:

(1) Following the inspection required under section 9 of this act and prior to transferring ownership of a department-owned vessel, the department shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the department.

(2)(a) The department shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the department may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the department's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the department, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The department may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the department is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550.

**NEW SECTION. Sec. 11.** A new section is added to chapter 79A.05 RCW to read as follows:

(1) Prior to transferring ownership of a commission-owned vessel, the commission shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the commission determines the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, that the commission may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or section 12 of this act.

**NEW SECTION. Sec. 12.** A new section is added to chapter 79A.05 RCW to read as follows:

(1) Following the inspection required under section 11 of this act and prior to transferring ownership of a commission-owned vessel, the commission shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the commission.

(2)(a) The commission shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the commission may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the commission's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the commission, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The commission may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the commission is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550.

NEW SECTION. Sec. 13. A new section is added to chapter 47.01 RCW to read as follows:

(1) Prior to transferring ownership of a department-owned vessel, the department shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the department determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the department may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

NEW SECTION. Sec. 14. A new section is added to chapter 47.01 RCW to read as follows:

(1) Following the inspection required under section 13 of this act and prior to transferring ownership of a department-owned vessel, the department shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the department.

(2)(a) The department shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the department may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the department's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the department, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The department may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the department is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550.

NEW SECTION. Sec. 15. A new section is added to chapter 35.21 RCW to read as follows:

(1) Prior to transferring ownership of a city or town-owned vessel, the city or town shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the city or town determines the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the city or town may: (a) Not

transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or section 16 of this act.

**NEW SECTION. Sec. 16.** A new section is added to chapter 35.21 RCW to read as follows:

(1) Following the inspection required under section 15 of this act and prior to transferring ownership of a city or town-owned vessel, a city or town shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the city or town.

(2)(a) The city or town shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the city or town may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the city or town's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the city or town, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The city or town may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the city or town is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550.

**NEW SECTION. Sec. 17.** A new section is added to chapter 35A.21 RCW to read as follows:

(1) Prior to transferring ownership of a code city-owned vessel, the code city shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the code city determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the code city may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or section 18 of this act.

**NEW SECTION. Sec. 18.** A new section is added to chapter 35A.21 RCW to read as follows:

(1) Following the inspection required under section 17 of this act and prior to transferring ownership of a code city-owned vessel, a code city shall obtain the following from the transferee:

- (a) The purposes for which the transferee intends to use the vessel; and
- (b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the code city.

(2)(a) The code city shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the code city may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the code city's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the code city, based on factors including the vessel's size, condition, and anticipated use of the vessel, including initial destination following transfer.

(c) The code city may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the code city is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550.

**NEW SECTION. Sec. 19.** A new section is added to chapter 36.32 RCW to read as follows:

(1) Prior to transferring ownership of a county-owned vessel, the county shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the county determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the county may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or section 20 of this act.

**NEW SECTION. Sec. 20.** A new section is added to chapter 36.32 RCW to read as follows:

(1) Following the inspection required under section 19 of this act and prior to transferring ownership of a county-owned vessel, a county shall obtain the following from the transferee:

- (a) The purposes for which the transferee intends to use the vessel; and
- (b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the county.

(2)(a) The county shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the county may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the county's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and



(ii) A reasonable amount of fuel as determined by the county, based on factors including the vessel's size, condition, and anticipated use of the vessel including initial destination following transfer.

(c) The county may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the county is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550.

**NEW SECTION. Sec. 21.** A new section is added to chapter 53.08 RCW to read as follows:

(1) Prior to transferring ownership of a vessel owned by a port district and used primarily to conduct port business, the port district shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the port district determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the port district may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

(3) Vessels taken into custody under chapter 79.100 RCW are not subject to this section or section 22 of this act.

**NEW SECTION. Sec. 22.** A new section is added to chapter 53.08 RCW to read as follows:

(1) Following the inspection required under section 21 of this act and prior to transferring ownership of a port district-owned vessel, a port district shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the port district.

(2)(a) The port district shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the port district may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the port district's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the port district, based on factors including the vessel's size, condition, and anticipated use of the vessel including initial destination following transfer.

(c) The port district may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the port district is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550.

**NEW SECTION. Sec. 23.** A new section is added to chapter 43.21A RCW to read as follows:

(1) Prior to transferring ownership of a department-owned vessel, the department shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the department determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the department may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

**NEW SECTION. Sec. 24.** A new section is added to chapter 43.21A RCW to read as follows:

(1) Following the inspection required under section 23 of this act and prior to transferring ownership of a department-owned vessel, the department shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the department.

(2)(a) The department shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the department may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the department's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the department, based on factors including the vessel's size, condition, and anticipated use of the vessel including initial destination following transfer.

(3) Prior to sale, and unless the vessel has a valid marine document, the department is required to apply for a title or certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550.

**NEW SECTION. Sec. 25.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) Prior to transferring ownership of an institution-owned vessel, an institution of higher education shall conduct a thorough review of the physical condition of the vessel, the vessel's operating capability, and any containers and other materials that are not fixed to the vessel.

(2) If the institution of higher education determines that the vessel is in a state of advanced deterioration or poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination, the institution of higher education may: (a) Not transfer the vessel until the conditions identified under this subsection have been corrected; or (b) permanently dispose of the vessel by landfill, deconstruction, or other related method.

**NEW SECTION. Sec. 26.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) Following the inspection required under section 25 of this act and prior to transferring ownership of an institution-owned vessel, the institution of higher education shall obtain the following from the transferee:

(a) The purposes for which the transferee intends to use the vessel; and

(b) Information demonstrating the prospective owner's intent to obtain legal moorage following the transfer, in the manner determined by the institution of higher education.

(2)(a) The institution of higher education shall remove any containers or other materials that are not fixed to the vessel and contain hazardous substances, as defined under RCW 70.105D.020.

(b) However, the institution of higher education may transfer a vessel with:

(i) Those containers or materials described under (a) of this subsection where the transferee demonstrates to the institution of higher education's satisfaction that the container's or material's presence is consistent with the anticipated use of the vessel; and

(ii) A reasonable amount of fuel as determined by the institution of higher education, based on factors including the vessel's size, condition, and anticipated use of the vessel including initial destination following transfer.

(c) The institution of higher education may consult with the department of ecology in carrying out the requirements of this subsection.

(3) Prior to sale, and unless the vessel has a title or valid marine document, the institution of higher education is required to apply for a certificate of title for the vessel under RCW 88.02.510 and register the vessel under RCW 88.02.550.

**Sec. 27.** RCW 28B.10.029 and 2012 c 230 s 4 are each amended to read as follows:

(1)(a) An institution of higher education may, consistent with sections 25 and 26 of this act, exercise independently those powers otherwise granted to the director of enterprise services 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.

(b) Property disposition policies followed by institutions of higher education shall be consistent with policies followed by the department of enterprise services.

(c)(i) Except as provided in (c)(ii) and (iii) of this subsection, 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,))~~ 43.19.685, ~~((43.19.700 through 43.19.704))~~ 39.26.260 through 39.26.271, and 43.19.560 through 43.19.637.

(ii) Institutions of higher education may use all appropriate means for making and paying for travel arrangements including, but not limited to, electronic booking and reservations, advance payment and deposits for tours, lodging, and other necessary expenses, and other travel transactions based on standard industry practices and federal accountable plan requirements. Such arrangements shall support student, faculty, staff, and other participants' travel, by groups and individuals, both domestic and international, in the most cost-effective and efficient manner possible, regardless of the source of funds.

(iii) Formal sealed, electronic, or web-based competitive bidding is not necessary for purchases or personal services contracts by institutions of higher education for less than one hundred thousand dollars. However, for purchases and personal services contracts of ten thousand dollars or more and less than one hundred thousand dollars, quotations must be secured from at least three vendors to assure establishment of a competitive price and may be obtained by telephone, electronic, or written quotations, or any combination thereof. As part of securing the three vendor quotations, institutions of higher education must invite at least one quotation each from a certified minority and a certified woman-owned vendor that otherwise qualifies to perform the work. A record of competition for all such purchases and personal services contracts of ten thousand dollars or more and less than one hundred thousand dollars must be documented for audit purposes.

(d) Purchases under chapter 39.29, 43.19, or 43.105 RCW by institutions of higher education may be made by using contracts for materials, supplies, services, or equipment negotiated or entered into by, for, or through group purchasing organizations.

(e) The community and technical colleges shall comply with RCW 43.19.450.

(f) Except for the University of Washington, institutions of higher education shall comply with RCW 43.19.769, 43.19.763, and 43.19.781.

(g) 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 and 43.19.637.

(h) Any institution of higher education that chooses to exercise independent purchasing authority for a commodity or group of commodities shall notify the director of enterprise services. Thereafter the director of enterprise services shall not be required to provide those services for that institution for the duration of the enterprise services contract term for that commodity or group of commodities.

(2) The council of presidents and the state board for community and technical colleges shall convene its correctional industries business development advisory committee, and work collaboratively with correctional industries, to:

(a) Reaffirm purchasing criteria and ensure that quality, service, and timely delivery result in the best value for expenditure of state dollars;

(b) Update the approved list of correctional industries products from which higher education shall purchase; and

(c) Develop recommendations on ways to continue to build correctional industries' business with institutions of higher education.

(3) Higher education and correctional industries shall develop a plan to build higher education business with correctional industries to increase higher education purchases of correctional industries products, based upon the criteria established in subsection (2) of this section. The plan shall include the correctional industries' production and sales goals for higher education and an approved list of products from which higher education institutions shall purchase, based on the criteria established in subsection (2) of this section. Higher education and correctional industries shall report to the legislature regarding the plan and its implementation no later than January 30, 2005.

(4)(a) Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2006, to purchase one percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections. Institutions of higher education shall set as a target to contract, beginning not later than June 30, 2008, to purchase two percent of the total goods and services required by the institutions each year produced or provided in whole or in part from class II inmate work programs operated by the department of corrections.

(b) Institutions of higher education shall endeavor to assure the department of corrections has notifications of bid opportunities with the goal of meeting or exceeding the purchasing target in (a) of this subsection.

**NEW SECTION. Sec. 28.** (1) The department of natural resources must reevaluate the criteria developed under RCW 79.100.100 regarding the prioritization of vessel removals funded by the derelict vessel removal account. This reprioritization process must occur by January 30, 2014, and consider how vessels located in the vicinity of aquaculture operations and other sensitive areas should be prioritized.

(2) This section expires July 31, 2015.

**Sec. 29.** RCW 88.02.380 and 2010 c 161 s 1006 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, and, in part, in order to prevent the future potential dereliction or abandonment of a vessel, a violation of this chapter and the rules adopted by the department is a ~~((misdemeanor punishable only by a fine not to exceed one hundred dollars per vessel for the first violation. Subsequent violations in the same year are subject to the following fines:~~

~~(a) For the second violation, a fine of two hundred dollars per vessel;~~

~~(b) For the third and successive violations, a fine of four hundred dollars per vessel)) class 2 civil infraction.~~

(2) A ~~((violation designated in this chapter as a))~~ civil infraction issued under this chapter must be ~~((punished accordingly pursuant to))~~ processed under chapter 7.80 RCW.

(3) After the subtraction of court costs and administrative collection fees, moneys collected under this section must be credited to the ~~((current expense fund of the arresting jurisdiction))~~ ticketing jurisdiction and used only for the support of the enforcement agency, department, division, or program that issued the violation.

(4) All law enforcement officers may enforce this chapter and the rules adopted by the department within their respective jurisdictions. A city, town, or county may contract with a fire protection district for enforcement of this chapter, and fire protection districts may engage in enforcement activities.

**Sec. 30.** RCW 88.02.340 and 2010 c 161 s 1004 are each amended to read as follows:

(1) Any person charged with the enforcement of this chapter may inspect the registration certificate of a vessel to ascertain the legal and registered ownership of the vessel. A vessel owner or operator who fails to provide the registration certificate for inspection upon the request of any person charged

with enforcement of this chapter (~~(is a class 2 civil infraction)~~) may be found to be in violation of this chapter.

(2) The department may require the inspection of vessels that are brought into this state from another state and for which a certificate of title has not been issued and for any other vessel if the department determines that inspection of the vessel will help to verify the accuracy of the information set forth on the application.

**Sec. 31.** RCW 88.02.550 and 2010 c 161 s 1017 are each amended to read as follows:

(1) Except as provided in this chapter, a person may not own or operate any vessel, including a rented vessel, on the waters of this state unless the vessel has been registered and displays a registration number and a valid decal in accordance with this chapter. A vessel that has or is required to have a valid marine document as a vessel of the United States is only required to display a valid decal. (~~(A violation of this section is a class 2 civil infraction.)~~)

(2) A vessel numbered in this state under the federal boat safety act of 1971 (85 Stat. 213, 46 U.S.C. 4301 et seq.) is not required to be registered under this chapter until the certificate of number issued for the vessel under the federal boat safety act expires. When registering under this chapter, this type of vessel is subject to the amount of excise tax due under chapter 82.49 RCW that would have been due under chapter 82.49 RCW if the vessel had been registered at the time otherwise required under this chapter.

**Sec. 32.** RCW 79.100.120 and 2010 c 210 s 34 are each amended to read as follows:

(1) A person seeking to contest an authorized public entity's decision to take temporary possession or custody of a vessel under this chapter, or to contest the amount of reimbursement owed to an authorized public entity under this chapter, may request a hearing in accordance with this section.

(2)(a) If the contested decision or action was undertaken by a state agency, a written request for a hearing related to the decision or action must be filed with the pollution control hearings board and served on the state agency in accordance with RCW 43.21B.230 (2) and (3) within thirty days of the date the authorized public entity acquires custody of the vessel under RCW 79.100.040, or if the vessel is redeemed before the authorized public entity acquires custody, the date of redemption, or the right to a hearing is deemed waived and the vessel's owner is liable for any costs owed the authorized public entity. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(b) Upon receipt of a timely hearing request, the pollution control hearings board shall proceed to hear and determine the validity of the decision to take the vessel into temporary possession or custody and the reasonableness of any towing, storage, or other charges permitted under this chapter. Within five business days after the request for a hearing is filed, the pollution control hearings board shall notify the vessel owner requesting the hearing and the authorized public entity of the date, time, and location for the hearing. Unless the vessel is redeemed before the request for hearing is filed, the pollution control hearings board shall set the hearing on a date that is within ten business days of the filing of the request for hearing. If the vessel is redeemed before the

request for a hearing is filed, the pollution control hearings board shall set the hearing on a date that is within sixty days of the filing of the request for hearing.

(c) Consistent with RCW 43.21B.305, a proceeding brought under this subsection may be heard by one member of the pollution control hearings board, whose decision is the final decision of the board.

(3)(a) If the contested decision or action was undertaken by a metropolitan park district, port district, city, town, or county, which has adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, those rules or procedures must be followed in order to contest a decision to take temporary possession or custody of a vessel, or to contest the amount of reimbursement owed.

(b) If the metropolitan park district, port district, city, town, or county has not adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, then a person requesting a hearing under this section must follow the procedure established in ~~((RCW 53.08.320(5) for contesting the decisions or actions of moorage facility operators))~~ subsection (2) of this section.

**Sec. 33.** RCW 43.21B.110 and 2010 c 210 s 7 and 2010 c 84 s 2 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, ~~((and))~~ the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) A final decision by the department or director made under chapter 183, Laws of 2009.

(d) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(e) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(f) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(g) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(h) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(i) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(j) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(k) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(l) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

(m) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(n) Decisions of ~~((a state agency that is))~~ an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

~~((e) Appeals of decisions by the department as provided in chapter 43.21B RCW.))~~

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

**Sec. 34.** RCW 43.21B.110 and 2010 c 210 s 8 and 2010 c 84 s 3 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, local health departments, the department of natural resources, the department of fish and wildlife, ~~((and))~~ the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 76.09.170, 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.



(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW.

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of ~~((a state agency that is))~~ an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

~~((e) Appeals of decisions by the department as provided in chapter 43.21L RCW.))~~

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

**NEW SECTION. Sec. 35.** A new section is added to chapter 79.100 RCW to read as follows:

(1) An officer or employee of an authorized public entity, or the department of ecology at the request of an authorized public entity, may, consistent with subsection (2) of this section, board any vessel at any reasonable time for the purpose of:

(a) Administering this chapter, including identifying ownership of a vessel, assessing the structural integrity of a vessel, and assessing whether a vessel meets the criteria described under RCW 79.100.040(3); or

(b) For the department of ecology only, mitigating a potential threat to health, safety, or the environment under the authority provided in chapter 90.56 RCW.

(2)(a) Prior to boarding any vessel under the authority of this section, an officer or employee of an authorized public entity or the department of ecology must apply for and obtain an administrative search warrant in either Thurston county superior court or the superior court in the county where the vessel is located, unless a warrant is not otherwise required by law. The court may issue an administrative search warrant where the court has reasonable cause to believe it is necessary to achieve the purposes of this section.

(b) Prior to requesting an administrative search warrant under this subsection, the officer or employee must make a reasonable effort to contact the owner or the owner's designee and obtain consent to board the vessel.

(3) Nothing in this section affects an authorized public entity's authority to carry out actions under RCW 79.100.040 or any agency's existing authority to enter onto vessels under any other statute.

**Sec. 36.** RCW 90.56.410 and 1990 c 116 s 23 are each amended to read as follows:

(1) The department, through its duly authorized representatives, shall have the power to enter upon any private or public property, including the boarding of any ship, at any reasonable time, and the owner, managing agent, master, or occupant of such property shall permit such entry for the purpose of investigating conditions relating to violations or possible violations of this chapter, and to have access to any pertinent records relating to such property, including but not limited to operation and maintenance records and logs. The authority granted (~~herein~~) in this section shall not be construed to require any person to divulge trade secrets or secret processes. The director may issue subpoenas for the production of any books, records, documents, or witnesses in any hearing conducted pursuant to this chapter.

(2) The department may utilize the authority granted to it in section 35 of this act for the purposes of mitigating a potential threat to health, safety, or the environment from a vessel.

**Sec. 37.** RCW 79.100.040 and 2007 c 342 s 2 are each amended to read as follows:

(1) Prior to exercising the authority granted in RCW 79.100.030, the authorized public entity must first obtain custody of the vessel. To do so, the authorized public entity must:

(a) Mail notice of its intent to obtain custody, at least twenty days prior to taking custody, to the last known address of the previous owner to register the

vessel in any state or with the federal government and to any lien holders or secured interests on record. A notice need not be sent to the purported owner or any other person whose interest in the vessel is not recorded with a state or federal agency;

(b) Post notice of its intent clearly on the vessel for thirty days and publish its intent at least once, more than ten days but less than twenty days prior to taking custody, in a newspaper of general circulation for the county in which the vessel is located; and

(c) Post notice of its intent on the department's internet web site on a page specifically designated for such notices. If the authorized public entity is not the department, the department must facilitate the internet posting.

(2) All notices sent, posted, or published in accordance with this section must, at a minimum, explain the intent of the authorized public entity to take custody of the vessel, the rights of the authorized public entity after taking custody of the vessel as provided in RCW 79.100.030, the procedures the owner must follow in order to avoid custody being taken by the authorized public entity, the procedures the owner must follow in order to reclaim possession after custody is taken by the authorized public entity, and the financial liabilities that the owner may incur as provided for in RCW 79.100.060.

(3)(a) ~~((H-a))~~ Any authorized public entity may tow, beach, or otherwise take temporary possession of a vessel if the owner of the vessel cannot be located or is unwilling or unable to assume immediate responsibility for the vessel and if the vessel ~~((is))~~:

(i) Is in immediate danger of sinking, breaking up, or blocking navigational channels; or

(ii) Poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination ~~((; and (iii) the owner of the vessel cannot be located or is unwilling or unable to assume immediate responsibility for the vessel, any authorized public entity may tow, beach, or otherwise take temporary possession of the vessel)).~~

(b) Before taking temporary possession of the vessel, the authorized public entity must make reasonable attempts to consult with the department or the United States coast guard to ensure that other remedies are not available. The basis for taking temporary possession of the vessel must be set out in writing by the authorized public entity within seven days of taking action and be submitted to the owner, if known, as soon thereafter as is reasonable. If the authorized public entity has not already provided the required notice, immediately after taking possession of the vessel, the authorized public entity must initiate the notice provisions in subsection (1) of this section. The authorized public entity must complete the notice requirements of subsection (1) of this section before using or disposing of the vessel as authorized in RCW 79.100.050.

(4) An authorized public entity may invite the department of ecology to use the authority granted to it under RCW 90.56.410 prior to, or concurrently with, obtaining custody of a vessel under this section. However, this is not a necessary prerequisite to an authorized public entity obtaining custody.

**NEW SECTION. Sec. 38.** A new section is added to chapter 79.100 RCW to read as follows:

(1) A vessel owner must obtain a vessel inspection under this section prior to transferring a vessel that is:

- (a) More than sixty-five feet in length and more than forty years old; and
- (b) Either:
  - (i) Is registered or required to be registered under chapter 88.02 RCW; or
  - (ii) Is listed or required to be listed under chapter 84.40 RCW.

(2) Where required under subsection (1) of this section, a vessel owner must provide a copy of the vessel inspection documentation to the transferee and, if the department did not conduct the inspection, to the department prior to the transfer.

(3) Failure to comply with the requirements of subsections (1) and (2) of this section will result in the transferor having secondary liability under RCW 79.100.060 if the vessel is later abandoned by the transferee or becomes derelict prior to a subsequent ownership transfer.

**NEW SECTION. Sec. 39.** (1) By December 31, 2013, the department of natural resources shall adopt by rule procedures and standards for the vessel inspections required under section 38 of this act. The procedures and standards must identify the public or private entities authorized to conduct inspections, the required elements of an inspection, and the manner in which inspection results must be documented. The vessel inspection required under this section must be designed to:

(a) Provide the transferee with current information about the condition of the vessel, including the condition of its hull and key operating systems, prior to the transfer;

(b) Provide the department of natural resources with information under (a) of this subsection for each applicable vessel and, more broadly, to improve the department's understanding of the condition of the larger, older boats in the state's waters;

(c) Discourage the future abandonment or dereliction of the vessel; and

(d) Maximize the efficiency and effectiveness of the inspection process, including with respect to the time and resources of the transferor, transferee, and the state.

(2) The department of natural resources shall work with appropriate government agencies and stakeholders in designing the inspection process and standards under this section.

(3) This section expires July 31, 2014.

**Sec. 40.** RCW 79.100.060 and 2006 c 153 s 4 are each amended to read as follows:

(1) The owner of an abandoned or derelict vessel, or any person or entity that has incurred secondary liability under section 38 of this act, is responsible for reimbursing an authorized public entity for all reasonable and auditable costs associated with the removal or disposal of the owner's vessel under this chapter. These costs include, but are not limited to, costs incurred exercising the authority granted in RCW 79.100.030, all administrative costs incurred by the authorized public entity during the procedure set forth in RCW 79.100.040, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. An authorized public entity that has taken temporary possession of a vessel may require that all reasonable and auditable costs associated with the removal of the vessel be paid before the vessel is released to the owner.

(2) Reimbursement for costs may be sought from an owner, or any person or entity that has incurred secondary liability under section 38 of this act, who is identified subsequent to the vessel's removal and disposal.

(3) If the full amount of all costs due to the authorized public entity under this chapter is not paid to the authorized public entity within thirty days after first notifying the responsible parties of the amounts owed, the authorized public entity or the department may bring an action in any court of competent jurisdiction to recover the costs, plus reasonable attorneys' fees and costs incurred by the authorized public entity.

**Sec. 41.** RCW 88.26.020 and 1993 c 474 s 2 are each amended to read as follows:

(1) Any private moorage facility operator may take reasonable measures, including the use of chains, ropes, and locks, or removal from the water, to secure vessels within the private moorage facility so that the vessels are in the possession and control of the operator and cannot be removed from the facility. These procedures may be used if an owner mooring or storing a vessel at the facility fails, after being notified that charges are owing and of the owner's right to commence legal proceedings to contest that such charges are owing, to pay charges owed or to commence legal proceedings. Notification shall be by two separate letters, one sent by first-class mail and one sent by registered mail to the owner and any lienholder of record at the last known address. In the case of a transient vessel, or where no address was furnished by the owner, the operator need not give notice prior to securing the vessel. At the time of securing the vessel, an operator shall attach to the vessel a readily visible notice. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached;

(b) A statement that if the account is not paid in full within ninety days from the time the notice is attached the vessel may be sold at public auction to satisfy the charges; and

(c) The address and telephone number where additional information may be obtained concerning release of the vessel.

After a vessel is secured, the operator shall make a reasonable effort to notify the owner and any lienholder of record by registered mail in order to give the owner the information contained in the notice.

(2) A private moorage facility operator, at his or her discretion, may move moored vessels ashore for storage within properties under the operator's control or for storage with a private person under their control as bailees of the private moorage facility, if the vessel is, in the opinion of the operator, a nuisance, in danger of sinking or creating other damage, or is owing charges. The costs of any such procedure shall be paid by the vessel's owner.

(3) If a vessel is secured under subsection (1) of this section or moved ashore under subsection (2) of this section, the owner who is obligated to the private operator for charges may regain possession of the vessel by:

(a) Making arrangements satisfactory with the operator for the immediate removal of the vessel from the facility or for authorized moorage; and

(b) Making payment to the operator of all charges, or by posting with the operator a sufficient cash bond or other acceptable security, to be held in trust by the operator pending written agreement of the parties with respect to payment by the vessel owner of the amount owing, or pending resolution of the matter of the

charges in a civil action in a court of competent jurisdiction. After entry of judgment, including any appeals, in a court of competent jurisdiction, or after the parties reach agreement with respect to payment, the trust shall terminate and the operator shall receive so much of the bond or other security as agreed, or as is necessary, to satisfy any judgment, costs, and interest as may be awarded to the operator. The balance shall be refunded immediately to the owner at the last known address.

(4) If a vessel has been secured by the operator under subsection (1) of this section and is not released to the owner under the bonding provisions of this section within ninety days after notifying or attempting to notify the owner under subsection (1) of this section, the vessel is conclusively presumed to have been abandoned by the owner.

(5) If a vessel moored or stored at a private moorage facility is abandoned, the operator may authorize the public sale of the vessel by authorized personnel, consistent with this section, to the highest and best bidder for cash as follows:

(a) Before the vessel is sold, the vessel owner and any lienholder of record shall be given at least twenty days' notice of the sale in the manner set forth in subsection (1) of this section if the name and address of the owner is known. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of charges owed with respect to the vessel. The notice of sale shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the facility is located. This notice shall include the name of the vessel, if any, the last known owner and address, and a reasonable description of the vessel to be sold. The operator may bid all or part of its charges at the sale and may become a purchaser at the sale.

(b) Before the vessel is sold, any person seeking to redeem an impounded vessel under this section may commence a lawsuit in the superior court for the county in which the vessel was impounded to contest the validity of the impoundment or the amount of charges owing. This lawsuit must be commenced within sixty days of the date the notification was provided under subsection (1) of this section, or the right to a hearing is deemed waived and the owner is liable for any charges owing the operator. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(c) The proceeds of a sale under this section shall be applied first to the payment of any liens superior to the claim for charges, then to payment of the charges, then to satisfy any other liens on the vessel in the order of their priority. The balance, if any, shall be paid to the owner. If the owner cannot in the exercise of due diligence be located by the operator within one year of the date of the sale, the excess funds from the sale shall revert to the department of revenue under chapter 63.29 RCW. If the sale is for a sum less than the applicable charges, the operator is entitled to assert a claim for deficiency, however, the deficiency judgment shall not exceed the moorage fees owed for the previous six-month period.

(d) In the event no one purchases the vessel at a sale, or a vessel is not removed from the premises or other arrangements are not made within ten days of sale, title to the vessel will revert to the operator.

(e) Either a minimum bid may be established or a letter of credit may be required from the buyer, or both, to discourage the future abandonment of the vessel.

(6) The rights granted to a private moorage facility operator under this section are in addition to any other legal rights an operator may have to hold and sell a vessel and in no manner does this section alter those rights, or affect the priority of other liens on a vessel.

**NEW SECTION. Sec. 42.** A new section is added to chapter 79.100 RCW to read as follows:

(1) The department may develop and administer a voluntary vessel turn-in program.

(2) The purpose of the vessel turn-in program is to allow the department to dismantle and dispose of vessels that pose a high risk of becoming a derelict vessel or abandoned vessel, but that do not yet meet the definition of those terms. The department shall design the program with the goal of dismantling and disposing of as many vessels as available resources allow, particularly those vessels posing the greatest risk of becoming abandoned or derelict in the future.

(3) The department shall disseminate information about the vessel turn-in program, including information about the application process, on its internet site and through appropriate agency publications and information sources as determined by the department. The department shall disseminate this information for a reasonable time as determined by the department prior to accepting applications.

(4) The department shall accept and review vessel turn-in program applications from eligible vessel owners, including private marinas that have gained legal title to a vessel in an advanced state of disrepair, during the time period or periods identified by the department. In order to be eligible for the vessel turn-in program, an applicant must demonstrate to the department's satisfaction that the applicant:

(a) Is a Washington resident or business;

(b) Owns a vessel that is in an advanced state of disrepair, has minimal or no value, and has a high likelihood of becoming an abandoned or derelict vessel; and

(c) Has insufficient resources to properly dispose of the vessel outside of the vessel turn-in program.

(5) Decisions regarding program eligibility and whether to accept a vessel for dismantling and disposal under the turn-in program are within the sole discretion of the department.

(6) The department may take other actions not inconsistent with this section in order to develop and administer the vessel turn-in program.

(7) The department may not spend more than two hundred thousand dollars in any one biennium on the program established in this section.

**NEW SECTION. Sec. 43.** (1) In compliance with RCW 43.01.036, the department of natural resources must provide a brief summary of the vessel turn-in program authorized under section 42 of this act to the legislature by September 1, 2014, including information about applications for the program, the vessels disposed of, and any recommendations for modification of the program.

(2) This section expires July 31, 2015.

**Sec. 44.** RCW 43.21B.305 and 2005 c 34 s 2 are each amended to read as follows:

(1) In an appeal that involves a penalty of fifteen thousand dollars or less or that involves a derelict or abandoned vessel under RCW 79.100.120, the appeal may be heard by one member of the board, whose decision shall be the final decision of the board. The board shall define by rule alternative procedures to expedite appeals involving penalties of fifteen thousand dollars or less or involving a derelict or abandoned vessel. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals.

(2) For appeals that involve a derelict or abandoned vessel under RCW 79.100.120 only, an administrative law judge employed by the board may be substituted for a board member under this section.

**NEW SECTION. Sec. 45.** (1) The department of natural resources must, in consultation with the department of ecology and appropriate stakeholders, evaluate potential changes to laws and rules related to derelict and abandoned vessels that increase vessel owner responsibility and address challenges associated with the economics of removing vessels from the water. This evaluation must include the development and analysis of:

(a) Administrative and legislative vessel owner responsibility options that seek to ensure the prevention and cleanup of derelict and abandoned vessels, including the development of mandatory processes for public and private moorage facility operators to employ in an effort to appropriately limit the transfer of high risk vessels; and

(b) The identification of challenges and roadblocks to deconstructing derelict vessels and transforming them into a viable scrap metal product.

(2) The department of natural resources may choose which appropriate stakeholders are consulted in the implementation of this section. However, persons with relevant expertise on financial responsibility mechanisms, such as insurance and surety bonds and letters of credit, must be included. The department of natural resources must also seek to ensure opportunities for interested members of the senate and house of representatives to provide input into the work group process and conclusions.

(3) The department of natural resources must provide a summary of the options developed by the work group, or a draft of proposed legislation, to the legislature consistent with RCW 43.01.036 by December 15, 2013.

(4) This section expires June 30, 2014.

**NEW SECTION. Sec. 46.** Section 33 of this act expires June 30, 2019.

**NEW SECTION. Sec. 47.** Section 34 of this act takes effect June 30, 2019.

**NEW SECTION. Sec. 48.** Section 38 of this act takes effect July 1, 2014.

Passed by the House April 23, 2013.

Passed by the Senate April 12, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.



## CHAPTER 292

[Substitute House Bill 1498]

## WASTE COLLECTION—ELECTRONIC PRODUCTS—REPORTS

AN ACT Relating to improving reports on electronic waste collection; and amending RCW 70.95N.140.

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

**Sec. 1.** RCW 70.95N.140 and 2006 c 183 s 14 are each amended to read as follows:

(1) By March 1st of the second program year and each program year thereafter, the authority and each authorized party shall file with the department an annual report for the preceding program year.

(2) The annual report must include the following information:

(a) The total weight in pounds of each type of covered electronic products collected and recycled, by county, during the preceding program year including documentation verifying collection and processing of that material. The total weight in pounds includes orphan products. The report must also indicate and document the weight in pounds received from each nonprofit charitable organization primarily engaged in the business of reuse and resale used by the plan. The report must document the weight in pounds that were received in large quantities from small businesses, small governments, charities and school districts as described in RCW 70.95N.090(5);

(b) The collection services provided in each county and for each city with a population over ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(c)(i) A list of processors used, the weight of covered electronic products processed by each direct processor, and a description of the processes and methods used to recycle the covered electronic products including a description of the processing and facility locations. The report must also include a list of subcontractors who further processed or recycled unwanted covered electronic products(;) or electronic components, ~~((or electronic scrap described in section 26(1) of this act,))~~ including facility locations.

(ii) An estimate of the weight of each type of material recovered as a result of the processing of recycled covered electronic products. Recovered materials catalogued under this subsection must include, at a minimum: Cathode ray tube glass, circuit boards, batteries, mercury-containing devices, plastics, and metals.

(iii) An estimate of the percentage, by weight, of all collected products that ultimately are reused, recycled, or end up as residual waste that is disposed of in another manner;

~~(d) ((Other documentation as established under section 26(3) of this act;~~

~~(e)) Educational and promotional efforts that were undertaken;~~

~~((f))~~ (e) The results of sampling and sorting as required in RCW 70.95N.110, including a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, and the total weight of the sample by product type;

~~((e))~~ (f) The list of manufacturers that are participating in the standard plan; ~~(and~~

~~(h))~~ (g) A description of program revenues and costs, including: (i) The total cost of the program; and (ii) the average cost of the program per pound of covered electronic product collected;

(h) A detailed accounting of the following costs of the program: (i) Program delivery, including: (A) Education and promotional efforts; (B) collection; (C) transportation; and (D) processing and labor; and (ii) program administration;

(i) A description of the methods used by the program to collect, transport, recycle, and process covered electronic products; and

(j) Any other information deemed necessary by the department.

(3) The department shall review each report within ninety days of its submission and shall notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program.

(4) All reports submitted to the department must be available to the general public through the internet. Proprietary information submitted to the department under this chapter is exempt from public disclosure under RCW 42.56.270.

Passed by the House March 6, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

## CHAPTER 293

[Engrossed Second Substitute Senate Bill 5215]

### INSURANCE CARRIERS AND THIRD-PARTY PAYORS— HEALTH CARE PROVIDERS—CONTRACTING

AN ACT Relating to health care professionals contracting with public and private payors; adding a new section to chapter 18.130 RCW; and adding a new chapter to Title 48 RCW.

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

**NEW SECTION. Sec. 1.** The legislature finds that Washington state is a provider friendly state within which to practice medicine. As part of health care reform, Washington state endeavors to establish and operate a state-based health benefits exchange wherein insurance products will be offered for sale and add potentially three hundred thousand patients to commercial insurance, and to expand access to medicaid for potentially three hundred thousand new enrollees. Such a successful and new insurance market in Washington state will require the willing participation of all categories of health care providers. The legislature further finds that principles of fair contracting apply to all contracts between health care providers and health insurance carriers offering insurance within Washington state and that fair dealings and transparency in expectations should be present in interactions between all third-party payors and health care providers.

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

(1) "Health care provider" or "provider" has the same meaning as in RCW 48.43.005 and, for the purposes of this chapter, includes facilities licensed under chapter 70.41 RCW.

(2) "Payor" or "third-party payor" means carriers licensed under chapters 48.20, 48.21, 48.44, and 48.46 RCW, and managed health care systems as defined in RCW 74.09.522.

(3) "Material amendment" means an amendment to a contract between a payor and health care provider that would result in requiring a health care provider to participate in a health plan, product, or line of business with a lower fee schedule in order to continue to participate in a health plan, product, or line of business with a higher fee schedule. A material amendment does not include any of the following:

(a) A decrease in payment or compensation resulting from a change in a fee schedule published by the payor upon which the payment or compensation is based and the date of applicability is clearly identified in the contract, compensation addendum, or fee schedule notice;

(b) A decrease in payment or compensation that was anticipated under the terms of the contract, if the amount and date of applicability of the decrease is clearly identified in the contract; or

(c) Changes unrelated to compensation so long as reasonable notice of not less than sixty days is provided.

**NEW SECTION. Sec. 3.** (1) A third-party payor shall provide no less than sixty days' notice to the health care provider of any proposed material amendments to a health care provider's contract with the third-party payor.

(2) Any material amendment to a contract must be clearly defined in a notice to the provider from the third-party payor as being a material change to the contract before the provider's notice period begins. The notice must also inform the providers that they may choose to reject the terms of the proposed material amendment through written or electronic means at any time during the notice period and that such rejection may not affect the terms of the health care provider's existing contract with the third-party payor.

(3) A health care provider's rejection of the material amendment does not affect the terms of the health care provider's existing contract with the third-party payor.

(4) A failure to comply with the terms of subsections (1), (2), and (3) of this section shall void the effectiveness of the material amendment.

**NEW SECTION. Sec. 4.** A payor may require a health care provider to extend the payor's medicaid rates, or some percentage above the payor's medicaid rates, that govern a health benefit program administered by a public purchaser to a commercial plan or line of business offered by a payor that is not administered by a public purchaser only if the health care provider has expressly agreed in writing to the extension. For the purposes of this section, "administered by a public purchaser" does not include commercial coverage offered through the Washington health benefit exchange. Nothing in this section prohibits a payor from utilizing medicaid rates, or some percentage above medicaid rates, as a base when negotiating payment rates with a health care provider.

NEW SECTION. Sec. 5. A new section is added to chapter 18.130 RCW to read as follows:

No licensee subject to this chapter may be required to participate in any public or private third-party reimbursement program or any plans or products offered by a payor as a condition of licensure.

NEW SECTION. Sec. 6. Sections 1 through 4 of this act constitute a new chapter in Title 48 RCW.

Passed by the Senate April 23, 2013.

Passed by the House April 11, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

**CHAPTER 294**

[Engrossed Senate Bill 5236]

**DEFAMATION**

AN ACT Relating to the uniform correction or clarification of defamation act; adding a new chapter to Title 7 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. INTENT. Since the United States supreme court recognized the First Amendment limitations on the common law tort of defamation and defamation-like torts, courts have struggled to achieve a balance between constitutionally protected guarantees of free expression and the need to protect citizens from reputational harm. Unlike personal injuries, harm to reputation can often be cured by means other than money damages. The correction or clarification of a published statement may restore a person's reputation more quickly and more thoroughly than a victorious lawsuit. The salutary effect of a correction or clarification is enhanced if it is published reasonably soon after a statement is made.

This act seeks to provide strong incentives for individuals to promptly correct or clarify an alleged false statement as an alternative to costly litigation. The options created by this act provide an opportunity for a plaintiff who believes he or she has been harmed by a false statement to secure quick and complete vindication of his or her reputation. This act provides publishers with a quick and cost-effective means of correcting or clarifying alleged mistakes and avoiding costly litigation.

NEW SECTION. Sec. 2. DEFINITION. The definition in this section applies throughout this chapter unless the context clearly requires otherwise.

"Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity. The term does not include a government or governmental subdivision, agency, or instrumentality.

NEW SECTION. Sec. 3. SCOPE. (1) This chapter applies to any claim for relief, however characterized, for damages arising out of harm caused by the false content of a publication that is published on or after the effective date of this section.

(2) This chapter applies to all publications, including writings, broadcasts, oral communications, electronic transmissions, or other forms of transmitting information.

**NEW SECTION. Sec. 4. REQUEST FOR CORRECTION OR CLARIFICATION.** (1) A person may maintain an action for defamation or another claim covered by this chapter only if:

(a) The person has made a timely and adequate request for correction or clarification from the defendant; or

(b) The defendant has made a correction or clarification.

(2) A request for correction or clarification is timely if made within the period of limitation for commencement of an action for defamation.

(3) A request for correction or clarification is adequate if it:

(a) Is made in writing and reasonably identifies the person making the request;

(b) Specifies with particularity the statement alleged to be false and defamatory or otherwise actionable and, to the extent known, the time and place of publication;

(c) Alleges the defamatory meaning of the statement;

(d) Specifies the circumstances giving rise to any defamatory meaning of the statement which arises from other than the express language of the publication; and

(e) States that the alleged defamatory meaning of the statement is false.

(4) In the absence of a previous adequate request, service of a summons and complaint stating a claim for defamation or another claim covered by this chapter and containing the information required in subsection (3) of this section constitutes an adequate request for correction or clarification.

(5) The period of limitation for commencement of a defamation action or another claim covered by this chapter is tolled during the period allowed in section 7(1) of this act for responding to a request for correction or clarification.

**NEW SECTION. Sec. 5. DISCLOSURE OF EVIDENCE OF FALSITY.**

(1) A person who has been requested to make a correction or clarification may ask the requester to disclose reasonably available information material to the falsity of the allegedly defamatory or otherwise actionable statement.

(2) If a correction or clarification is not made, a person who unreasonably fails to disclose the information after a request to do so may not recover damages for injury to reputation or presumed damages; however, the person may recover all other damages permitted by law.

**NEW SECTION. Sec. 6. EFFECT OF CORRECTION OR CLARIFICATION.** If a timely and sufficient correction or clarification is made, a person may not recover damages for injury to reputation or presumed damages; however, the person may recover all other damages permitted by law.

**NEW SECTION. Sec. 7. TIMELY AND SUFFICIENT CORRECTION OR CLARIFICATION.** (1) A correction or clarification is timely if it is published before, or within thirty days after, receipt of a request for correction or clarification or of the information in section 5(1) of this act, whichever is later, unless the period is extended by written agreement of the parties.

(2) A correction or clarification is sufficient if it:

(a) Is published with a prominence and in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of;

(b) Refers to the statement being corrected or clarified and:

(i) Corrects the statement;

(ii) In the case of defamatory or false meaning arising from other than the express language of the publication, disclaims an intent to communicate that meaning or to assert its truth; or

(iii) In the case of a statement attributed to another person, identifies the person and disclaims an intent to assert the truth of the statement;

(c) In advance of the publication, is provided to the person who has made a request for correction or clarification; and

(d) Accompanies and is an equally prominent part of any electronic publication of the allegedly defamatory or otherwise actionable statement by the publisher.

(3) A correction or clarification is published in a medium reasonably likely to reach substantially the same audience as the publication complained of if it is published in a later issue, edition, or broadcast of the original publication.

(4) If a later issue, edition, or broadcast of the original publication will not be published within the time limits established for a timely correction or clarification, a correction or clarification is published in a manner and medium reasonably likely to reach substantially the same audience as the publication complained of if:

(a) It is timely published in a reasonably prominent manner:

(i) In another medium likely to reach an audience reasonably equivalent to the original publication; or

(ii) If the parties cannot agree on another medium, in the newspaper with the largest general circulation in the region in which the original publication was distributed;

(b) Reasonable steps are taken to correct undistributed copies of the original publication, if any; and

(c) It is published in the next practicable issue, edition, or broadcast, if any, of the original publication.

(5) A correction or clarification is timely and sufficient if the parties agree in writing that it is timely and sufficient.

**NEW SECTION. Sec. 8. CHALLENGES TO CORRECTION OR CLARIFICATION OR TO REQUEST FOR CORRECTION OR CLARIFICATION.** (1) If a defendant in an action governed by this chapter intends to rely on a timely and sufficient correction or clarification, the defendant's intention to do so, and the correction or clarification relied upon, must be set forth in a notice served on the plaintiff within sixty days after service of the summons and complaint or ten days after the correction or clarification is made, whichever is later.

(2) If a defendant in an action governed by this chapter intends to challenge the adequacy or timeliness of a request for correction or clarification, the defendant must set forth the challenge in a motion to declare the request inadequate or untimely served within sixty days after service of the summons and complaint. The court shall rule on the motion at the earliest appropriate time before trial.

**NEW SECTION. Sec. 9. OFFER TO CORRECT OR CLARIFY.** (1) If a timely correction or clarification is no longer possible, the publisher of an alleged defamatory or otherwise actionable statement may offer, at any time before trial, to make a correction or clarification. The offer must be made in writing to the person allegedly harmed by the publication and:

(a) Contain the publisher's offer to:

(i) Publish, at the person's request, a sufficient correction or clarification; and

(ii) Pay the person's reasonable expenses of litigation, including attorneys' fees, incurred before publication of the correction or clarification; and

(b) Be accompanied by a copy of the proposed correction or clarification and the plan for its publication.

(2) If the person accepts in writing an offer to correct or clarify made pursuant to subsection (1) of this section:

(a) The person is barred from commencing an action against the publisher based on the statement; or

(b) If an action has been commenced, the court shall dismiss the action against the defendant with prejudice after the defendant complies with the terms of the offer.

(3) A person who does not accept an offer made in conformance with subsection (1) of this section may not recover damages for injury to reputation or presumed damages in an action based on the statement; however, the person may recover all other damages permitted by law, together with reasonable expenses of litigation, including attorneys' fees, incurred before the offer, unless the person failed to make a good faith attempt to request a correction or clarification in accordance with section 4 of this act or failed to disclose information in accordance with section 5 of this act.

(4) On request of either party, a court shall promptly determine the sufficiency of the offered correction or clarification.

**NEW SECTION. Sec. 10. SCOPE OF PROTECTION.** A timely and sufficient correction or clarification made by a person responsible for a publication constitutes a correction or clarification made by all persons responsible for that publication other than a republisher. However, a correction or clarification that is sufficient only because of the operation of section 7(2)(b)(iii) of this act does not constitute a correction or clarification made by the person to whom the statement is attributed.

**NEW SECTION. Sec. 11. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

**NEW SECTION. Sec. 12. SHORT TITLE.** This chapter may be known and cited as the uniform correction or clarification of defamation act.

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

**NEW SECTION. Sec. 14.** Sections 2 through 12 of this act constitute a new chapter in Title 7 RCW.

Passed by the Senate April 28, 2013.

Passed by the House April 26, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

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## CHAPTER 295

[Substitute Senate Bill 5256]

### AUTOPSIES AND POSTMORTEMS—REPORTS AND RECORDS

AN ACT Relating to reports and records of autopsies and postmortems; amending RCW 68.50.105; adding a new section to chapter 68.50 RCW; and providing an effective date.

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

**Sec. 1.** RCW 68.50.105 and 2011 c 61 s 1 are each amended to read as follows:

(1) Reports and records of autopsies or postmortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the decedent as defined in RCW 11.02.005, any family member, the attending physician or advanced registered nurse practitioner, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, the department of labor and industries in cases in which it has an interest under RCW 68.50.103, or the secretary of the department of social and health services or his or her designee in cases being reviewed under RCW 74.13.640.

(2)(a) Notwithstanding the restrictions contained in this section regarding the dissemination of records and reports of autopsies or postmortems, nor the exemptions referenced under RCW 42.56.240(1), nothing in this chapter prohibits a coroner, medical examiner, or his or her designee, from publicly discussing his or her findings as to any death subject to the jurisdiction of his or her office where actions of a law enforcement officer or corrections officer have been determined to be a proximate cause of the death, except as provided in (b) of this subsection.

(b) A coroner, medical examiner, or his or her designee may not publicly discuss his or her findings outside of formal court or inquest proceedings if there is a pending or active criminal investigation, or a criminal or civil action, concerning a death that has commenced prior to the effective date of this section.

(3) The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or postmortem. For the purposes of this section, the term "family" means the surviving spouse, state registered domestic partner, or any child, parent, grandparent, grandchild, brother, or sister of the decedent, or any person who was guardian of the decedent at the time of death.

NEW SECTION. **Sec. 2.** A new section is added to chapter 68.50 RCW to read as follows:

No coroner, medical examiner, or his or her designee shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of any information related to his or her findings under RCW 68.50.105 if the coroner, medical examiner, or his or her designee acted in good faith in attempting to comply with the provisions of this chapter.



NEW SECTION. Sec. 3. This act takes effect January 1, 2014.

Passed by the Senate April 23, 2013.

Passed by the House April 17, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

**CHAPTER 296**

[Substitute Senate Bill 5559]

HIGHER EDUCATION—EDUCATIONAL SPECIALIST DEGREES

AN ACT Relating to educational specialist degrees at regional universities and the state college; amending RCW 28B.35.202; and adding a new section to chapter 28B.40 RCW.

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

**Sec. 1.** RCW 28B.35.202 and 2012 c 229 s 810 are each amended to read as follows:

The boards of trustees of Central Washington University, Eastern Washington University, and Western Washington University may offer educational specialist degrees.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.40 RCW to read as follows:

The board of trustees of The Evergreen State College may offer educational specialist degrees.

Passed by the Senate March 4, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

**CHAPTER 297**

[Substitute Senate Bill 5601]

ELECTRONIC HEALTH RECORD TECHNOLOGY—REBATING PRACTICES

AN ACT Relating to ensuring chapter 19.68 RCW is interpreted in a manner consistent with the federal antikickback statute; adding new sections to chapter 19.68 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. (1) The legislature recognizes the complexity of the health care delivery system and the need to provide a clear and consistent regulatory framework to enable health care providers to manage their operations in an efficient and effective manner. The legislature also recognizes that the donation of electronic health records systems reduces health care costs, promotes patient safety, and improves the quality of health care.

(2) To further the important national policy of promoting the widespread adoption of electronic health records systems, the federal antikickback statute and the rules adopted to implement the statute contain a safe harbor that allows the donation of electronic health records systems. The federal statute and rules also contain additional safe harbors to preserve a variety of other activities which, in many cases, improve access to health care. For health care entities

other than clinical laboratories, the legality of all of these arrangements is currently in question.

(3) The legislature is adding language to chapter 19.68 RCW to clarifying existing law and ensure that, except with respect to arrangements involving an entity which principally operates as a clinical laboratory, it is interpreted in a manner consistent with the federal antikickback statute.

**NEW SECTION. Sec. 2.** (1) Nothing in this chapter may be construed to limit or prohibit the donation of electronic health record technology or other activity by any entity, including a hospital licensed under chapter 70.41 RCW that operates a clinical laboratory, when the donation or other activity is allowed by or otherwise does not violate, 42 U.S.C. Sec. 1320a-7b(b) or the federal rules adopted to implement 42 U.S.C. Sec. 1320a-7b(b).

(2) This section does not apply to any entity which principally operates as a clinical laboratory licensed or certified under section 353 of the public health service act, 42 U.S.C. Sec. 263a, or other applicable Washington state law.

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

"Electronic health record technology" means items and services, in the form of software or information technology and training services, necessary and used predominantly to create, maintain, transmit, or receive electronic health records.

**NEW SECTION. Sec. 4.** This act applies retroactively to June 1, 2006, as well as prospectively.

**NEW SECTION. Sec. 5.** Sections 2 and 3 of this act are each added to chapter 19.68 RCW.

Passed by the Senate April 24, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

## CHAPTER 298

[Substitute Senate Bill 5615]

### HEALTH PROFESSIONALS—LOAN REPAYMENT SCHOLARSHIP PROGRAM

AN ACT Relating to the health professional loan repayment and scholarship program; and amending RCW 28B.115.030.

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

**Sec. 1.** RCW 28B.115.030 and 2011 1st sp.s. c 11 s 205 are each amended to read as follows:

The health professional loan repayment and scholarship program is established for credentialed health professionals and residents serving in health professional shortage areas. The program shall be administered by the office. In administering this program, the office shall:

(1) Select credentialed health care professionals and residents to participate in the loan repayment portion of the loan repayment and scholarship program and select eligible students to participate in the scholarship portion of the loan repayment and scholarship program;

(2) Adopt rules and develop guidelines to administer the program;

(3) Collect and manage repayments from participants who do not meet their service obligations under this chapter;

(4) Publicize the program, particularly to maximize participation among individuals in shortage areas and among populations expected to experience the greatest growth in the workforce;

(5) Solicit and accept grants and donations from public and private sources for the program;

(6) Use a competitive procurement to contract with a fund-raiser to solicit and accept grants and donations from private sources for the program. The fund-raiser shall be paid on a contingency fee basis on a sliding scale but must not exceed fifteen percent of the total amount raised for the program each year. The fund-raiser shall not be a registered state lobbyist; and

~~((6))~~ (7) Develop criteria for a contract for service in lieu of the service obligation where appropriate, that may be a combination of service and payment.

Passed by the Senate April 22, 2013.

Passed by the House April 12, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

## CHAPTER 299

[Engrossed Senate Bill 5616]

### HIGHWAYS—FARM VEHICLES

AN ACT Relating to the use of farm vehicles on public highways; amending RCW 46.16A.080 and 46.04.181; and reenacting and amending RCW 46.16A.420.

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

**Sec. 1.** RCW 46.16A.420 and 2010 c 161 s 409 and 2010 c 8 s 9010 are each reenacted and amended to read as follows:

(1) A farmer shall apply to the department, county auditor or other agent, or subagent appointed by the director for a farm exempt decal for a farm vehicle if the farm vehicle is exempt under RCW 46.16A.080(3). The farm exempt decal:

(a) Allows the farm vehicle to be operated ~~((within a radius of fifteen miles of the farm where it is principally used or garaged))~~ on public highways as identified under RCW 46.16A.080(3);

(b) Must be displayed on the farm vehicle so that it is clearly visible from outside of the farm vehicle; ~~((and))~~

(c) Must identify that the farm vehicle is exempt from the registration requirements of this chapter; and

(d) Must be visible from the rear of the farm vehicle. This requirement for a farm exempt decal to be visible from the rear of the vehicle applies only to farm exempt decals issued after the effective date of this section.

(2) A farmer or the farmer's representative must apply for a farm exempt decal on a form furnished or approved by the department. The application must show:

(a) The name and address of the person who is the owner of the vehicle;

(b) A full description of the vehicle, including its make, model, year, the motor number or the vehicle identification number if the vehicle is a motor vehicle, or the serial number if the vehicle is a trailer;

- (c) The purpose for which the vehicle is principally used;
- (d) The place where the farm vehicle is principally used or garaged; and
- (e) Other information as required by the department upon application.

(3) The department, county auditor or other agent, or subagent appointed by the director shall collect the fee required under RCW 46.17.325 when issuing a farm exempt decal.

(4) A farm exempt decal may not be renewed. The status as an exempt vehicle continues until suspended or revoked for misuse, or when the vehicle is no longer used as a farm vehicle.

- (5) The department may adopt rules to implement this section.

**Sec. 2.** RCW 46.16A.080 and 2011 c 171 s 45 are each amended to read as follows:

The following vehicles are not required to be registered under this chapter:

(1) Converter gears 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;

- (2) Electric-assisted bicycles;

(3)(a) (~~Farm implements, tractors, trailers, and other~~) Farm vehicles ((+)) operated within a radius of ((fifteen)) twenty-five miles of the farm where it is principally used or garaged for the purposes of traveling between farms or other locations to engage in activities that support farming operations, (b) farm tractors and farm implements including trailers designed as cook or bunk houses(~~(-,(ii))~~) used exclusively for animal herding(~~(-and-(iii))~~) temporarily operating or drawn upon the public highways, and ((+)) (c) trailers used exclusively to transport farm implements from one farm to another during daylight hours or at night when the trailer is equipped with lights that comply with applicable law;

(4) Forklifts operated during daylight hours on public highways adjacent to and within five hundred feet of the warehouses they serve;

(5) Golf carts, as defined in RCW 46.04.1945, operating within a designated golf cart zone as described in RCW 46.08.175;

(6) Motor vehicles operated solely within a national recreation area that is not accessible by a state highway, including motorcycles, motor homes, passenger cars, and sport utility vehicles. This exemption applies only after initial registration;

- (7) Motorized foot scooters;

(8) Nurse rigs or equipment auxiliary for 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;

(9) Off-road vehicles operated on a street, road, or highway as authorized under RCW 46.09.360, or nonhighway roads under RCW 46.09.450;

- (10) Special highway construction equipment;

(11) Dump trucks and tractor-dump trailer combinations that are:

- (a) Designed and used primarily for construction work on highways;
- (b) Not designed or used primarily for the transportation of persons or property on a public highway; and
- (c) Only incidentally operated or moved over the highways;

(12) 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;

(13) Tow dollies;

(14) Trams used for transporting persons to and from facilities related to the horse racing industry as regulated in chapter 67.16 RCW, as long as the public right-of-way routes over which the trams operate are not more than one mile from end to end, the public rights-of-way over which the tram operates have average daily traffic of not more than fifteen thousand vehicles per day, and the activity is in conformity with federal law. The operator must be a licensed driver and at least eighteen years old. For the purposes of this section, "tram" also means a vehicle, or combination of vehicles linked together with a single mode of propulsion, used to transport persons from one location to another; and

(15) Vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks.

**Sec. 3.** RCW 46.04.181 and 2012 c 130 s 1 are each amended to read as follows:

"Farm vehicle" means any vehicle other than a farm tractor or farm implement which is: (1) Designed and/or used primarily in agricultural pursuits on farms for the purpose of transporting machinery, equipment, implements, farm products, supplies and/or farm labor thereon and is only incidentally operated on or moved along public highways for the purpose of going from one farm to another or between locations supporting farming operations; or (2) for purposes of RCW 46.25.050, used to transport agricultural products, farm machinery, farm supplies, or any combination of these materials to or from a farm.

Passed by the Senate April 22, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

## CHAPTER 300

[Substitute Senate Bill 5630]

### VULNERABLE ADULTS—ADULT FAMILY HOMES

AN ACT Relating to the enactment of the Engrossed Substitute House Bill No. 1277 adult family home quality assurance panel; amending RCW 70.128.060 and 70.128.160; adding new sections to chapter 70.128 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 70.128 RCW to read as follows:

(1) The protection of vulnerable residents living in adult family homes and other long-term care facilities in the state is a matter of ongoing concern and grave importance. In 2011, the legislature examined problems with the quality of care and oversight of adult family homes in Washington. The 2011 legislature passed Engrossed Substitute House Bill No. 1277 to address some of these issues, and in addition, created an adult family home quality assurance panel, chaired by the state long-term care ombudsman, to meet and make

recommendations to the governor and legislature by December 1, 2012, for further improvements in adult family home care and the oversight of the homes by the department of social and health services.

(2) The legislature recognizes that significant progress has been made over the years in adult family home care, and that many adult family homes provide high quality care and are the preferred alternative for many residents in contrast to a larger care facility setting. The legislature finds however that the quality of care in some adult family homes would be improved, and abuse and neglect would decline, if these homes' caregivers and providers received better training and mentoring, residents and their families were more informed and able to select an appropriate home, and oversight by the department of social and health services was more vigorous and prompt against poorly performing homes. It is therefore the intent of the legislature to enact the recommendations included in the adult family home quality assurance panel report in order to improve the quality of care of vulnerable residents and the department's oversight of adult family homes.

**Sec. 2.** RCW 70.128.060 and 2011 1st sp.s. c 3 s 403 are each amended to read as follows:

(1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) Subject to the provisions of this section, the department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter. The department may not issue a license if (a) the applicant or a person affiliated with the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past ten years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department; or (b) the applicant or a person affiliated with the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating to the provision of care or services to vulnerable adults or to children. A person is considered affiliated with an applicant if the person is listed on the license application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.

(3) The license fee shall be submitted with the application.

(4) Proof of financial solvency must be submitted when requested by the department.

(5) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.

(6) The department shall not issue a license to a provider if the department finds that the provider or spouse of the provider or any partner, officer, director, managerial employee, or majority owner has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.

(7) The department shall license an adult family home for the maximum level of care that the adult family home may provide. The department shall define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.

(8) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers consistent with RCW 70.128.230, and also is required for caregivers, with standardized competency testing for caregivers hired after the effective date of this section, as set forth by the department in rule. The department shall examine, with input from experts, providers, consumers, and advocates, whether the existing specialty training courses are adequate for providers, resident managers, and caregivers to meet these residents' special needs, are sufficiently standardized in curricula and instructional techniques, and are accompanied by effective tools to fairly evaluate successful student completion. The department may enhance the existing specialty training requirements by rule, and may update curricula, instructional techniques, and competency testing based upon its review and stakeholder input. In addition, the department shall examine, with input from experts, providers, consumers, and advocates, whether additional specialty training categories should be created for adult family homes serving residents with other special needs, such as traumatic brain injury, skilled nursing, or bariatric care. The department may establish, by rule, additional specialty training categories and requirements for providers, resident managers, and caregivers, if needed to better serve residents with such special needs.

(9) The department shall establish, by rule, standards used to license nonresident providers and multiple facility operators.

~~((9))~~ (10) The department shall establish, by rule, for multiple facility operators educational standards substantially equivalent to recognized national certification standards for residential care administrators.

~~((10))~~ (11) At the time of an application for an adult family home license and upon the annual fee renewal date set by the department, the licensee shall pay a license fee. Beginning July 1, 2011, the per bed license fee and any processing fees, including the initial license fee, must be established in the omnibus appropriations act and any amendment or additions made to that act. The license fees established in the omnibus appropriations act and any amendment or additions made to that act may not exceed the department's annual licensing and oversight activity costs and must include the department's cost of paying providers for the amount of the license fee attributed to medicaid clients.

~~((11))~~ (12) A provider who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of an adult family home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the provider, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the provider relinquished or surrendered the license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license.

~~((+2))~~ (13) The department shall establish, by rule, the circumstances requiring a change in the licensed provider, which include, but are not limited to, a change in ownership or control of the adult family home or provider, a change in the provider's form of legal organization, such as from sole proprietorship to partnership or corporation, and a dissolution or merger of the licensed entity with another legal organization. The new provider is subject to the provisions of this chapter, the rules adopted under this chapter, and other applicable law. In order to ensure that the safety of residents is not compromised by a change in provider, the new provider is responsible for correction of all violations that may exist at the time of the new license.

NEW SECTION. **Sec. 3.** A new section is added to chapter 70.128 RCW to read as follows:

(1) In order to enhance the selection of an appropriate adult family home, all adult family homes licensed under this chapter shall disclose the scope of, and charges for, the care, services, and activities provided by the home or customarily arranged for by the home. The disclosure must be provided to the home's residents and the residents' representatives, if any, prior to admission, and to interested prospective residents and their representatives upon request, using standardized disclosure forms developed by the department with stakeholders' input. The home may also disclose supplemental information to prospective residents and other interested persons.

(2)(a) The disclosure forms that the department develops must be standardized, reasonable in length, and easy to read. The form setting forth the scope of an adult family home's care, services, and activities must be available from the adult family home through a link to the department's web site developed pursuant to this section. This form must indicate, among other categories, the scope of personal care and medication service provided, the scope of skilled nursing services or nursing delegation provided or available, any specialty care designations held by the adult family home, the customary number of caregivers present during the day and whether the home has awake staff at night, any particular cultural or language access available, and clearly state whether the home admits medicaid clients or retains residents who later become eligible for medicaid. The adult family home shall provide or arrange for the care, services, and activities disclosed in its form.

(b) The department must also develop a second standardized disclosure form with stakeholders' input for use by adult family homes to set forth an adult family home's charges for its care, services, items, and activities, including the charges not covered by the home's daily or monthly rate, or by medicaid, medicare, or other programs. This form must be available from the home and disclosed to residents and their representatives, if any, prior to admission, and to interested prospective residents and their representatives upon request.

(3)(a) If the adult family home decreases the scope of care, services, or activities it provides, due to circumstances beyond the home's control, the home shall provide a minimum of thirty days' written notice to the residents, and the residents' representative if any, before the effective date of the decrease in the scope of care, services, or activities provided.

(b) If the adult family home voluntarily decreases the scope of care, services, or activities it provides, and any such decrease will result in the discharge of one or more residents, then ninety days' written notice must be



provided prior to the effective date of the decrease. Notice must be given to the residents and the residents' representative, if any.

(c) If the adult family home increases the scope of care, services, or activities it provides, the home shall promptly provide written notice to the residents, and the residents' representative if any, and shall indicate the date on which the increase is effective.

(4) When the care needs of a resident exceed the disclosed scope of care or services that the adult family home provides, the home may exceed the care or services previously disclosed, provided that the additional care or services are permitted by the adult family home's license, and the home can safely and appropriately serve the resident with available staff or through the provision of reasonable accommodations required by state or federal law. The provision of care or services to a resident that exceed those previously disclosed by the home does not mean that the home is capable of or required to provide the same care or services to other residents, unless required as a reasonable accommodation under state or federal law.

(5) An adult family home may deny admission to a prospective resident if the home determines that the needs of the prospective resident cannot be met, so long as the adult family home operates in compliance with state and federal law, including RCW 70.129.030(3) and the reasonable accommodation requirements of state and federal antidiscrimination laws.

(6) The department shall work with consumers, advocates, and other stakeholders to combine and improve existing web resources to create a more robust, comprehensive, and user-friendly web site for family members, residents, and prospective residents of adult family homes in Washington. The department may contract with outside vendors and experts to assist in the development of the web site. The web site should be easy to navigate and have links to information important for residents, prospective residents, and their family members or representatives including, but not limited to: (a) Explanations of the types of licensed long-term care facilities, levels of care, and specialty designations; (b) lists of suggested questions when looking for a care facility; (c) warning signs of abuse, neglect, or financial exploitation; and (d) contact information for the department and the long-term care ombudsman. In addition, the consumer oriented web site should include a searchable list of all adult family homes in Washington, with links to inspection and investigation reports and any enforcement actions by the department for the previous three years. If a violation or enforcement remedy is deleted, rescinded, or modified under RCW 70.128.167 or chapter 34.05 RCW, the department shall make the appropriate changes to the information on the web site as soon as reasonably feasible, but no later than thirty days after the violation or enforcement remedy has been deleted, rescinded, or modified. To facilitate the comparison of adult family homes, the web site should also include a link to each licensed adult family home's disclosure form required by subsection (2)(a) of this section. The department's web site should also include periodically updated information about whether an adult family home has a current vacancy, if the home provides such information to the department, or may include links to other consumer-oriented web sites with the vacancy information.

**Sec. 4.** RCW 70.128.160 and 2011 1st sp.s. c 3 s 208 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 an adult family home provider has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated an adult family home 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 license;

(b) Impose reasonable conditions on a license, 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 at least one hundred dollars per day per violation;

(d) Impose civil penalties of up to three thousand dollars for each incident that violates adult family home licensing laws and rules, including, but not limited to, chapters 70.128, 70.129, 74.34, and 74.39A RCW and related rules. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty;

(e) Impose civil penalties of up to ten thousand dollars for a current or former licensed provider who is operating an unlicensed home;

(f) Suspend, revoke, or refuse to renew a license; or

(g) Suspend admissions to the adult family home by imposing stop placement.

(3) When the department orders stop placement, the facility shall not admit any person 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)~~ only after: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement, the previous stop placement shall remain in effect until the new stop placement is imposed. In order to protect the home's existing residents from potential ongoing neglect, when the provider has been cited for a violation that is repeated, uncorrected, pervasive, or presents a threat to the health, safety, or welfare of one or more residents, and the department has imposed a stop placement, the department shall also impose a condition on license or other remedy to facilitate or spur prompter compliance if the violation has not been corrected, and the provider has not exhibited the capacity to maintain correction, within sixty days of the stop placement.

(4) Nothing in subsection (3) of this section is intended to apply to stop placement imposed in conjunction with a license revocation or summary

suspension or to prevent the department from imposing a condition on license or other remedy prior to sixty days after a stop placement, if the department considers it necessary to protect one or more residents' well-being. After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(5) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing license suspension, stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue in effect pending any hearing.

(6) A separate adult family home account is created in the custody of the state treasurer. All receipts from civil penalties imposed under this chapter must be deposited into the account. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. The department shall use the special account only for promoting the quality of life and care of residents living in adult family homes.

(7) The department shall by rule specify criteria as to when and how the sanctions specified in this section must be applied. The criteria must provide for the imposition of incrementally more severe penalties for deficiencies that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of one or more residents. The criteria shall be tiered such that those homes consistently found to have deficiencies will be subjected to increasingly severe penalties. The department shall implement prompt and specific enforcement remedies without delay for providers found to have delivered care or failed to deliver care resulting in problems that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of one or more residents. In the selection of remedies, the health, safety, and well-being of residents must be of paramount importance.

NEW SECTION. Sec. 5. A new section is added to chapter 70.128 RCW to read as follows:

(1) If during an inspection, reinspection, or complaint investigation by the department, an adult family home corrects a violation or deficiency that the department discovers, the department shall record and consider such violation or deficiency for purposes of the home's compliance history; however, the licensor or complaint investigator may not include in the home's report the violation or deficiency if the violation or deficiency:

(a) Is corrected to the satisfaction of the department prior to the exit conference;

(b) Is not recurring; and

(c) Did not pose a significant risk of harm or actual harm to a resident.

(2) For the purposes of this section, "recurring" means that the violation or deficiency was found under the same regulation or statute in one of the two most recent preceding inspections, reinspections, or complaint investigations.

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, 2013, in the omnibus appropriations act, this act is null and void.

Passed by the Senate April 23, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

**CHAPTER 301**

[Engrossed Senate Bill 5666]

HOSPITALS—QUALITY IMPROVEMENT PROGRAMS—PROFESSIONAL PEER REVIEW

AN ACT Relating to health care quality improvement measures, including professional peer review; amending RCW 7.71.030, 70.41.230, 70.230.080, and 70.230.140; and reenacting and amending RCW 70.41.200.

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

**Sec. 1.** RCW 7.71.030 and 2012 c 165 s 1 are each amended to read as follows:

(1) If the limitation on damages under RCW 7.71.020 and P.L. 99-660 Sec. 411(a)(1) does not apply, this section shall provide the exclusive ((remedy)) remedies in any lawsuit by a health care provider for any action taken by a professional peer review body of health care providers as defined in RCW 7.70.020(~~(, that is found to be based on matters not related to the competence or professional conduct of a health care provider)).~~).

(2) ~~((Actions))~~ Remedies shall be limited to appropriate injunctive relief, and damages shall be allowed only for lost earnings directly attributable to the action taken by the professional peer review body, incurred between the date of such action and the date the action is functionally reversed by the professional peer review body.

(3) Reasonable attorneys' fees and costs shall be awarded if approved by the court under RCW 7.71.035.

(4) The statute of limitations for actions under this section shall be one year from the date of the action of the professional peer review body.

**Sec. 2.** RCW 70.41.200 and 2007 c 273 s 22 and 2007 c 261 s 3 are each reenacted and amended to read as follows:

(1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of ((a)) one or more quality improvement committees with the responsibility to review the services rendered in the hospital, both

retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. ~~((The))~~ Different quality improvement committees may be established as a part of a quality improvement program to review different health care services. Such committees shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A process, including a medical staff privileges sanction procedure which must be conducted substantially in accordance with medical staff bylaws and applicable rules, regulations, or policies of the medical staff through which credentials, physical and mental capacity, professional conduct, and competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) ~~((The))~~ A process for the periodic review of the credentials, physical and mental capacity, professional conduct, and competence in delivering health care services of all ~~((persons))~~ other health care providers who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients including health care-associated infections as defined in RCW 43.70.056, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, infection control, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for,

and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510, a coordinated quality improvement committee maintained by an ambulatory surgical facility under RCW 70.230.070, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 74.42.640 (7) and (9), and 4.24.250.

(9) A hospital that operates a nursing home as defined in RCW 18.51.010 may conduct quality improvement activities for both the hospital and the nursing home through a quality improvement committee under this section, and such activities shall be subject to the provisions of subsections (2) through (8) of this section.

(10) Violation of this section shall not be considered negligence per se.

**Sec. 3.** RCW 70.41.230 and 1994 sp.s. c 9 s 744 are each amended to read as follows:

(1) Prior to granting or renewing clinical privileges or association of any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from the physician and the physician shall provide the following information:

(a) The name of any hospital or facility with or at which the physician had or has any association, employment, privileges, or practice during the prior five years: PROVIDED, That the hospital may request additional information going back further than five years, and the physician shall use his or her best efforts to comply with such a request for additional information;

(b) ~~((If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation))~~ Whether the physician has ever been or is in the process of being denied, revoked, terminated, suspended, restricted, reduced, limited, sanctioned, placed on probation, monitored, or not renewed for any professional activity listed in (b)(i) through (x) of this subsection, or has ever voluntarily or involuntarily relinquished, withdrawn, or failed to proceed with an application for any professional activity listed in (b)(i) through (x) of this subsection in order to avoid an adverse action or to preclude an investigation or while under investigation relating to professional competence or conduct;

(i) License to practice any profession in any jurisdiction;

(ii) Other professional registration or certification in any jurisdiction;

(iii) Specialty or subspecialty board certification;

(iv) Membership on any hospital medical staff;

(v) Clinical privileges at any facility, including hospitals, ambulatory surgical centers, or skilled nursing facilities;

(vi) Medicare, medicaid, the food and drug administration, the national institute of health (office of human research protection), governmental, national, or international regulatory agency, or any public program;

(vii) Professional society membership or fellowship;

(viii) Participation or membership in a health maintenance organization, preferred provider organization, independent practice association, physician-hospital organization, or other entity;

(ix) Academic appointment;

(x) Authority to prescribe controlled substances (drug enforcement agency or other authority);

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the physician deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the physician deems appropriate;

(e) A waiver by the physician of any confidentiality provisions concerning the information required to be provided to hospitals pursuant to this subsection; and

(f) A verification by the physician that the information provided by the physician is accurate and complete.

(2) Prior to granting privileges or association to any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from any hospital with or at which the physician had or has privileges, was associated, or was employed, during the preceding five years, the following information concerning the physician:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals pursuant to RCW 18.71.0195.

(3) The medical quality assurance commission shall be advised within thirty days of the name of any physician denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital or facility that receives a request for information from another hospital or facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital or facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital or facility. A hospital, facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.



(5) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(6) Hospitals shall be granted access to information held by the medical quality assurance commission and the board of osteopathic medicine and surgery pertinent to decisions of the hospital regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se.

**Sec. 4.** RCW 70.230.080 and 2007 c 273 s 9 are each amended to read as follows:

(1) Every ambulatory surgical facility shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of ((~~the~~)) one or more quality improvement committees with the responsibility to review the services rendered in the ambulatory surgical facility, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. ((~~The~~)) Different quality improvement committees may be established as a part of the quality improvement program to review different health care services. Such committees shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise the policies and procedures of the ambulatory surgical facility;

(b) A process, including a medical staff privileges sanction procedure which must be conducted substantially in accordance with medical staff bylaws and applicable rules, regulations, or policies of the medical staff through which credentials, physical and mental capacity, professional conduct, and competence

in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the ambulatory surgical facility;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the ambulatory surgical facility's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the ambulatory surgical facility for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual practitioners within the practitioner's personnel or credential file maintained by the ambulatory surgical facility;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee is not subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to review or disclosure, except as provided in this section, or discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any

civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence of information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the management of the ambulatory surgical facility, as identified in the facility's application, in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission, the board of osteopathic medicine and surgery, or the podiatric medical board, as appropriate, may review and audit the records of committee decisions in which a practitioner's privileges are terminated or restricted. Each ambulatory surgical facility shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained is not subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of an ambulatory surgical facility to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department and any accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of the ambulatory surgical facility. Information so obtained is not subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each ambulatory surgical facility shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or RCW 43.70.510 or 70.41.200, a quality assurance committee maintained in accordance with RCW 18.20.390 or 74.42.640, or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to

implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents are not subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section, RCW 18.20.390 (6) and (8), 70.41.200(3), 74.42.640 (7) and (9), and 4.24.250.

(9) An ambulatory surgical facility that participates in a coordinated quality improvement program under RCW 43.70.510 shall be deemed to have met the requirements of this section.

(10) Violation of this section shall not be considered negligence per se.

**Sec. 5.** RCW 70.230.140 and 2007 c 273 s 15 are each amended to read as follows:

(1) Prior to granting or renewing clinical privileges or association of any practitioner or hiring a practitioner, an ambulatory surgical facility approved pursuant to this chapter shall request from the practitioner and the practitioner shall provide the following information:

(a) The name of any hospital, ambulatory surgical facility, or other facility with or at which the practitioner had or has any association, employment, privileges, or practice during the prior five years: PROVIDED, That the ambulatory surgical facility may request additional information going back further than five years, and the physician shall use his or her best efforts to comply with such a request for additional information;

(b) ~~((If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation))~~ Whether the physician has ever been or is in the process of being denied, revoked, terminated, suspended, restricted, reduced, limited, sanctioned, placed on probation, monitored, or not renewed for any professional activity listed in (b)(i) through (x) of this subsection, or has ever voluntarily or involuntarily relinquished, withdrawn, or failed to proceed with an application for any professional activity listed in (b)(i) through (x) of this subsection in order to avoid an adverse action or to preclude an investigation or while under investigation relating to professional competence or conduct;

(i) License to practice any profession in any jurisdiction;

(ii) Other professional registration or certification in any jurisdiction;

(iii) Specialty or subspecialty board certification;

(iv) Membership on any hospital medical staff;

(v) Clinical privileges at any facility, including hospitals, ambulatory surgical centers, or skilled nursing facilities;

(vi) Medicare, medicaid, the food and drug administration, the national institute of health (office of human research protection), governmental, national, or international regulatory agency, or any public program;

(vii) Professional society membership or fellowship;

(viii) Participation or membership in a health maintenance organization, preferred provider organization, independent practice association, physician-hospital organization, or other entity;

(ix) Academic appointment;

(x) Authority to prescribe controlled substances (drug enforcement agency or other authority);

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the practitioner deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the practitioner deems appropriate;

(e) A waiver by the practitioner of any confidentiality provisions concerning the information required to be provided to ambulatory surgical facilities pursuant to this subsection; and

(f) A verification by the practitioner that the information provided by the practitioner is accurate and complete.

(2) Prior to granting privileges or association to any practitioner or hiring a practitioner, an ambulatory surgical facility approved under this chapter shall request from any hospital or ambulatory surgical facility with or at which the practitioner had or has privileges, was associated, or was employed, during the preceding five years, the following information concerning the practitioner:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals or ambulatory surgical facilities pursuant to RCW 18.130.070.

(3) The medical quality assurance commission, board of osteopathic medicine and surgery, podiatric medical board, or dental quality assurance commission, as appropriate, shall be advised within thirty days of the name of any practitioner denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital, ambulatory surgical facility, or other facility that receives a request for information from another hospital, ambulatory surgical facility, or other facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital, ambulatory surgical facility, or other facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital, ambulatory surgical facility, or facility. A hospital, ambulatory surgical facility, other facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created specifically for, and collected and maintained by, a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not

preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any, and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by rule of the department to be made regarding the care and treatment received.

(6) Ambulatory surgical facilities shall be granted access to information held by the medical quality assurance commission, board of osteopathic medicine and surgery, or podiatric medical board pertinent to decisions of the ambulatory surgical facility regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se.

Passed by the Senate April 26, 2013.

Passed by the House April 25, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

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## CHAPTER 302

[Engrossed Substitute Senate Bill 5669]

### CRIMES—TRAFFICKING

AN ACT Relating to trafficking; amending RCW 9.68A.090, 9.68A.100, 9.68A.101, 9.68A.102, 9.68A.103, 9A.44.020, 9A.44.128, 9A.44.150, 9A.82.010, and 13.34.132; reenacting and amending RCW 9A.40.100; prescribing penalties; and providing an effective date.

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

**Sec. 1.** RCW 9.68A.090 and 2006 c 139 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor.

(2) A person who communicates with a minor for immoral purposes is guilty of a class C felony punishable according to chapter 9A.20 RCW if the person has previously been convicted under this section or of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state or if the person communicates with a minor or with someone the person believes to be a minor for immoral purposes, including the purchase or sale of commercial sex acts and sex trafficking, through the sending of an electronic communication.

(3) For the purposes of this section, "electronic communication" has the same meaning as defined in RCW 9.61.260.

**Sec. 2.** RCW 9.68A.100 and 2010 c 289 s 13 are each amended to read as follows:

(1) A person is guilty of commercial sexual abuse of a minor if:

(a) He or she pays a fee to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;

(b) He or she pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or

(c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee.

(2) Commercial sexual abuse of a minor is a class B felony punishable under chapter 9A.20 RCW.

(3) In addition to any other penalty provided under chapter 9A.20 RCW, a person guilty of commercial sexual abuse of a minor is subject to the provisions under RCW 9A.88.130 and 9A.88.140.

(4) Consent of a minor to the sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

**Sec. 3.** RCW 9.68A.101 and 2012 c 144 s 1 are each amended to read as follows:

(1) A person is guilty of promoting commercial sexual abuse of a minor if he or she knowingly advances commercial sexual abuse or a sexually explicit act of a minor or profits from a minor engaged in sexual conduct or a sexually explicit act.

(2) Promoting commercial sexual abuse of a minor is a class A felony.

(3) For the purposes of this section:

(a) A person "advances commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct or as a person engaged in commercial sexual abuse of a minor, he or she causes or aids a person to commit or engage in commercial sexual abuse of a minor, procures or solicits customers for commercial sexual abuse of a minor, provides persons or premises for the purposes of engaging in commercial sexual abuse of a minor, operates or assists in the operation of a house or enterprise for the purposes of engaging in commercial sexual abuse of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate an act or enterprise of commercial sexual abuse of a minor.

(b) A person "profits from commercial sexual abuse of a minor" if, acting other than as a minor receiving compensation for personally rendered sexual conduct, he or she accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he or she participates or will participate in the proceeds of commercial sexual abuse of a minor.

(c) A person "advances a sexually explicit act of a minor" if he or she causes or aids a sexually explicit act of a minor, procures or solicits customers for a sexually explicit act of a minor, provides persons or premises for the purposes of

a sexually explicit act of a minor, or engages in any other conduct designed to institute, aid, cause, assist, or facilitate a sexually explicit act of a minor.

(d) A "sexually explicit act" is a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons and for which something of value is given or received.

(e) A "patron" is a person who pays or agrees to pay a fee to another person as compensation for a sexually explicit act of a minor or who solicits or requests a sexually explicit act of a minor in return for a fee.

(4) Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense to any offense listed in this section.

(5) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

**Sec. 4.** RCW 9.68A.102 and 2007 c 368 s 5 are each amended to read as follows:

(1) A person commits the offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in this state.

(2) Promoting travel for commercial sexual abuse of a minor is a class C felony.

(3) Consent of a minor to the travel for commercial sexual abuse, or the sexually explicit act or sexual conduct itself, does not constitute a defense to any offense listed in this section.

(4) For purposes of this section, "travel services" has the same meaning as defined in RCW 19.138.021.

**Sec. 5.** RCW 9.68A.103 and 2007 c 368 s 7 are each amended to read as follows:

(1) A person is guilty of permitting commercial sexual abuse of a minor if, having possession or control of premises which he or she knows are being used for the purpose of commercial sexual abuse of a minor, he or she fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.

(2) Permitting commercial sexual abuse of a minor is a gross misdemeanor.

(3) Consent of a minor to the sexually explicit act or sexual conduct does not constitute a defense to any offense listed in this section.

**Sec. 6.** RCW 9A.40.100 and 2012 c 144 s 2 and 2012 c 134 s 1 are each reenacted and amended to read as follows:

(1)(a) A person is guilty of trafficking in the first degree when:

(i) Such person:

(A) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact, that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act, or that the person has not attained the age of eighteen years and is caused to engage in a sexually explicit act or a commercial sex act; or



(B) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i)(A) of this subsection; and

(ii) The acts or venture set forth in (a)(i) of this subsection:

(A) Involve committing or attempting to commit kidnapping;

(B) Involve a finding of sexual motivation under RCW 9.94A.835;

(C) Involve the illegal harvesting or sale of human organs; or

(D) Result in a death.

(b) Trafficking in the first degree is a class A felony.

(2)(a) A person is guilty of trafficking in the second degree when such person:

(i) Recruits, harbors, transports, transfers, provides, obtains, buys, purchases, or receives by any means another person knowing, or in reckless disregard of the fact, that force, fraud, or coercion as defined in RCW 9A.36.070 will be used to cause the person to engage in forced labor, involuntary servitude, a sexually explicit act, or a commercial sex act, or that the person has not attained the age of eighteen years and is caused to engaged in a sexually explicit act or a commercial sex act; or

(ii) Benefits financially or by receiving anything of value from participation in a venture that has engaged in acts set forth in (a)(i) of this subsection.

(b) Trafficking in the second degree is a class A felony.

(3)(a) A person who is either convicted or given a deferred sentence or a deferred prosecution or who has entered into a statutory or nonstatutory diversion agreement as a result of an arrest for a violation of a trafficking crime shall be assessed a (~~three~~) ten thousand dollar fee.

(b) The court shall not reduce, waive, or suspend payment of all or part of the fee assessed in this section unless it finds, on the record, that the offender does not have the ability to pay the fee in which case it may reduce the fee by an amount up to two-thirds of the maximum allowable fee.

(c) Fees assessed under this section shall be collected by the clerk of the court and remitted to the treasurer of the county where the offense occurred for deposit in the county general fund, except in cases in which the offense occurred in a city or town that provides for its own law enforcement, in which case these amounts shall be remitted to the treasurer of the city or town for deposit in the general fund of the city or town. Revenue from the fees must be used for local efforts to reduce the commercial sale of sex including, but not limited to, increasing enforcement of commercial sex laws.

(i) At least fifty percent of the revenue from fees imposed under this section must be spent on prevention, including education programs for offenders, such as john school, and rehabilitative services, such as mental health and substance abuse counseling, parenting skills, training, housing relief, education, vocational training, drop-in centers, and employment counseling.

(ii) Revenues from these fees are not subject to the distribution requirements under RCW 3.50.100, 3.62.020, 3.62.040, 10.82.070, or 35.20.220.

(4) If the victim of any offense identified in this section is a minor, force, fraud, or coercion are not necessary elements of an offense and consent to the sexually explicit act or commercial sex act does not constitute a defense.

(5) For purposes of this section(~~;~~):

(a) "Commercial sex act" means any act of sexual contact or sexual intercourse, both as defined in chapter 9A.44 RCW, for which something of value is given or received by any person; and

(b) "Sexually explicit act" means a public, private, or live photographed, recorded, or videotaped act or show intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons for which something of value is given or received.

**Sec. 7.** RCW 9A.44.020 and 1975 1st ex.s. c 14 s 2 are each amended to read as follows:

(1) In order to convict a person of any crime defined in this chapter it shall not be necessary that the testimony of the alleged victim be corroborated.

(2) Evidence of the victim's past sexual behavior including but not limited to the victim's marital history, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is inadmissible on the issue of credibility and is inadmissible to prove the victim's consent except as provided in subsection (3) of this section, but when the perpetrator and the victim have engaged in sexual intercourse with each other in the past, and when the past behavior is material to the issue of consent, evidence concerning the past behavior between the perpetrator and the victim may be admissible on the issue of consent to the offense.

(3) In any prosecution for the crime of rape, trafficking pursuant to RCW 9A.40.100, or any of the offenses in chapter 9.68A RCW, or for an attempt to commit, or an assault with an intent to commit any such crime evidence of the victim's past sexual behavior including but not limited to the victim's marital behavior, divorce history, or general reputation for promiscuity, nonchastity, or sexual mores contrary to community standards is not admissible if offered to attack the credibility of the victim and is admissible on the issue of consent, except where prohibited in the underlying criminal offense, only pursuant to the following procedure:

(a) A written pretrial motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the past sexual behavior of the victim proposed to be presented and its relevancy on the issue of the consent of the victim.

(b) The written motion shall be accompanied by an affidavit or affidavits in which the offer of proof shall be stated.

(c) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and the hearing shall be closed except to the necessary witnesses, the defendant, counsel, and those who have a direct interest in the case or in the work of the court.

(d) At the conclusion of the hearing, if the court finds that the evidence proposed to be offered by the defendant regarding the past sexual behavior of the victim is relevant to the issue of the victim's consent; is not inadmissible because its probative value is substantially outweighed by the probability that its admission will create a substantial danger of undue prejudice; and that its exclusion would result in denial of substantial justice to the defendant; the court shall make an order stating what evidence may be introduced by the defendant, which order may include the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(4) Nothing in this section shall be construed to prohibit cross-examination of the victim on the issue of past sexual behavior when the prosecution presents evidence in its case in chief tending to prove the nature of the victim's past sexual behavior, but the court may require a hearing pursuant to subsection (3) of this section concerning such evidence.

**Sec. 8.** RCW 9A.44.128 and 2012 c 134 s 2 are each amended to read as follows:

For the purposes of RCW 9A.44.130 through 9A.44.145, 10.01.200, 43.43.540, 70.48.470, and 72.09.330, the following definitions apply:

(1) "Business day" means any day other than Saturday, Sunday, or a legal local, state, or federal holiday.

(2) "Conviction" means any adult conviction or juvenile adjudication for a sex offense or kidnapping offense.

(3) "Disqualifying offense" means a conviction for: Any offense that is a felony; a sex offense as defined in this section; a crime against children or persons as defined in RCW 43.43.830(~~(5)~~) (7) and 9.94A.411(2)(a); an offense with a domestic violence designation as provided in RCW 10.99.020; permitting the commercial sexual abuse of a minor as defined in RCW 9.68A.103; or any violation of chapter 9A.88 RCW.

(4) "Employed" or "carries on a vocation" means employment that is full time or part time for a period of time exceeding fourteen days, or for an aggregate period of time exceeding thirty days during any calendar year. A person is employed or carries on a vocation whether the person's employment is financially compensated, volunteered, or for the purpose of government or educational benefit.

(5) "Fixed residence" means a building that a person lawfully and habitually uses as living quarters a majority of the week. Uses as living quarters means to conduct activities consistent with the common understanding of residing, such as sleeping; eating; keeping personal belongings; receiving mail; and paying utilities, rent, or mortgage. A nonpermanent structure including, but not limited to, a motor home, travel trailer, camper, or boat may qualify as a residence provided it is lawfully and habitually used as living quarters a majority of the week, primarily kept at one location with a physical address, and the location it is kept at is either owned or rented by the person or used by the person with the permission of the owner or renter. A shelter program may qualify as a residence provided it is a shelter program designed to provide temporary living accommodations for the homeless, provides an offender with a personally assigned living space, and the offender is permitted to store belongings in the living space.

(6) "In the community" means residing outside of confinement or incarceration for a disqualifying offense.

(7) "Institution of higher education" means any public or private institution dedicated to postsecondary education, including any college, university, community college, trade, or professional school.

(8) "Kidnapping offense" means:

(a) The crimes of kidnapping in the first degree, kidnapping in the second degree, and unlawful imprisonment, as defined in chapter 9A.40 RCW, where the victim is a minor and the offender is not the minor's parent;

(b) Any offense that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a kidnapping offense under this subsection; and

(c) Any federal or out-of-state conviction for: An offense for which the person would be required to register as a kidnapping offender if residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a kidnapping offense under this subsection.

(9) "Lacks a fixed residence" means the person does not have a living situation that meets the definition of a fixed residence and includes, but is not limited to, a shelter program designed to provide temporary living accommodations for the homeless, an outdoor sleeping location, or locations where the person does not have permission to stay.

(10) "Sex offense" means:

(a) Any offense defined as a sex offense by RCW 9.94A.030;

(b) Any violation under RCW 9A.44.096 (sexual misconduct with a minor in the second degree);

(c) Any violation under RCW 9A.40.100(1)(a)(ii)(B) (trafficking);

(d) Any violation under RCW 9.68A.090 (communication with a minor for immoral purposes);

~~((f))~~ (e) A violation under RCW 9A.88.070 (promoting prostitution in the first degree) or RCW 9A.88.080 (promoting prostitution in the second degree) if the person has a prior conviction for one of these offenses;

~~((e))~~ (f) Any gross misdemeanor that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit an offense that is classified as a sex offense under RCW 9.94A.030 or this subsection;

~~((f))~~ (g) Any out-of-state conviction for an offense for which the person would be required to register as a sex offender while residing in the state of conviction; or, if not required to register in the state of conviction, an offense that under the laws of this state would be classified as a sex offense under this subsection;

~~((g))~~ (h) Any federal conviction classified as a sex offense under 42 U.S.C. Sec. 16911 (SORNA);

~~((h))~~ (i) Any military conviction for a sex offense. This includes sex offenses under the uniform code of military justice, as specified by the United States secretary of defense;

~~((i))~~ (j) Any conviction in a foreign country for a sex offense if it was obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established pursuant to 42 U.S.C. Sec. 16912.

(11) "School" means a public or private school regulated under Title 28A RCW or chapter 72.40 RCW.

(12) "Student" means a person who is enrolled, on a full-time or part-time basis, in any school or institution of higher education.

**Sec. 9.** RCW 9A.44.150 and 2005 c 455 s 1 are each amended to read as follows:

(1) On motion of the prosecuting attorney in a criminal proceeding, the court may order that a child under the age of ~~((teen))~~ fourteen may testify in a

room outside the presence of the defendant and the jury while one-way closed-circuit television equipment simultaneously projects the child's testimony into another room so the defendant and the jury can watch and hear the child testify if:

(a) The testimony will:

(i) Describe an act or attempted act of sexual contact performed with or on the child witness by another person or with or on a child other than the child witness by another person;

(ii) Describe an act or attempted act of physical abuse against the child witness by another person or against a child other than the child witness by another person; ~~((e))~~

(iii) Describe a violation of RCW 9A.40.100 (trafficking) or any offense identified in chapter 9.68A RCW (sexual exploitation of children); or

(iv) Describe a violent offense as defined by RCW 9.94A.030 committed against a person known by or familiar to the child witness or by a person known by or familiar to the child witness;

(b) The testimony is taken during the criminal proceeding;

(c) The court finds by substantial evidence, in a hearing conducted outside the presence of the jury, that requiring the child witness to testify in the presence of the defendant will cause the child to suffer serious emotional or mental distress that will prevent the child from reasonably communicating at the trial. If the defendant is excluded from the presence of the child, the jury must also be excluded;

(d) As provided in ~~((subsection (1))~~(a) and (b) of this subsection, the court may allow a child witness to testify in the presence of the defendant but outside the presence of the jury, via closed-circuit television, if the court finds, upon motion and hearing outside the presence of the jury, that the child will suffer serious emotional distress that will prevent the child from reasonably communicating at the trial in front of the jury, or, that although the child may be able to reasonably communicate at trial in front of the jury, the child will suffer serious emotional or mental distress from testifying in front of the jury. If the child is able to communicate in front of the defendant but not the jury the defendant will remain in the room with the child while the jury is excluded from the room;

(e) The court finds that the prosecutor has made all reasonable efforts to prepare the child witness for testifying, including informing the child or the child's parent or guardian about community counseling services, giving court tours, and explaining the trial process. If the prosecutor fails to demonstrate that preparations were implemented or the prosecutor in good faith attempted to implement them, the court shall deny the motion;

(f) The court balances the strength of the state's case without the testimony of the child witness against the defendant's constitutional rights and the degree of infringement of the closed-circuit television procedure on those rights;

(g) The court finds that no less restrictive method of obtaining the testimony exists that can adequately protect the child witness from the serious emotional or mental distress;

(h) When the court allows the child witness to testify outside the presence of the defendant, the defendant can communicate constantly with the defense attorney by electronic transmission and be granted reasonable court recesses

during the child's testimony for person-to-person consultation with the defense attorney;

(i) The court can communicate with the attorneys by an audio system so that the court can rule on objections and otherwise control the proceedings;

(j) All parties in the room with the child witness are on camera and can be viewed by all other parties. If viewing all participants is not possible, the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child;

(k) The court finds that the television equipment is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment; and

(l) The court imposes reasonable guidelines upon the parties for conducting the filming to avoid trauma to the child witness or abuse of the procedure for tactical advantage.

The prosecutor, defense attorney, and a neutral and trained victim's advocate, if any, shall always be in the room where the child witness is testifying. The court in the court's discretion depending on the circumstances and whether the jury or defendant or both are excluded from the room where the child is testifying, may remain or may not remain in the room with the child.

(2) During the hearing conducted under subsection (1) of this section to determine whether the child witness may testify outside the presence of the defendant and/or the jury, the court may conduct the observation and examination of the child outside the presence of the defendant if:

(a) The prosecutor alleges and the court concurs that the child witness will be unable to testify in front of the defendant or will suffer severe emotional or mental distress if forced to testify in front of the defendant;

(b) The defendant can observe and hear the child witness by closed-circuit television;

(c) The defendant can communicate constantly with the defense attorney during the examination of the child witness by electronic transmission and be granted reasonable court recesses during the child's examination for person-to-person consultation with the defense attorney; and

(d) The court finds the closed-circuit television is capable of making an accurate reproduction and the operator of the equipment is competent to operate the equipment. Whenever possible, all the parties in the room with the child witness shall be on camera so that the viewers can see all the parties. If viewing all participants is not possible, then the court shall describe for the viewers the location of the prosecutor, defense attorney, and other participants in relation to the child.

(3) The court shall make particularized findings on the record articulating the factors upon which the court based its decision to allow the child witness to testify via closed-circuit television pursuant to this section. The factors the court may consider include, but are not limited to, a consideration of the child's age, physical health, emotional stability, expressions by the child of fear of testifying in open court or in front of the defendant, the relationship of the defendant to the child, and the court's observations of the child's inability to reasonably communicate in front of the defendant or in open court. The court's findings shall identify the impact the factors have upon the child's ability to testify in front of the jury or the defendant or both and the specific nature of the emotional

or mental trauma the child would suffer. The court shall determine whether the source of the trauma is the presence of the defendant, the jury, or both, and shall limit the use of the closed-circuit television accordingly.

(4) This section does not apply if the defendant is an attorney pro se unless the defendant has a court-appointed attorney assisting the defendant in the defense.

(5) This section may not preclude the presence of both the child witness and the defendant in the courtroom together for purposes of establishing or challenging the identification of the defendant when identification is a legitimate issue in the proceeding.

(6) The Washington supreme court may adopt rules of procedure regarding closed-circuit television procedures.

(7) All recorded tapes of testimony produced by closed-circuit television equipment shall be subject to any protective order of the court for the purpose of protecting the privacy of the child witness.

(8) Nothing in this section creates a right of the child witness to a closed-circuit television procedure in lieu of testifying in open court.

(9) The state shall bear the costs of the closed-circuit television procedure.

(10) A child witness may or may not be a victim in the proceeding.

(11) Nothing in this section precludes the court, under other circumstances arising under subsection (1)(a) of this section, from allowing a child to testify outside the presence of the defendant and the jury so long as the testimony is presented in accordance with the standards and procedures required in this section.

**Sec. 10.** RCW 9A.82.010 and 2012 c 139 s 1 are each amended to read as follows:

Unless the context requires the contrary, the definitions in this section apply throughout this chapter.

(1)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest is considered to be located where the real property owned by the trustee is located.

(2) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(3) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(4) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable

under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

- (a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;
- (b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;
- (c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;
- (d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;
- (e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, 9A.56.080, and 9A.56.083;
- (f) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;
- (g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;
- (h) Child selling or child buying, as defined in RCW 9A.64.030;
- (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;
- (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- (l) Unlawful production of payment instruments, unlawful possession of payment instruments, unlawful possession of a personal identification device, unlawful possession of fictitious identification, or unlawful possession of instruments of financial fraud, as defined in RCW 9A.56.320;
- (m) Extortionate extension of credit, as defined in RCW 9A.82.020;
- (n) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;
- (o) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;
- (p) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- (q) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;
- (r) Trafficking in stolen property, as defined in RCW 9A.82.050;
- (s) Leading organized crime, as defined in RCW 9A.82.060;
- (t) Money laundering, as defined in RCW 9A.83.020;
- (u) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;
- (v) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;
- (w) Promoting pornography, as defined in RCW 9.68.140;
- (x) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;
- (y) Promoting prostitution, as defined in RCW 9A.88.070 and 9A.88.080;
- (z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
- (aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
- (bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
- (cc) A pattern of equity skimming, as defined in RCW 61.34.020;



- (dd) Commercial telephone solicitation in violation of RCW 19.158.040(1);
- (ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;
- (ff) Unlawful practice of law, as defined in RCW 2.48.180;
- (gg) Commercial bribery, as defined in RCW 9A.68.060;
- (hh) Health care false claims, as defined in RCW 48.80.030;
- (ii) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7);
- (jj) Improperly obtaining financial information, as defined in RCW 9.35.010;
- (kk) Identity theft, as defined in RCW 9.35.020;
- (ll) Unlawful shipment of cigarettes in violation of RCW 70.155.105(6) (a) or (b);
- (mm) Unlawful shipment of cigarettes in violation of RCW 82.24.110(2);
- (nn) Unauthorized sale or procurement of telephone records in violation of RCW 9.26A.140;
- (oo) Theft with the intent to resell, as defined in RCW 9A.56.340;
- (pp) Organized retail theft, as defined in RCW 9A.56.350;
- (qq) Mortgage fraud, as defined in RCW 19.144.080;
- (rr) Commercial sexual abuse of a minor, as defined in RCW 9.68A.100;
- ((~~rr~~))
- (ss) Promoting commercial sexual abuse of a minor, as defined in RCW 9.68A.101; or

(tt) Trafficking, as defined in RCW 9A.40.100, promoting travel for commercial sexual abuse of a minor, as defined in RCW 9.68A.102, and permitting commercial sexual abuse of a minor, as defined in RCW 9.68A.103.

(5) "Dealer in property" means a person who buys and sells property as a business.

(6) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(7) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(8) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(9) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(10) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(11) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(12) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under RCW 9A.82.100.

(13) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(14) "Records" means any book, paper, writing, record, computer program, or other material.

(15) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(16) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(17) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(18) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(19) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(20)(a) "Trustee" means:

(i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;

(ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or

(iii) A successor trustee to a person who is a trustee under (a)(i) or (ii) of this subsection.

(b) "Trustee" does not mean a person appointed or acting as:

- (i) A personal representative under Title 11 RCW;
- (ii) A trustee of any testamentary trust;
- (iii) A trustee of any indenture of trust under which a bond is issued; or
- (iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

- (a) In violation of any one of the following:
  - (i) Chapter 67.16 RCW relating to horse racing;
  - (ii) Chapter 9.46 RCW relating to gambling;
- (b) In a gambling activity in violation of federal law; or
- (c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

**Sec. 11.** RCW 13.34.132 and 2011 c 309 s 28 are each amended to read as follows:

A court may order that a petition seeking termination of the parent and child relationship be filed if the following requirements are met:

(1) The court has removed the child from his or her home pursuant to RCW 13.34.130;

(2) Termination is recommended by the department or the supervising agency;

(3) Termination is in the best interests of the child; and

(4) Because of the existence of aggravated circumstances, reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interests of the child. In determining whether aggravated circumstances exist by clear, cogent, and convincing evidence, the court shall consider one or more of the following:

(a) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

(b) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;

(c) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

(d) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;

(e) Conviction of the parent of trafficking, or promoting commercial sexual abuse of a minor when the victim of the crime is the child, the child's other parent, a sibling of the child, or another child.

(f) Conviction of the parent of attempting, soliciting, or conspiring to commit a crime listed in (a), (b), (c), or (d) of this subsection;

~~((f))~~ (g) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

~~((g))~~ (h) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent

has failed to effect significant change in the interim. In the case of a parent of an Indian child, as defined in RCW 13.38.040, the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

~~((h))~~ (i) An infant under three years of age has been abandoned;

~~((g))~~ (j) Conviction of the parent, when a child has been born of the offense, of: (A) A sex offense under chapter 9A.44 RCW; or (B) incest under RCW 9A.64.020.

**NEW SECTION. Sec. 12.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 13.** This act takes effect August 1, 2013.

Passed by the Senate March 4, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

## CHAPTER 303

[Engrossed Substitute Senate Bill 5681]

### MENTAL HEALTH AND CHEMICAL DEPENDENCY TREATMENT— CO-OCCURRING DISORDERS—RULES

AN ACT Relating to facilitating treatment for persons with co-occurring disorders by requiring development of an integrated rule; adding a new section to chapter 70.96A RCW; adding a new section to chapter 71.24 RCW; 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 70.96A RCW to read as follows:

(1) Any licensed mental health agency which has a waiver from the department exempting the agency from compliance with chemical dependency rules for services provided to patients with co-occurring mental health and chemical dependency disorders as of January 1, 2013, may request and must receive a three-year renewal of the waiver exempting the agency from compliance with chemical dependency rules with respect to such patients if a fully integrated rule is not in effect by May 1, 2014.

(2) This section expires June 30, 2014.

**NEW SECTION. Sec. 2.** A new section is added to chapter 71.24 RCW to read as follows:

(1) Any licensed mental health agency which has a waiver from the department exempting the agency from compliance with chemical dependency rules for services provided to patients with co-occurring mental health and chemical dependency disorders as of January 1, 2013, may request and must receive a three-year renewal of the waiver exempting the agency from compliance with chemical dependency rules with respect to such patients if a fully integrated rule is not in effect by May 1, 2014.

(2) This section expires June 30, 2014.

Passed by the Senate March 1, 2013.  
 Passed by the House April 17, 2013.  
 Approved by the Governor May 20, 2013.  
 Filed in Office of Secretary of State May 20, 2013.

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## CHAPTER 304

[Senate Bill 5692]

### GUARDIANSHIP—STANDBY AND LIMITED GUARDIANS

AN ACT Relating to standby guardians and limited guardians; and amending RCW 11.88.125.

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

**Sec. 1.** RCW 11.88.125 and 2011 c 329 s 5 are each amended to read as follows:

(1) ~~((The person))~~ Any individual or professional guardian appointed by the court as either guardian or limited guardian of the person and/or estate of an incapacitated person shall file in writing with the court, within ninety days from the date of appointment, a notice designating a standby ~~((limited))~~ guardian or standby limited guardian to serve as ~~((limited))~~ guardian or limited guardian at the death ~~((or))~~, legal incapacity, or planned absence of the court-appointed guardian or limited guardian. The notice shall state the name, address, zip code, and telephone number of the designated standby guardian or standby limited guardian. Notice of the guardian's designation of the standby guardian or standby limited guardian shall be given to the standby guardian or standby limited guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person ~~((entitled to))~~ who requested special notice under RCW 11.92.150 ~~((or any person entitled to receive pleadings pursuant to RCW 11.88.095(2)(j)))~~. ~~((Such))~~

(2)(a) If the regularly appointed guardian or limited guardian dies or becomes incapacitated, then the standby guardian or standby limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or standby limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or standby limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

~~((2))~~ (b) Letters of guardianship shall be issued to the standby guardian or standby limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100 ((as now or hereafter amended)). The oath may be filed prior to the regularly appointed guardian's or limited guardian's death or incapacity. The standby guardian or standby limited guardian shall provide notice of such appointment ((shall be provided)) to the ((standby guardian, the)) incapacitated person and his or her spouse or domestic partner and adult children, ((and)) any

facility in which the incapacitated person resides, and any person who requested special notice under RCW 11.92.150.

(c) The provisions of RCW 11.88.100 through 11.88.110 (~~as now or hereafter amended~~) shall apply to standby guardians and standby limited guardians.

(3)(a) A standby guardian or standby limited guardian may assume some or all of the duties, responsibilities, and powers of the guardian or limited guardian during the guardian's or limited guardian's planned absence. Prior to the commencement of the guardian's or limited guardian's planned absence and prior to the standby guardian or standby limited guardian assuming any duties, responsibilities, and powers of the guardian or limited guardian, the guardian or limited guardian shall file a petition in the superior court where the guardianship or limited guardianship is being administered stating the dates of the planned absence and the duties, responsibilities, and powers the standby guardian or standby limited guardian should assume. The guardian or limited guardian shall give notice of the planned absence petition to the standby guardian or standby limited guardian, the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW 11.92.150.

(b) Upon the conclusion of the hearing on the planned absence petition, and a determination by the court that the standby guardian or standby limited guardian meets the requirements of RCW 11.88.020, the court shall issue an order specifying: (i) The amount of bond as required by RCW 11.88.100 through 11.88.110 to be filed by the standby guardian or standby limited guardian; (ii) the duties, responsibilities, and powers the standby guardian or standby limited guardian will assume during the planned absence; (iii) the duration the standby guardian or standby limited guardian will be acting; and (iv) the expiration date of the letters of guardianship to be issued to the standby guardian or standby limited guardian.

(c) Letters of guardianship consistent with the court's determination under (b) of this subsection shall be issued to the standby guardian or standby limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100. The standby guardian or standby limited guardian shall give notice of such appointment to the incapacitated person and his or her spouse or domestic partner and adult children, any facility in which the incapacitated person resides, and any person who requested special notice under RCW 11.92.150.

(d) The provisions of RCW 11.88.100 through 11.88.110 shall apply to standby guardians and standby limited guardians.

(4) In addition to the powers of a standby (~~limited~~) guardian or standby limited guardian as noted in (~~subsection (1) of~~) this section, the standby (~~limited~~) guardian or standby limited guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in (~~RCW 11.92.040 as now or hereafter amended~~) RCW 11.92.043, if the guardian or limited guardian cannot be located within four hours after the need for such consent arises.

Passed by the Senate April 23, 2013.

Passed by the House April 12, 2013.

Approved by the Governor May 20, 2013.  
Filed in Office of Secretary of State May 20, 2013.

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## CHAPTER 305

[Engrossed Senate Bill 5699]

### RECYCLING—ELECTRONIC PRODUCTS

AN ACT Relating to electronic product recycling; amending RCW 70.95N.020, 70.95N.040, 70.95N.050, 70.95N.090, 70.95N.110, 70.95N.140, 70.95N.180, 70.95N.190, 70.95N.200, 70.95N.210, 70.95N.230, 70.95N.290, 70.95N.300, and 42.56.270; and providing an effective date.

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

**Sec. 1.** RCW 70.95N.020 and 2006 c 183 s 2 are each amended to read as follows:

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

(1) "Authority" means the Washington materials management and financing authority created under RCW 70.95N.280.

(2) "Authorized party" means a manufacturer who submits an individual independent plan or the entity authorized to submit an independent plan for more than one manufacturer.

(3) "Board" means the board of directors of the Washington materials management and financing authority created under RCW 70.95N.290.

(4) "Collector" means an entity licensed to do business in the state that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets minimum standards that may be developed by the department.

(5) "Contract for services" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, and recycling services, in whole or in part, that will be provided to the citizens of the state within service areas as described in the approved standard plan.

(6) "Covered electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally, a desktop computer, a laptop or a portable computer, or a cathode ray tube or flat panel television having a viewable area greater than four inches when measured diagonally that has been used in the state by any covered entity regardless of original point of purchase. "Covered electronic product" does not include: (a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft; (b) monitoring and control instruments or systems; (c) medical devices; (d) products including materials intended for use as ingredients in those products as defined in the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.) or the virus-serum-toxin act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts; (e) equipment used in the delivery of patient care in a health care setting; (f) a computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; or (g) hand-held portable voice or data

devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

(7) "Covered entity" means any household, charity, school district, small business, or small government located in Washington state.

(8) "Curbside service" means a collection service providing regularly scheduled pickup of covered electronic products from households or other covered entities in quantities generated from households.

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

(10) "Electronic product" includes a cathode ray tube or flat panel computer monitor having a viewable area greater than four inches when measured diagonally; a desktop computer; a laptop or a portable computer; or a cathode ray tube or flat screen television having a viewable area greater than four inches when measured diagonally.

(11) "Equivalent share" means the weight in pounds of covered electronic products identified for an individual manufacturer under this chapter as determined by the department under RCW 70.95N.200.

(12) "Household" means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

(13) "Independent plan" means a plan for the collection, transportation, and recycling of unwanted covered electronic products that is developed, implemented, and financed by an individual manufacturer or by an authorized party.

(14) "Manufacturer" means any person, in business or no longer in business but having a successor in interest, who, irrespective of the selling technique used, including by means of distance or remote sale:

(a) Manufactures or has manufactured a covered electronic product under its own brand names for sale in or into this state;

(b) Assembles or has assembled a covered electronic product that uses parts manufactured by others for sale in or into this state under the assembler's brand names;

(c) Resells or has resold in or into this state under its own brand names a covered electronic product produced by other suppliers, including retail establishments that sell covered electronic products under their own brand names;

(d) Manufactures or manufactured a cobranded product for sale in or into this state that carries the name of both the manufacturer and a retailer;

(e) Imports or has imported a covered electronic product into the United States that is sold in or into this state. However, if the imported covered electronic product is manufactured by any person with a presence in the United States meeting the criteria of manufacturer under (a) through (d) of this subsection, that person is the manufacturer. For purposes of this subsection, "presence" means any person that performs activities conducted under the standards established for interstate commerce under the commerce clause of the United States Constitution; ~~((f))~~

(f) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (e) of this subsection, and elects to register in lieu of the importer as the manufacturer for those products; or

(g) Beginning in program year 2016, elects to assume the responsibility and register in lieu of a manufacturer as defined under this section. In the event the



entity who assumes responsibility fails to comply, the manufacturer as defined under (a) through (f) of this subsection remains fully responsible.

(15) "New entrant" means: (a) A manufacturer of televisions that have been sold in the state for less than ten years; or (b) a manufacturer of desktop computers, laptop and portable computers, or computer monitors that have been sold in the state for less than five years. However, a manufacturer of both televisions and computers or a manufacturer of both televisions and computer monitors that is deemed a new entrant under either only (a) or (b) of this subsection is not considered a new entrant for purposes of this chapter.

(16) "Orphan product" means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest.

(17) "Plan's equivalent share" means the weight in pounds of covered electronic products for which a plan is responsible. A plan's equivalent share is equal to the sum of the equivalent shares of each manufacturer participating in that plan.

(18) "Plan's return share" means the sum of the return shares of each manufacturer participating in that plan.

(19) "Premium service" means services such as at-location system upgrade services provided to covered entities and at-home pickup services offered to households. "Premium service" does not include curbside service.

(20) "Processor" means an entity engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and prepare those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter and by the department. A processor may also salvage parts to be used in new products.

(21) "Product type" means one of the following categories: Computer monitors; desktop computers; laptop and portable computers; and televisions.

(22) "Program" means the collection, transportation, and recycling activities conducted to implement an independent plan or the standard plan.

(23) "Program year" means each full calendar year after the program has been initiated.

(24) "Recycling" means transforming or remanufacturing unwanted electronic products, components, and by-products into usable or marketable materials for use other than landfill disposal or incineration. "Recycling" does not include energy recovery or energy generation by means of combusting unwanted electronic products, components, and by-products with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

(25) "Retailer" means a person who offers covered electronic products for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

(26) "Return share" means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by the department under RCW 70.95N.190.

(27) "Reuse" means any operation by which an electronic product or a component of a covered electronic product changes ownership and is used for the same purpose for which it was originally purchased.

(28) "Small business" means a business employing less than fifty people.

(29) "Small government" means a city in the state with a population less than fifty thousand, a county in the state with a population less than one hundred twenty-five thousand, and special purpose districts in the state.

(30) "Standard plan" means the plan for the collection, transportation, and recycling of unwanted covered electronic products developed, implemented, and financed by the authority on behalf of manufacturers participating in the authority.

(31) "Transporter" means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

(32) "Unwanted electronic product" means a covered electronic product that has been discarded or is intended to be discarded by its owner.

(33) "White box manufacturer" means a person who manufactured unbranded covered electronic products offered for sale in the state within ten years prior to a program year for televisions or within five years prior to a program year for desktop computers, laptop or portable computers, or computer monitors.

(34) "Market share" means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by the department under RCW 70.95N.190.

(35) "Plan's market share" means the sum of the market shares of each manufacturer participating in that plan.

**Sec. 2.** RCW 70.95N.040 and 2006 c 183 s 4 are each amended to read as follows:

(1) By January 1, 2007, and annually thereafter, each manufacturer must register with the department.

(2) A manufacturer must submit to the department with each registration or annual renewal a fee to cover the administrative costs of this chapter as determined by the department under RCW 70.95N.230.

(3) The department shall review the registration or renewal application and notify the manufacturer if their registration does not meet the requirements of this section. Within thirty days of receipt of such a notification from the department, the manufacturer must file with the department a revised registration addressing the requirements noted by the department.

(4) The registration must include the following information:

(a) The name and contact information of the manufacturer submitting the registration;

(b) The manufacturer's brand names of covered electronic products, including all brand names sold in the state in the past, all brand names currently being sold in the state, and all brand names for which the manufacturer has legal responsibility under RCW 70.95N.100;

(c) The method or methods of sale used in the state; and

(d) Whether the registrant will be participating in the standard plan or submitting an independent plan to the department for approval.

(5) The registrant shall submit any changes to the information provided in the registration to the department within fourteen days of such change.

(6) The department shall identify, using all reasonable means, manufacturers that are in business or that are no longer in business but that have a successor in interest by examining best available return share data, product advertisements, and other pertinent data. The department shall notify manufacturers that have been identified and for whom an address has been found of the requirements of this chapter, including registration and plan requirements under this section and RCW 70.95N.050.

**Sec. 3.** RCW 70.95N.050 and 2006 c 183 s 5 are each amended to read as follows:

(1) A manufacturer must participate in the standard plan administered by the authority, unless the manufacturer obtains department approval for an independent plan for the collection, transportation, and recycling of unwanted electronic products.

(2) An independent plan may be submitted by an individual manufacturer or by a group of manufacturers, provided that:

(a) For program years 2009 through 2015, each independent plan represents at least a five percent return share of covered electronic products. For program year 2016 and all subsequent program years, each independent plan represents at least a five percent market share of covered electronic products; and

(b) No manufacturer may participate in an independent plan if it is a new entrant or a white box manufacturer.

(3) An individual manufacturer submitting an independent plan to the department is responsible for collecting, transporting, and recycling its equivalent share of covered electronic products.

(4)(a) Manufacturers collectively submitting an independent plan are responsible for collecting, transporting, and recycling the sum of the equivalent shares of each participating manufacturer.

(b) Each group of manufacturers submitting an independent plan must designate a party authorized to file the plan with the department on their behalf. A letter of certification from each of the manufacturers designating the authorized party must be submitted to the department together with the plan.

(5) Each manufacturer in the standard plan or in an independent plan retains responsibility and liability under this chapter in the event that the plan fails to meet the manufacturer's obligations under this chapter.

**Sec. 4.** RCW 70.95N.090 and 2006 c 183 s 9 are each amended to read as follows:

(1) A program must provide collection services for covered electronic products of all product types and produced by any manufacturer that are reasonably convenient and available to all citizens of the state residing within its geographic boundaries, including both rural and urban areas. Each program must provide collection service in every county of the state. A program may provide collection services jointly with another plan or plans.

(a) For any city or town with a population of greater than ten thousand, each program shall provide a minimum of one collection site or alternate collection service described in subsection (3) of this section or a combination of sites and alternate service that together provide at least one collection opportunity for all

product types. A collection site for a county may be the same as a collection site for a city or town in the county.

(b) Collection sites may include electronics recyclers and repair shops, recyclers of other commodities, reuse organizations, charities, retailers, government recycling sites, or other suitable locations.

(c) Collection sites must be staffed, open to the public at a frequency adequate to meet the needs of the area being served, and on an on-going basis.

(2) A program may limit the number of covered electronic products or covered electronic products by product type accepted per customer per day or per delivery at a collection site or service. All covered entities may use a collection site as long as the covered entities adhere to any restrictions established in the plans.

(3) A program may provide collection services in forms different than collection sites, such as curbside services, if those alternate services provide equal or better convenience to citizens and equal or increased recovery of unwanted covered electronic products.

(4) For rural areas without commercial centers or areas with widely dispersed population, a program may provide collection at the nearest commercial centers or solid waste sites, collection events, mail-back systems, or a combination of these options.

(5) For small businesses, small governments, charities, and school districts that may have large quantities of covered electronic products that cannot be handled at collection sites or curbside services, a program may provide alternate services. At a minimum, a program must provide for processing of these large quantities of covered electronic products at no charge to the small businesses, small governments, charities, and school districts.

**Sec. 5.** RCW 70.95N.110 and 2006 c 183 s 11 are each amended to read as follows:

(1) For program years 2009 through 2014, an independent plan and the standard plan must implement and finance an auditable, statistically significant sampling of covered electronic products entering its program every program year. The information collected must include a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, the total weight of the sample by product type, and any additional information needed to assign return share.

(2) For program years 2009 through 2014, the sampling must be conducted in the presence of the department or a third-party organization approved by the department. The department may, at its discretion, audit the methodology and the results.

(3) After the fifth program year through the 2014 program year, the department may reassess the sampling required in this section. The department may adjust the frequency at which manufacturers must implement the sampling or may adjust the frequency at which manufacturers must provide certain information from the sampling. Prior to making any changes, the department shall notify the public, including all registered manufacturers, and provide a comment period. The department shall notify all registered manufacturers of any such changes.

**Sec. 6.** RCW 70.95N.140 and 2006 c 183 s 14 are each amended to read as follows:

(1) By March 1st of the second program year and each program year thereafter, the authority and each authorized party shall file with the department an annual report for the preceding program year.

(2) The annual report must include the following information:

(a) The total weight in pounds of covered electronic products collected and recycled, by county, during the preceding program year including documentation verifying collection and processing of that material. The total weight in pounds includes orphan products. The report must also indicate and document the weight in pounds received from each nonprofit charitable organization primarily engaged in the business of reuse and resale used by the plan. The report must document the weight in pounds that were received in large quantities from small businesses, small governments, charities and school districts as described in RCW 70.95N.090(5);

(b) The collection services provided in each county and for each city with a population over ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(c) A list of processors used, the weight of covered electronic products processed by each direct processor, and a description of the processes and methods used to recycle the covered electronic products including a description of the processing and facility locations. The report must also include a list of subcontractors who further processed or recycled unwanted covered electronic products, electronic components, or electronic scrap (~~described in section 26(1) of this act~~), including facility locations;

(~~d~~) (~~Other documentation as established under section 26(3) of this act;~~

~~e~~) Educational and promotional efforts that were undertaken;

~~f~~) ~~e~~) For program years 2009 through 2014, the results of sampling and sorting as required in RCW 70.95N.110, including a list of the brand names of covered electronic products by product type, the number of covered electronic products by product type, the weight of covered electronic products that are identified for each brand name or that lack a manufacturer's brand, and the total weight of the sample by product type;

~~g~~) ~~f~~) The list of manufacturers that are participating in the standard plan; and

~~h~~) ~~g~~) Any other information deemed necessary by the department.

(3) The department shall review each report within ninety days of its submission and shall notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program.

(4) All reports submitted to the department must be available to the general public through the internet. Proprietary information submitted to the department under this chapter is exempt from public disclosure under RCW 42.56.270.

**Sec. 7.** RCW 70.95N.180 and 2006 c 183 s 18 are each amended to read as follows:

(1) The department shall maintain on its web site the following information:

(a) The names of the manufacturers and the manufacturer's brands that are registered with the department under RCW 70.95N.040;

(b) The names of the manufacturers and the manufacturer's brands that are participating in an approved plan under RCW 70.95N.050;

(c) The names and addresses of the collectors and transporters that are listed in registrations filed with the department under RCW 70.95N.240;

(d) The names and addresses of the processors used to fulfill the requirements of the plans;

(e) For program years 2009 through 2015, return and equivalent shares for all manufacturers.

(2) The department shall update this web site information promptly upon receipt of a registration or a report.

**Sec. 8.** RCW 70.95N.190 and 2006 c 183 s 19 are each amended to read as follows:

(1) For program years 2009 through 2015, the department shall determine the return share for each manufacturer in the standard plan or an independent plan by dividing the weight of covered electronic products identified for each manufacturer by the total weight of covered electronic products identified for all manufacturers in the standard plan or an independent plan, then multiplying the quotient by one hundred.

(2) For the first program year, the department shall determine the return share for such manufacturers using all reasonable means and based on best available information regarding return share data from other states and other pertinent data.

(3) For ~~((the second and each subsequent program year))~~ 2014, the department shall determine the return share for such manufacturers using all reasonable means and based on the most recent sampling of covered electronic products conducted in the state under RCW 70.95N.110.

(4)(a) For program year 2016 and all subsequent program years, the department shall determine market share by weight for all manufacturers using any combination of the following data:

(i) Generally available market research data;

(ii) Sales data supplied by manufacturers for brands they manufacture or sell; or

(iii) Sales data provided by retailers for brands they sell.

(b) The department shall determine each manufacturer's percentage of market share by dividing each manufacturer's total pounds of covered electronic products sold in Washington by the sum total of all pounds of covered electronic products sold in Washington by all manufacturers.

(5) Data reported by manufacturers under subsection (4) of this section is exempt from public disclosure under chapter 42.56 RCW.

**Sec. 9.** RCW 70.95N.200 and 2006 c 183 s 20 are each amended to read as follows:

(1) For program years 2009 through 2015, the department shall determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the return share percentage for each manufacturer by one hundred, then multiplying the quotient by the total weight in pounds of covered electronic products collected for that program year, allowing as needed for the additional credit authorized in subsection (3) of this section. For program year 2016 and all subsequent program years, the department shall determine the

total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the market share percentage for each manufacturer by one hundred, then multiplying the quotient by the total weight in pounds of covered electronic products collected for that program year, allowing as needed for the additional credit authorized in subsection (3) of this section.

(2)(a) By June 1st of each program year, the department shall notify each manufacturer of the manufacturer's equivalent share of covered electronic products to be applied to the previous program year. The department shall also notify each manufacturer of how its equivalent share was determined.

(b) By June 1st of each program year, the department shall bill any authorized party or authority that has not attained its plan's equivalent share as determined under RCW 70.95N.220. The authorized party or authority shall remit payment to the department within sixty days from the billing date.

(c) By September 1st of each program year, the department shall pay any authorized party or authority that exceeded its plan's equivalent share.

(3) Plans that utilize the collection services of nonprofit charitable organizations that qualify for a taxation exemption under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) that are primarily engaged in the business of reuse and resale must be given an additional five percent credit to be applied toward a plan's equivalent share for pounds that are received for recycling from those organizations. The department may adjust the percentage of credit annually.

**Sec. 10.** RCW 70.95N.210 and 2006 c 183 s 21 are each amended to read as follows:

(1) By June 1, 2007, the department shall notify each manufacturer of its preliminary return share of covered electronic products for the first program year.

(2) For program years 2009 through 2014, preliminary return share of covered electronic products must be announced annually by June 1st of each program year for the next program year. For the 2015 program year and all subsequent program years, preliminary market share of covered electronic products must be sent out to each individual manufacturer annually by June 1st of each program year for the next program year.

(3) Manufacturers may challenge the preliminary return or market share by written petition to the department. The petition must be received by the department within thirty days of the date of publication of the preliminary return or market shares.

(4) The petition must contain a detailed explanation of the grounds for the challenge, an alternative calculation, and the basis for such a calculation, documentary evidence supporting the challenge, and complete contact information for requests for additional information or clarification.

(5) Sixty days after the publication of the preliminary return or market share, the department shall make a final decision on return or market share, having fully taken into consideration any and all challenges to its preliminary calculations.

(6) A written record of challenges received and a summary of the bases for the challenges, as well as the department's response, must be published at the same time as the publication of the final return share.

(7) By August 1, 2007, the department shall publish the final return shares for the first program year. For program years 2009 through 2014, by August 1st of each program year, the department shall publish the final return shares for use in the coming program year. For the 2015 program year and all subsequent program years, by August 1st of each program year, the department shall notify each manufacturer of its final market shares for use in the coming program year.

**Sec. 11.** RCW 70.95N.230 and 2006 c 183 s 23 are each amended to read as follows:

(1) The department shall adopt rules to determine the process for manufacturers to change plans under RCW 70.95N.080.

(2) The department shall establish annual registration and plan review fees for administering this chapter. An initial fee schedule must be established by rule and be adjusted no more often than once every two years. All fees charged must be based on factors relating to administering this chapter and be based on a sliding scale that is representative of annual sales of covered electronic products in the state, either by weight or unit, or by representative market share. Fees must be established in amounts to fully recover and not to exceed expenses incurred by the department to implement this chapter.

(3) The department shall establish an annual process for local governments and local communities to report their satisfaction with the services provided by plans under this chapter. This information must be used by the department in reviewing plan updates and revisions.

(4) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

**Sec. 12.** RCW 70.95N.290 and 2008 c 79 s 1 are each amended to read as follows:

(1)(a) The authority is governed by a board of directors. The board of directors is comprised of eleven participating manufacturers, appointed by the director of the department. For program years 2009 through 2015, five board positions are reserved for representatives of the top ten brand owners by return share of covered electronic products, and six board positions are reserved for representatives of other brands, including at least one board position reserved for a manufacturer who is also a retailer selling their own private label. The return share of covered electronic products used to determine the top ten brand owners for purposes of electing the board must be determined by the department by January 1, 2007. For program years 2016 and beyond, five board positions are reserved for representatives of the top ten brand owners by market share of covered electronic products, and six board positions are reserved for representatives of other brands, including at least one board position reserved for a manufacturer who is also a retailer selling its own private label. The market share of covered electronic products used to determine the top ten brand owners for purposes of electing the board must be determined by the department by October 1, 2015.

(b) The board must have representation from both television and computer manufacturers.

(2) The board shall select from its membership the chair of the board and such other officers as it deems appropriate.

(3) A majority of the board constitutes a quorum.



(4) The directors of the department of ~~((community, trade, and economic development))~~ commerce and the department of ecology serve as ex officio members. The state agency directors serving in ex officio capacity may each designate an employee of their respective departments to act on their behalf in all respects with regard to any matter to come before the authority. Ex officio designations must be made in writing and communicated to the authority director.

(5) The board shall create its own bylaws in accordance with the laws of the state of Washington.

(6) Any member of the board may be removed for misfeasance, malfeasance, or willful neglect of duty after notice and a public hearing, unless the notice and hearing are expressly waived in writing by the affected member.

(7) The members of the board serve without compensation but are entitled to reimbursement, solely from the funds of the authority, for expenses incurred in the discharge of their duties under this chapter.

**Sec. 13.** RCW 70.95N.300 and 2006 c 183 s 31 are each amended to read as follows:

(1) Manufacturers participating in the standard plan shall pay the authority to cover all administrative and operational costs associated with the collection, transportation, and recycling of covered electronic products within the state of Washington incurred by the standard program operated by the authority to meet the standard plan's equivalent share obligation as described in RCW 70.95N.280(5).

(2) The authority shall assess charges on each manufacturer participating in the standard plan and collect funds from each participating manufacturer for the manufacturer's portion of the costs in subsection (1) of this section. For program years 2009 through 2015, such apportionment ((shall)) must be based on return share, market share, any combination of return share and market share, or any other equitable method. For the 2016 program year and all subsequent program years, such apportionment must be based on market share. The authority's apportionment of costs to manufacturers participating in the standard plan may not include nor be based on electronic products imported through the state and subsequently exported outside the state. Charges assessed under this section must not be formulated in such a way as to create incentives to divert imported electronic products to ports or distribution centers in other states. The authority shall adjust the charges to manufacturers participating in the standard plan as necessary in order to ensure that all costs associated with the identified activities are covered.

(3) The authority may require financial assurances or performance bonds for manufacturers participating in the standard plan, including but not limited to new entrants and white box manufacturers, when determining equitable methods for apportioning costs to ensure that the long-term costs for collecting, transporting, and recycling of a covered electronic product are borne by the appropriate manufacturer in the event that the manufacturer ceases to participate in the program.

(4) Nothing in this section authorizes the authority to assess fees or levy taxes directly on the sale or possession of electronic products.

(5) If a manufacturer has not met its financial obligations as determined by the authority under this section, the authority shall notify the department that the manufacturer is no longer participating in the standard plan.

(6) For program years 2009 through 2015, the authority shall submit its plan for assessing charges and apportioning cost on manufacturers participating in the standard plan to the department for review and approval along with the standard plan as provided in RCW 70.95N.060.

(7)(a) Any manufacturer participating in the standard plan may appeal an assessment of charges or apportionment of costs levied by the authority under this section by written petition to the director of the department. The director of the department or the director's designee shall review all appeals within timelines established by the department and shall reverse any assessments of charges or apportionment of costs if the director finds that the authority's assessments or apportionment of costs was an arbitrary administrative decision, an abuse of administrative discretion, or is not an equitable assessment or apportionment of costs. The director shall make a fair and impartial decision based on sound data. If the director of the department reverses an assessment of charges, the authority must redetermine the assessment or apportionment of costs.

(b) Disputes regarding a final decision made by the director or director's designee may be challenged through arbitration. The director shall appoint one member to serve on the arbitration panel and the challenging party shall appoint one other. These two persons shall choose a third person to serve. If the two persons cannot agree on a third person, the presiding judge of the Thurston county superior court shall choose a third person. The decision of the arbitration panel shall be final and binding, subject to review by the superior court solely upon the question of whether the decision of the panel was arbitrary or capricious.

**Sec. 14.** RCW 42.56.270 and 2011 1st sp.s. c 14 s 15 are each amended to read as follows:

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

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

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

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

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

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

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

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

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

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

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

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

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

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8); and

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

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

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

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

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

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

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

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

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

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

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

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

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

(21) Financial, commercial, operations, and technical and research information and data submitted to or obtained by innovate Washington in applications for, or delivery of, grants and loans under chapter 43.333 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information; and

(22) Market share data submitted by a manufacturer under RCW 70.95N.190(4).

**NEW SECTION. Sec. 15.** This act takes effect January 1, 2014.

Passed by the Senate April 23, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

CHAPTER 306

[Engrossed Substitute Senate Bill 5024]

TRANSPORTATION BUDGET

AN ACT Relating to transportation funding and appropriations; amending RCW 47.64.170, 47.64.270, 43.19.642, 46.12.630, 46.18.060, 46.68.113, 46.68.170, 46.68.325, 47.29.170, 47.56.403, 47.56.876, 46.20.745, 46.68.370, 47.12.244, 47.12.340, 46.63.180, 82.70.020, 82.70.040, and 82.70.900; amending 2012 c 86 ss 201, 202, 203, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 302, 303, 305, 306, 307, 308, 309, 310, 401, 402, 404, 405, 406, 407, and 701 (uncodified); amending 2011 c 367 s 601 (uncodified); reenacting and amending RCW 46.63.170 and 46.68.060; adding a new section to chapter 47.06A RCW; creating new sections; repealing 2012 c 86 ss 702, 703, 704, 705, 706, 707, 709, 710, 711, 712, 713, 714, 715, and 716 (uncodified); prescribing penalties; making appropriations and authorizing expenditures for capital improvements; providing an effective date; providing expiration dates; providing contingent effective dates; and declaring an emergency.

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

2013-2015 FISCAL BIENNIUM

NEW SECTION. **Sec. 1.** (1) The transportation budget of the state is hereby adopted and, subject to the provisions set forth, the several amounts specified, or as much thereof as may be necessary to accomplish the purposes designated, are hereby appropriated from the several accounts and funds named to the designated state agencies and offices for employee compensation and other expenses, for capital projects, and for other specified purposes, including the payment of any final judgments arising out of such activities, for the period ending June 30, 2015.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this act.

(a) "Fiscal year 2014" or "FY 2014" means the fiscal year ending June 30, 2014.

(b) "Fiscal year 2015" or "FY 2015" means the fiscal year ending June 30, 2015.

(c) "FTE" means full-time equivalent.

(d) "Lapse" or "revert" means the amount shall return to an unappropriated status.

(e) "Provided solely" means the specified amount may be spent only for the specified purpose. Unless otherwise specifically authorized in this act, any portion of an amount provided solely for a specified purpose that is not expended subject to the specified conditions and limitations to fulfill the specified purpose shall lapse.

(f) "Reappropriation" means appropriation and, unless the context clearly provides otherwise, is subject to the relevant conditions and limitations applicable to appropriations.

(g) "LEAP" means the legislative evaluation and accountability program committee.

2013-2015 FISCAL BIENNIUM  
GENERAL GOVERNMENT AGENCIES—OPERATING

NEW SECTION. **Sec. 101. FOR THE DEPARTMENT OF  
ARCHAEOLOGY AND HISTORIC PRESERVATION**

Motor Vehicle Account—State Appropriation . . . . . \$435,000

The appropriation in this section is subject to the following conditions and limitations: The entire appropriation is provided solely for staffing costs to be dedicated to state transportation activities. Staff hired to support transportation activities must have practical experience with complex construction projects.

NEW SECTION. **Sec. 102. FOR THE UTILITIES AND  
TRANSPORTATION COMMISSION**

Grade Crossing Protective Account—State Appropriation . . . . . \$504,000

NEW SECTION. **Sec. 103. FOR THE OFFICE OF FINANCIAL  
MANAGEMENT**

Motor Vehicle Account—State Appropriation . . . . . \$1,641,000

Puget Sound Ferry Operations Account—State

Appropriation . . . . . \$176,000

**TOTAL APPROPRIATION . . . . . \$1,817,000**

The appropriations in this section are subject to the following conditions and limitations:

(1) \$932,000 of the motor vehicle account—state appropriation is provided solely for the office of financial management, from funds set aside out of statewide fuel taxes distributed to counties according to RCW 46.68.120(3), to contract with the Washington state association of counties to identify, analyze, evaluate, and implement county transportation performance measures associated with transportation system policy goals outlined in RCW 47.04.280. The Washington state association of counties, in cooperation with state agencies, must: Identify, analyze, and report on county transportation system preservation; identify, evaluate, and report on opportunities to streamline reporting requirements for counties; and evaluate project management tools to help improve project delivery at the county level.

(2) \$70,000 of the Puget Sound ferry operations account—state appropriation is provided solely for the state's share of the marine salary survey.

NEW SECTION. **Sec. 104. FOR THE DEPARTMENT OF  
ENTERPRISE SERVICES**

Motor Vehicle Account—State Appropriation . . . . . \$502,000

NEW SECTION. **Sec. 105. FOR THE STATE PARKS AND  
RECREATION COMMISSION**

Motor Vehicle Account—State Appropriation . . . . . \$986,000

The appropriation in this section is subject to the following conditions and limitations: The entire appropriation in this section is provided solely for road maintenance purposes.

NEW SECTION. **Sec. 106. FOR THE DEPARTMENT OF  
AGRICULTURE**

Motor Vehicle Account—State Appropriation . . . . . \$1,208,000

The appropriation in this section is subject to the following conditions and limitations:

(1) \$351,000 of the motor vehicle account—state appropriation is provided solely for costs associated with the motor fuel quality program.

(2) \$857,000 of the motor vehicle account—state appropriation is provided solely to test the quality of biofuel. The department must test fuel quality at the biofuel manufacturer, distributor, and retailer.

**NEW SECTION. Sec. 107. FOR THE LEGISLATIVE EVALUATION AND ACCOUNTABILITY PROGRAM COMMITTEE**

Motor Vehicle Account—State Appropriation . . . . . \$529,000

**NEW SECTION. Sec. 108. FOR THE JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE**

Motor Vehicle Account—State Appropriation . . . . . \$493,000

The appropriation in this section is subject to the following conditions and limitations:

(1) \$243,000 of the motor vehicle account—state appropriation is for the joint legislative audit and review committee to conduct a review of the methods and systems used by the department of transportation to develop asset condition and maintenance service level needs and subsequent funding requests for highway preservation and maintenance programs, to include tolled facilities. The review will examine whether the methods and systems used by the department of transportation for estimating preservation and maintenance needs and costs are consistent with industry practices and other appropriate standards. The review will include analysis of a selection of preservation and maintenance requests and address issues such as:

- (a) Was a systematic, documented process used to develop the estimate of need?
- (b) Are practices in place to minimize life-cycle preservation and maintenance costs?
- (c) Was each stage in the cost estimating process fully documented?
- (d) If appropriate, how were risks to the cost estimate quantified?
- (e) What steps are in place to ensure that requests are not unduly impacted by outside pressures?

Expert engineering or cost estimating consultants may be used to review methods, systems, and individual estimates for accuracy. A briefing report, focusing on an overview of the methods and processes, must be completed by December 2013. A report containing any findings and recommendations must be completed by December 2014.

(2) \$200,000 of the motor vehicle account—state appropriation is provided solely for the joint legislative audit and review committee to conduct a forensic audit of the Interstate 5/Columbia River Crossing project (400506A) to investigate possible misuse of public funds. The joint legislative audit and review committee may contract with the state auditor's office for fraud-related investigation services, if necessary.

(3)(a) The joint legislative audit and review committee shall conduct a study of registration and inspection fee programs regulating gas stations and other businesses that emit gasoline vapors administered by the department of ecology and air pollution control authorities (collectively referred to as "regulatory

agencies") as provided in chapter 70.94 RCW. The goal of the study is to provide recommendations to the legislature that, if implemented, would further effective implementation of chapter 70.94 RCW by the regulatory agencies and would result in more consistent and transparent registration fees and regulations across all regulatory agencies included in the study.

(b) The study must include, but not be limited to:

(i) Comparing and contrasting registration and inspection fees and methodologies used in calculating fees among all regulatory agencies as provided in RCW 70.94.151;

(ii) Comparing and contrasting inspection processes and criteria among all regulatory agencies, including frequency of registration and inspection of facilities; and

(iii) Comparing and contrasting inspection processes and criteria utilized by the state's regulatory agencies with criteria established by the United States environmental protection agency regulating gas stations and other businesses that emit gasoline vapors. This should include, but not be limited to, federal stage II vapor recovery requirements and federal ozone standards and nonattainment.

(c) In conducting the study, the joint legislative audit and review committee shall develop a stakeholder list, including representatives from each regulatory agency, from the Washington oil marketers association, and from other industry associations or groups. The committee shall meet with stakeholders as it deems necessary, but shall convene at least one meeting of all stakeholders within two months of commencing the study. The committee shall submit its findings and recommendations to the legislature by December 31, 2014.

**NEW SECTION. Sec. 109. FOR THE DEPARTMENT OF FISH AND WILDLIFE**

Motor Vehicle Account—State Appropriation . . . . . \$295,000

The appropriation in this section is subject to the following conditions and limitations:

(1) \$200,000 of the motor vehicle account—state appropriation is from the cities statewide fuel tax distributions under RCW 46.68.110(2) and is provided solely for the department to inventory, prioritize, and study fish passage barriers associated with city roads and streets in the Puget Sound region. The department shall submit the results to the department of transportation and to organizations representing cities by June 30, 2015.

(2) \$95,000 of the motor vehicle account—state appropriation is from the counties statewide fuel tax distribution under RCW 46.68.120(3) and is provided solely for the department of transportation to contract with the department to inventory, assess, and prioritize fish passage barriers associated with county roads. The department shall submit the results to the department of transportation, the office of financial management, and the transportation committees of the legislature by June 30, 2015.



TRANSPORTATION AGENCIES—OPERATING

**\*NEW SECTION. Sec. 201. FOR THE WASHINGTON TRAFFIC SAFETY COMMISSION**

Highway Safety Account—State Appropriation. . . . .	\$3,017,000
Highway Safety Account—Federal Appropriation . . . . .	\$40,699,000
Highway Safety Account—Private/Local Appropriation. . . . .	\$50,000
School Zone Safety Account—State Appropriation. . . . .	\$1,800,000
TOTAL APPROPRIATION . . . . .	\$45,566,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The commission shall develop and implement, in collaboration with the Washington state patrol, a target zero team pilot program in Yakima and Spokane counties. The pilot program must demonstrate the effectiveness of intense, high visibility driving under the influence enforcement in Washington state. The commission shall apply to the national highway traffic safety administration for federal highway safety grants to cover the cost of the pilot program.

(2) \$20,000,000 of the highway safety account—federal appropriation is provided solely for federal funds that may be obligated to the commission pursuant to 23 U.S.C. Sec. 164 during the 2013-2015 fiscal biennium.

*(3) Of the amounts provided in this section, any amounts that are granted by the commission for the traffic safety resource prosecutor program must be directed to the Washington association of prosecuting attorneys.*

(4) The commission may continue to oversee pilot projects implementing the use of automated traffic safety cameras to detect speed violations within cities west of the Cascade mountains that have a population over one hundred ninety-five thousand. For the purposes of pilot projects in this subsection, no more than one automated traffic safety camera may be used to detect speed violations within any one jurisdiction.

(a) The commission shall comply with RCW 46.63.170 in administering the pilot projects.

(b) By January 1, 2015, any local authority that is operating an automated traffic safety camera to detect speed violations must provide a summary to the transportation committees of the legislature concerning the use of the cameras and data regarding infractions, revenues, and costs.

\*Sec. 201 was partially vetoed. See message at end of chapter.

**NEW SECTION. Sec. 202. FOR THE COUNTY ROAD ADMINISTRATION BOARD**

Rural Arterial Trust Account—State Appropriation. . . . .	\$945,000
Motor Vehicle Account—State Appropriation . . . . .	\$2,186,000
County Arterial Preservation Account—State Appropriation. . . . .	\$1,456,000
TOTAL APPROPRIATION . . . . .	\$4,587,000

**NEW SECTION. Sec. 203. FOR THE TRANSPORTATION IMPROVEMENT BOARD**

Transportation Improvement Account—State Appropriation. . . . .	\$3,804,000
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**NEW SECTION. Sec. 204. FOR THE JOINT TRANSPORTATION COMMITTEE**

Motor Vehicle Account—State Appropriation . . . . . \$1,330,000

The appropriation in this section is subject to the following conditions and limitations:

(1)(a) \$325,000 of the motor vehicle account—state appropriation is for a study of transportation cost drivers and potential efficiencies to contain project costs and gain more value from investments in Washington state's transportation system. The goal is to enable the department of transportation to construct bridge and highway projects more quickly and to build and operate them at a lower cost, while ensuring that appropriate environmental and regulatory protections are maintained and a quality project is delivered. The joint transportation committee must convene an advisory panel to provide study guidance and discuss potential efficiencies and recommendations. The scope of the study must be limited to state-level policies and practices relating to the planning, design, permitting, construction, financing, and operation of department of transportation roadway and bridge projects. The study must:

- (i) Identify best practices;
- (ii) Identify inefficiencies in state policy or agency practice where changes may save money;
- (iii) Recommend changes to improve efficiency and save money; and
- (iv) Identify potential savings to be achieved by adopting changes in practice or policy.

(b) The joint transportation committee shall issue a report of its findings to the house of representatives and senate transportation committees by December 31, 2013.

(2) The joint transportation committee shall coordinate a work group comprised of the department of licensing, the department of revenue, county auditors or other agents, and subagents to identify possible issues relating to the administration of, compliance with, and enforcement of the existing statutory requirement for a person to provide an unexpired driver's license when registering a vehicle. The work group shall provide recommendations on how administration and enforcement may be modified, as needed, to address any identified issues, including whether statutory changes may be needed. A report presenting the recommendations must be presented to the house of representatives and senate transportation committees by December 31, 2013.

(3) The joint transportation committee shall continue to convene a subcommittee for legislative oversight of the I-5/Columbia river crossing bridge replacement project. The Columbia river crossing legislative oversight subcommittee must be made up of six members: Two appointed by the cochairs of the senate transportation committee, two appointed by the chair and ranking member of the house of representatives transportation committee, one designee of the governor, and one citizen jointly appointed by the four members of the joint transportation executive committee. The citizen appointee must be a Washington state resident of the area served by the bridge. At least two of the legislative members must be from the legislative districts served by the bridge. In addition to reviewing project and financing information, the subcommittee

must also coordinate with the Oregon legislative oversight committee for the Columbia river crossing bridge.

(4) The joint transportation committee shall convene a work group to identify and evaluate internal refinance opportunities for the Tacoma Narrows bridge. The study must include a staff work group, including staff from the office of financial management, the transportation commission, the department of transportation, the office of the state treasurer, and the legislative transportation committees. The joint transportation committee shall issue a report of its findings to the house of representatives and the senate transportation committees by December 31, 2013.

(5) The joint transportation committee shall study and review the use of surplus property proceeds to fund facility replacement projects, and the possibility of using the north central region as a pilot. The joint transportation committee shall consult with the department of transportation and the office of financial management regarding the department's current process for prioritizing and funding facility improvement and replacement projects.

**NEW SECTION. Sec. 205. FOR THE TRANSPORTATION COMMISSION**

Motor Vehicle Account—State Appropriation . . . . .	\$2,947,000
Multimodal Transportation Account—State Appropriation . . . . .	\$112,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$3,059,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) Consistent with RCW 43.135.055, 47.60.290, and 47.60.315, during the 2013-2015 fiscal biennium, the legislature authorizes the transportation commission to periodically review and, if necessary, adjust the schedule of fares for the Washington state ferry system only in amounts not greater than those sufficient to generate the amount of revenue required by the biennial transportation budget. When adjusting ferry fares, the commission must consider input from affected ferry users by public hearing and by review with the affected ferry advisory committees, in addition to the data gathered from the current ferry user survey.

(2) Consistent with RCW 43.135.055 and 47.46.100, during the 2013-2015 fiscal biennium, the legislature authorizes the transportation commission to periodically review and, if necessary, adjust the schedule of toll charges applicable to the Tacoma Narrows bridge only in amounts not greater than those sufficient to support (a) any required costs for operating and maintaining the toll bridge, including the cost of insurance, (b) any amount required by law to meet the redemption of bonds and applicable interest payments, and (c) repayment of the motor vehicle fund.

(3)(a) \$400,000 of the motor vehicle account—state appropriation is provided solely for the development of the business case for the transition to a road usage charge system as the basis for funding the state transportation system, from the current motor fuel tax system. The funds are provided for fiscal year 2014 only.

(b) The legislature finds that the efforts started in the 2011-2013 fiscal biennium regarding the transition to a road usage charge system represent an

important first step in the policy and conceptual development of potential alternative systems to fund transportation projects, but that the governance for the development needs clarification. The legislature also finds that significant amounts of research and public education are occurring in similar efforts in several states and that these efforts can and should be leveraged to advance the evaluation in Washington. The legislature intends, therefore, that the commission and its staff lead the policy development of the business case for a road usage charge system, with the goal of providing the business case to the governor and the legislative committees of the legislature in time for inclusion in the 2014 supplemental omnibus transportation appropriations act. The legislature intends for additional oversight in the business case development, with guidance from a steering committee as provided in chapter 86, Laws of 2012, augmented with participation by the joint transportation committee. The legislature further intends that the department of transportation continue to address administrative, technical, and conceptual operational issues related to road usage charge systems, and that the department serve as a resource for information gleaned from other states on this topic for the commission's efforts.

(c) For the purposes of this subsection (3), the commission shall:

(i) Develop preliminary road usage charge policies that are necessary to develop the business case, as well as supporting research and data that will guide the potential application in Washington;

(ii) Develop the preferred operational concept or concepts that reflect the preliminary policies;

(iii) Evaluate the business case for the road usage charge system that would result from implementing the preliminary policies and preferred operational concept or concepts. The evaluation must assess likely financial outcomes if the system were to be implemented; and

(iv) Identify and document policy and other issues that are deemed important to further refine the preferred operational concept or concepts and to gain public acceptance. These identified issues should form the basis for continued work beyond this funding cycle.

(d) The commission shall convene a steering committee to guide the development of the business case. The membership must be the same as provided in chapter 86, Laws of 2012, except that the membership must also include the joint transportation committee executive members.

(e) The commission shall submit a report of the business case to the governor and the transportation committees of the legislature by December 15, 2013. The report must also include a proposed budget and work plan for fiscal year 2015. A progress report must be submitted to the governor and the joint transportation committee by November 1, 2013, including a presentation to the joint transportation committee.

(4) \$174,000 of the motor vehicle account—state appropriation is provided solely for the voice of Washington survey program. The funding must be utilized for continued program maintenance and two transportation surveys for the 2013-2015 fiscal biennium.

**NEW SECTION. Sec. 206. FOR THE FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD**

Motor Vehicle Account—State Appropriation . . . . . \$904,000

**NEW SECTION. Sec. 207. FOR THE WASHINGTON STATE PATROL**

State Patrol Highway Account—State	
Appropriation. . . . .	\$370,354,000
State Patrol Highway Account—Federal	
Appropriation. . . . .	\$11,137,000
State Patrol Highway Account—Private/Local	
Appropriation. . . . .	\$3,591,000
Highway Safety Account—State Appropriation. . . . .	\$19,429,000
Multimodal Transportation Account—State	
Appropriation. . . . .	\$273,000
Ignition Interlock Device Revolving Account—State	
Appropriation. . . . .	\$573,000
TOTAL APPROPRIATION . . . . .	\$405,357,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The Washington state patrol shall collaborate with the Washington traffic safety commission on the target zero team pilot program referenced in section 201 of this act.

(2) During the 2013-2015 fiscal biennium, the Washington state patrol shall relocate its data center to the state data center in Olympia. The Washington state patrol shall work with the department of enterprise services to negotiate the lease termination agreement for the current data center site.

(3) Washington state patrol officers engaged in off-duty uniformed employment providing traffic control services to the department of transportation or other state agencies may use state patrol vehicles for the purpose of that employment, subject to guidelines adopted by the chief of the Washington state patrol. The Washington state patrol must be reimbursed for the use of the vehicle at the prevailing state employee rate for mileage and hours of usage, subject to guidelines developed by the chief of the Washington state patrol.

(4) \$573,000 of the ignition interlock device revolving account—state appropriation is provided solely for the ignition interlock program at the Washington state patrol to provide funding for two staff to work and provide support for the program in working with manufacturers, service centers, technicians, and participants in the program.

(5) \$370,000 of the state patrol highway account—state appropriation is provided solely for costs associated with the pilot program described under section 216(6) of this act. The Washington state patrol may incur costs related only to the assignment of cadets and necessary computer equipment and to the reimbursement of the department of transportation for contract costs. The appropriation in this subsection must be funded from the portion of the automated traffic safety camera infraction fines deposited into the state patrol highway account; however, if the fines deposited into the state patrol highway account from automated traffic safety camera infractions do not reach three hundred seventy thousand dollars, the department of transportation shall remit funds necessary to the Washington state patrol to ensure the completion of the pilot program. The Washington state patrol may not incur overtime as a result of

this pilot program. The Washington state patrol shall not assign troopers to operate or deploy the pilot program equipment used in roadway construction zones.

(6) The cost allocation for any costs incurred for the facilities at the Olympia, Washington airport used for the Washington state patrol aviation section must be split evenly between the state patrol highway account and the general fund.

(7) The Washington state patrol shall work with the state interoperability executive committee to compile a list of recent studies evaluating the potential savings and benefits of consolidating law enforcement and emergency dispatching centers and report to the joint transportation committee by December 1, 2014, on the findings and recommendations of those studies. As part of this study, the Washington state patrol must look for potential efficiencies within state government.

**NEW SECTION. Sec. 208. FOR THE DEPARTMENT OF LICENSING**

Marine Fuel Tax Refund Account—State	
Appropriation . . . . .	\$34,000
Motorcycle Safety Education Account—State	
Appropriation . . . . .	\$4,409,000
State Wildlife Account—State Appropriation . . . . .	\$885,000
Highway Safety Account—State Appropriation . . . . .	\$156,679,000
Highway Safety Account—Federal Appropriation . . . . .	\$4,392,000
Motor Vehicle Account—State Appropriation . . . . .	\$76,819,000
Motor Vehicle Account—Federal Appropriation . . . . .	\$467,000
Motor Vehicle Account—Private/Local Appropriation . . . . .	\$1,544,000
Ignition Interlock Device Revolving Account—State	
Appropriation . . . . .	\$2,656,000
Department of Licensing Services Account—State	
Appropriation . . . . .	\$5,959,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$253,844,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$1,235,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter . . . (Substitute House Bill No. 1752), Laws of 2013 (requirements for the operation of commercial motor vehicles in compliance with federal regulations). If chapter . . . (Substitute House Bill No. 1752), Laws of 2013 is not enacted by June 30, 2013, the amount provided in this subsection lapses.

(2) \$1,000,000 of the highway safety account—state appropriation is provided solely for information technology field system modernization.

(3) \$201,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Substitute Senate Bill No. 5152), Laws of 2013 (Sounders FC and Seahawks license plates). If chapter . . . (Substitute Senate Bill No. 5152), Laws of 2013 is not enacted by June 30, 2013, the amount provided in this subsection lapses.

(4) \$425,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter . . . (Substitute Senate Bill No. 5182),

Laws of 2013 (vehicle owner information). If chapter . . . (Substitute Senate Bill No. 5182), Laws of 2013 is not enacted by June 30, 2013, the amount provided in this subsection lapses.

(5) \$172,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter . . . (Senate Bill No. 5775), Laws of 2013 (veterans/drivers' licenses). If chapter . . . (Senate Bill No. 5775), Laws of 2013 is not enacted by June 30, 2013, the amount provided in this subsection lapses.

(6) \$652,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Engrossed Substitute Senate Bill No. 5785), Laws of 2013 (license plates). If chapter . . . (Engrossed Substitute Senate Bill No. 5785), Laws of 2013 is not enacted by June 30, 2013, the amount provided in this subsection lapses.

(7) \$78,000 of the motor vehicle account—state appropriation and \$3,707,000 of the highway safety account—state appropriation are provided solely for the implementation of chapter . . . (Engrossed Substitute Senate Bill No. 5857), Laws of 2013 (vehicle-related fees). If chapter . . . (Engrossed Substitute Senate Bill No. 5857), Laws of 2013 is not enacted by June 30, 2013, the amount provided in this subsection lapses.

(8) The appropriation in this section reflects the department charging an amount sufficient to cover the full cost of providing the data requested under RCW 46.12.630(1)(b).

(9)(a) The department must convene a work group to examine the use of parking placards and special license plates for persons with disabilities and develop a strategic plan for ending any abuse. In developing this plan, the department must work with the department of health, disabled citizen advocacy groups, and representatives from local government.

(b) The work group must be composed of no more than two representatives from each of the entities listed in (a) of this subsection. The work group may, when appropriate, consult with any other public or private entity in order to complete the strategic plan.

(c) The strategic plan must include:

(i) Oversight measures to ensure that parking placards and special license plates for persons with disabilities are being properly issued, including: (A) The entity responsible for coordinating a randomized review of applications for special parking privileges; (B) a volunteer panel of medical professionals to conduct such reviews; (C) a means to protect the anonymity of both the medical professional conducting a review and the medical professional under review; (D) a means to protect the privacy of applicants by removing any personally identifiable information; and (E) possible sanctions against a medical professional for repeated improper issuances of parking placards or special license plates for persons with disabilities, including those sanctions listed in chapter 18.130 RCW; and

(ii) The creation of a publicly accessible system in which the validity of parking placards and special license plates for persons with disabilities may be verified. This system must not allow the public to access any personally identifiable information or protected health information of a person who has been issued a parking placard or special license plate.

(d) The work group must convene by July 1, 2013, and terminate by December 1, 2013.

(e) By December 1, 2013, the work group must deliver to the legislature and the appropriate legislative committees the strategic plan required under this subsection, together with its findings, recommendations, and any necessary draft legislation in order to implement the strategic plan.

(10) \$3,082,000 of the highway safety account—state appropriation is provided solely for exam and licensing activities, including the workload associated with providing driver record abstracts, and is subject to the following additional conditions and limitations:

(a) The department may furnish driving record abstracts only to those persons or entities expressly authorized to receive the abstracts under Title 46 RCW;

(b) The department may furnish driving record abstracts only for an amount that does not exceed the specified fee amounts in RCW 46.52.130 (2)(e)(v) and (4); and

(c) The department may not enter into a contract, or otherwise participate in any arrangement, with a third party or other state agency for any service that results in an additional cost, in excess of the fee amounts specified in RCW 46.52.130 (2)(e)(v) and (4), to statutorily authorized persons or entities purchasing a driving record abstract.

**\*NEW SECTION. Sec. 209. FOR THE DEPARTMENT OF TRANSPORTATION—TOLL OPERATIONS AND MAINTENANCE—PROGRAM B**

High-Occupancy Toll Lanes Operations Account—State

Appropriation . . . . .	\$1,851,000
Motor Vehicle Account—State Appropriation . . . . .	\$509,000
State Route Number 520 Corridor Account—State	
Appropriation . . . . .	\$32,419,000
State Route Number 520 Civil Penalties Account—State	
Appropriation . . . . .	\$4,169,000
Tacoma Narrows Toll Bridge Account—State	
Appropriation . . . . .	\$23,730,000
Puget Sound Ferry Operations Account—State	
Appropriation . . . . .	\$250,000
TOTAL APPROPRIATION . . . . .	\$62,928,000

The appropriations in this section are subject to the following conditions and limitations:

(1)(a) The legislature finds that the department's tolling division has expanded greatly in recent years to address the demands of administering several newly tolled facilities using emerging toll collection technologies. The legislature intends for the department to continue its good work in administering the tolled facilities of the state, while at the same time implementing controls and processes to ensure the efficient and judicious administration of toll payer dollars.

(b) The legislature finds that the department has undertaken a cost-of-service study in the winter and spring of 2013 for the purposes of identifying in detail the costs of operating and administering tolling on state route number 520,



state route number 167 high-occupancy toll lanes, and the Tacoma Narrows bridge. The purpose of the study is to provide results to establish a baseline by which future activity may be compared and opportunities identified for cost savings and operational efficiencies. In addition, the legislature finds that the state auditor has undertaken a performance audit of the department's contract for the customer service center and back office processing of tolling transactions. The audit findings, which are expected to include lessons learned, are due in late spring 2013.

(c) Using the results of the cost-of-service study and the state audit as a basis, the department shall conduct a review of operations using lean management principles in order to eliminate inefficiencies and redundancies, incorporate lessons learned, and identify opportunities to conduct operations more efficiently and effectively. Within current statutory and budgetary tolling policy, the department shall use the results of the review to improve operations in order to conduct toll operations within the appropriations provided in subsections (2) through (4) of this section. The department shall submit the review, along with the status of and plans for the implementation of review recommendations, to the office of financial management and the house of representatives and senate transportation committees by October 15, 2013.

(2) \$10,482,000 of the Tacoma Narrows toll bridge account—state appropriation, \$17,056,000 of the state route number 520 corridor account—state appropriation, \$1,226,000 of the high-occupancy toll lanes operations account—state appropriation, and \$509,000 of the motor vehicle account—state appropriation are provided solely for nonvendor costs of administering toll operations, including the costs of: Staffing the division, consultants and other personal service contracts required for technical oversight and management assistance, insurance, payments related to credit card processing, transponder purchases and inventory management, facility operations and maintenance, and other miscellaneous nonvendor costs.

(3) \$10,907,000 of the Tacoma Narrows toll bridge account—state appropriation, \$9,363,000 of the state route number 520 corridor account—state appropriation, and \$625,000 of the high-occupancy toll lanes operations account—state appropriation are provided solely for vendor-related costs of operating tolled facilities, including the costs of: The customer service center; cash collections on the Tacoma Narrows bridge; electronic payment processing; and toll collection equipment maintenance, renewal, and replacement.

(4) \$1,300,000 of the Tacoma Narrows toll bridge account—state appropriation and \$6,000,000 of the state route number 520 corridor account—state appropriation are provided solely for the purposes of addressing unforeseen operations and maintenance costs on the Tacoma Narrows bridge and the state route number 520 bridge, respectively. The office of financial management shall place the amounts provided in this section, which represent a portion of the required minimum fund balance under the policy of the state treasurer, in unallotted status. The office may release the funds only when it determines that all other funds designated for operations and maintenance purposes have been exhausted.

(5) \$4,169,000 of the state route number 520 civil penalties account—state appropriation and \$1,039,000 of the Tacoma Narrows toll bridge account—state appropriation are provided solely for expenditures related to the toll adjudication

process. The department shall report on the civil penalty process to the office of financial management and the house of representatives and senate transportation committees by the end of each calendar quarter. The reports must include a summary table for each toll facility that includes: The number of notices of civil penalty issued; the number of recipients who pay before the notice becomes a penalty; the number of recipients who request a hearing and the number who do not respond; workload costs related to hearings; the cost and effectiveness of debt collection activities; and revenues generated from notices of civil penalty.

(6) The Tacoma Narrows toll bridge account—state appropriation in this section reflects reductions in management costs of \$1,235,000.

(7) The department shall make detailed quarterly expenditure reports available to the transportation commission and to the public on the department's web site using current department resources. The reports must include a summary of toll revenue by facility on all operating toll facilities and high occupancy toll lane systems, and an itemized depiction of the use of that revenue.

(8) The department shall make detailed quarterly reports to the governor and the transportation committees of the legislature on the use of consultants in the tolling program. The reports must include the name of the contractor, the scope of work, the type of contract, timelines, deliverables, any new task orders, and any extensions to existing consulting contracts.

(9)(a) \$250,000 of the Puget Sound ferry operations account—state appropriation is provided solely for the development of a plan to integrate and transition customer service, reservation, and payment systems currently provided by the marine division to ferry users into the statewide tolling customer service center.

(b)(i) The department shall develop a plan that addresses:

(A) A phased implementation approach, beginning with "Good To Go" as a payment option for ferry users;

(B) The feasibility, schedule, and cost of creating a single account-based system for toll road and ferry users;

(C) Transitioning customer service currently provided by the marine division to the statewide tolling customer service center; and

(D) Transitioning existing and planned ferry reservation system support from the marine division to the statewide tolling customer service center.

(ii) The plan must be provided to the office of financial management and the transportation committees of the legislature by January 14, 2014.

***(10) \$120,000 of the state route number 520 corridor account—state appropriation and \$120,000 of the Tacoma Narrows toll bridge account—state appropriation are provided solely to the department to enter into an interagency agreement with the office of financial management to manage a contract with a certified public accounting firm to provide annual independent audits on the state route number 520 toll bridge, as required in master bond resolution 1117, and the Tacoma Narrows bridge. The department is not limited to providing technical support on these audits within existing funds provided in the tolling program and may use resources from elsewhere in the agency.***

\*Sec. 209 was partially vetoed. See message at end of chapter.

**NEW SECTION. Sec. 210. FOR THE DEPARTMENT OF TRANSPORTATION—INFORMATION TECHNOLOGY—PROGRAM C**

Transportation Partnership Account—State	
Appropriation . . . . .	\$1,460,000
Motor Vehicle Account—State Appropriation . . . . .	\$68,773,000
Multimodal Transportation Account—State	
Appropriation . . . . .	\$363,000
Transportation 2003 Account (Nickel Account)—State	
Appropriation . . . . .	\$1,460,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$72,056,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$290,000 of the motor vehicle account—state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit.

(2) \$1,460,000 of the transportation partnership account—state appropriation and \$1,460,000 of the transportation 2003 account (nickel account)—state appropriation are provided solely for maintaining the department's project management reporting system.

**NEW SECTION. Sec. 211. FOR THE DEPARTMENT OF TRANSPORTATION—FACILITY MAINTENANCE, OPERATIONS, AND CONSTRUCTION—PROGRAM D—OPERATING**

Motor Vehicle Account—State Appropriation . . . . .	\$26,251,000
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The appropriation in this section is subject to the following conditions and limitations: \$850,000 of the motor vehicle account—state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit.

**NEW SECTION. Sec. 212. FOR THE DEPARTMENT OF TRANSPORTATION—AVIATION—PROGRAM F**

Aeronautics Account—State Appropriation . . . . .	\$7,361,000
Aeronautics Account—Federal Appropriation . . . . .	\$2,150,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$9,511,000</b>

The appropriations in this section are subject to the following conditions and limitations: \$3,500,000 of the aeronautics account—state appropriation is provided solely for the airport aid grant program, which provides competitive grants to public airports for pavement, safety, planning, and security.

**NEW SECTION. Sec. 213. FOR THE DEPARTMENT OF TRANSPORTATION—PROGRAM DELIVERY MANAGEMENT AND SUPPORT—PROGRAM H**

Motor Vehicle Account—State Appropriation . . . . .	\$47,607,000
Motor Vehicle Account—Federal Appropriation . . . . .	\$500,000
Multimodal Transportation Account—State	
Appropriation . . . . .	\$250,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$48,357,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$4,423,000 of the motor vehicle account—state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit.

(2) The real estate services division of the department must recover the cost of its efforts from sale proceeds and fund additional future sales from those proceeds.

(3) The legislature recognizes that the Dryden pit site (WSDOT Inventory Control (IC) No. 2-04-00103) is unused state-owned real property under the jurisdiction of the department, and that the public would benefit significantly from the complete enjoyment of the natural scenic beauty and recreational opportunities available at the site. Therefore, pursuant to RCW 47.12.080, the legislature declares that transferring the property to the department of fish and wildlife for recreational use and fish and wildlife restoration efforts is consistent with the public interest in order to preserve the area for the use of the public and the betterment of the natural environment. The department shall work with the department of fish and wildlife and transfer and convey the Dryden pit site to the department of fish and wildlife as-is for an adjusted fair market value reflecting site conditions, the proceeds of which must be deposited in the motor vehicle fund. The department is not responsible for any costs associated with the cleanup or transfer of this property. This subsection expires June 30, 2014.

(4) The legislature recognizes that the trail known as the Apple Capital Loop, and its extensions, serve to separate motor vehicle traffic from pedestrians and bicyclists, increasing motor vehicle safety on existing state route number 28. Consistent with chapter 47.30 RCW and pursuant to RCW 47.12.080, the legislature declares that transferring portions of WSDOT Inventory Control (IC) Nos. 2-09-04537 and 2-09-04569 to Douglas county and the city of East Wenatchee is consistent with the public interest. The legislature directs the department to transfer the property to Douglas county and the city of East Wenatchee. The department must be paid fair market value for any portions of the transferred real property that is later abandoned, vacated, or ceases to be publicly maintained for trail purposes. Douglas county and the city of East Wenatchee must agree to accept responsibility for trail segments within their respective jurisdictions and sign an agreement with the state that the transfer of these parcels to their respective jurisdictions extinguishes any state obligations to improve, maintain, or be in any way responsible for these assets. This subsection expires June 30, 2014.

(5) The legislature recognizes that the SR 20/Cook Road realignment and extension project in the city of Sedro-Woolley will enhance the state and local highway systems by providing a more direct route from state route number 20 and state route number 9 to Interstate 5, and will reduce traffic on state route number 20 and state route number 9, improving the capacity of each route. Furthermore, the legislature declares that certain portions of the department's property held for highway purposes located primarily to the north and west of state route number 20, between state route number 20 to the south and F and S Grade Road to the north, in the incorporated limits of Sedro-Woolley in Skagit county, can help facilitate completion of the project. Therefore, consistent with RCW 47.12.063, 47.12.080, and 47.12.120, it is the intent of the legislature that

the department sell, transfer, or lease, as appropriate, to the city of Sedro-Woolley only those portions of the property necessary to construct the project, including necessary staging areas. However, any staging areas should revert to the department within three years of completion of the project.

**NEW SECTION. Sec. 214. FOR THE DEPARTMENT OF TRANSPORTATION—ECONOMIC PARTNERSHIPS—PROGRAM K**  
Motor Vehicle Account—State Appropriation . . . . . \$570,000

The appropriation in this section is subject to the following conditions and limitations:

(1) The legislature finds that the efforts started in the 2011-2013 fiscal biennium regarding the transition to a road usage charge system represent an important first step in the policy and conceptual development of potential alternative systems to fund transportation projects, but that the governance for the development needs clarification. The legislature also finds that significant amounts of research and public education are occurring in similar efforts in several states and that these efforts can and should be leveraged to advance the evaluation in Washington. The legislature intends, therefore, that the transportation commission and its staff lead the policy development of the business case for a road usage charge system, with the goal of providing the business case to the governor and the legislative committees of the legislature in time for inclusion in the 2014 supplemental omnibus transportation appropriations act. The legislature intends for additional oversight in the business case development, with guidance from a steering committee as provided in chapter 86, Laws of 2012 for the transportation commission, augmented with participation by the joint transportation committee. The legislature further intends that, through the economic partnerships program, the department continue to address administrative, technical, and conceptual operational issues related to road usage charge systems, and that the department serve as a resource for information gleaned from other states on this topic for the transportation commission's efforts.

(2) The economic partnerships program must continue to explore retail partnerships at state-owned park-and-ride facilities, as authorized in RCW 47.04.295.

**NEW SECTION. Sec. 215. FOR THE DEPARTMENT OF TRANSPORTATION—HIGHWAY MAINTENANCE—PROGRAM M**

Highway Safety Account—State Appropriation . . . . .	\$10,000,000
Motor Vehicle Account—State Appropriation . . . . .	\$390,040,000
Motor Vehicle Account—Federal Appropriation . . . . .	\$7,000,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$407,040,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$377,779,000 of the motor vehicle account—state appropriation and \$10,000,000 of the highway safety account—state appropriation are provided solely for the maintenance program to achieve specific levels of service on the thirty maintenance targets listed by statewide priority in LEAP Transportation Document 2013-4 as developed April 23, 2013. Beginning in February 2014, the department shall report to the legislature annually on its updated

maintenance accountability process targets and whether or not the department was able to achieve its targets.

(2) \$8,450,000 of the motor vehicle account—state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit.

(3) \$1,305,000 of the motor vehicle account—state appropriation is provided solely for utility fees assessed by local governments as authorized under RCW 90.03.525 for the mitigation of storm water runoff from state highways.

(4) The department shall submit a budget decision for the 2014 legislative session package that details all costs associated with utility fees assessed by local governments as authorized under RCW 90.03.525.

(5) \$50,000 of the motor vehicle account—state appropriation is provided solely for clearing and pruning dangerous trees along state route number 542 between mile markers 43 and 48 to prevent safety hazards and delays.

(6) \$2,277,000 of the motor vehicle account—state appropriation is provided solely to replace or rehabilitate critical equipment needed to perform snow and ice removal activities and roadway maintenance. These funds may not be used to purchase passenger cars as defined in RCW 46.04.382.

**\*NEW SECTION. Sec. 216. FOR THE DEPARTMENT OF TRANSPORTATION—TRAFFIC OPERATIONS—PROGRAM Q—OPERATING**

Motor Vehicle Account—State Appropriation . . . . .	\$50,504,000
Motor Vehicle Account—Federal Appropriation . . . . .	\$2,050,000
Motor Vehicle Account—Private/Local Appropriation . . . . .	\$250,000
TOTAL APPROPRIATION . . . . .	\$52,804,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$6,000,000 of the motor vehicle account—state appropriation is provided solely for low-cost enhancements. The department shall give priority to low-cost enhancement projects that improve safety or provide congestion relief. The department shall prioritize low-cost enhancement projects on a statewide rather than regional basis. By September 1st of each even-numbered year, the department shall provide a report to the legislature listing all low-cost enhancement projects prioritized on a statewide rather than regional basis completed in the prior year.

(2) \$9,000,000 of the motor vehicle account—state appropriation is provided solely for the department's incident response program.

(3) During the 2013-2015 fiscal biennium, the department shall continue a pilot program that expands private transportation providers' access to high occupancy vehicle lanes. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, the following vehicles must be authorized to use the reserved portion of the highway if the vehicle has the capacity to carry eight or more passengers, regardless of the number of passengers in the vehicle: (a) Auto transportation company vehicles regulated under chapter 81.68 RCW; (b) passenger charter carrier vehicles regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under

department of licensing rules; (c) private nonprofit transportation provider vehicles regulated under chapter 81.66 RCW; and (d) private employer transportation service vehicles. For purposes of this subsection, "private employer transportation service" means regularly scheduled, fixed-route transportation service that is offered by an employer for the benefit of its employees. Nothing in this subsection is intended to authorize the conversion of public infrastructure to private, for-profit purposes or to otherwise create an entitlement or other claim by private users to public infrastructure.

(4) The department shall work with the cities of Lynnwood and Edmonds to provide traffic light synchronization on state route number 524.

*(5)(a) Upon receipt of funding from the city of Kenmore, the department shall erect guide signs along Interstate 5, Interstate 405, and state route number 522 directing travelers to Bastyr University and Kenmore International Air Harbor.*

*(b) Within existing resources, and only if the department is replacing existing signs, the department shall erect:*

*(i) Guide signs on Interstate 405 northbound and southbound that include the city of Kenmore; and*

*(ii) Overhead signs on Interstate 5 northbound and southbound that include the city of Kenmore.*

(6) The department, in consultation with the Washington state patrol, must continue a pilot program for the state patrol to issue infractions based on information from automated traffic safety cameras in roadway construction zones on state highways. For the purpose of this pilot program, during the 2013-2015 fiscal biennium, a roadway construction zone includes areas where public employees or private contractors may be present or where a driving condition exists that would make it unsafe to drive at higher speeds, such as, when the department is redirecting or realigning lanes on any public roadway pursuant to ongoing construction. The department shall use the following guidelines to administer the program:

(a) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle;

(b) The department shall plainly mark the locations where the automated traffic safety cameras are used by placing signs on locations that clearly indicate to a driver that he or she is entering a roadway construction zone where traffic laws are enforced by an automated traffic safety camera;

(c) Notices of infractions must be mailed to the registered owner of a vehicle within fourteen days of the infraction occurring;

(d) The owner of the vehicle is not responsible for the violation if the owner of the vehicle, within fourteen days of receiving notification of the violation, mails to the patrol, a declaration under penalty of perjury, stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner, or any other extenuating circumstances;

(e) For purposes of the 2013-2015 fiscal biennium pilot program, infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras must be processed in the same manner as parking infractions for the

purposes of RCW 3.50.100, 35.20.220, 46.16A.120, and 46.20.270(3). However, the amount of the fine issued under this subsection (6) for an infraction generated through the use of an automated traffic safety camera is one hundred thirty-seven dollars. The court shall remit thirty-two dollars of the fine to the state treasurer for deposit into the state patrol highway account; and

(f) If a notice of infraction is sent to the registered owner and the registered owner is a rental car business, the infraction must be dismissed against the business if it mails to the patrol, within fourteen days of receiving the notice, a declaration under penalty of perjury of the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred. If the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred, the business must sign a declaration under penalty of perjury to this effect. The declaration must be mailed to the patrol within fourteen days of receiving the notice of traffic infraction. Timely mailing of this declaration to the issuing agency relieves a rental car business of any liability under this section for the notice of infraction. A declaration form suitable for this purpose must be included with each automated traffic safety camera infraction notice issued, along with instructions for its completion and use.

(7) \$102,000 of the motor vehicle account—state appropriation is provided solely to replace or rehabilitate critical equipment needed to perform traffic control. These funds may not be used to purchase passenger cars as defined in RCW 46.04.382.

\*Sec. 216 was partially vetoed. See message at end of chapter.

**NEW SECTION. Sec. 217. FOR THE DEPARTMENT OF TRANSPORTATION—TRANSPORTATION MANAGEMENT AND SUPPORT—PROGRAM S**

Motor Vehicle Account—State Appropriation . . . . .	\$27,281,000
Motor Vehicle Account—Federal Appropriation . . . . .	\$30,000
Multimodal Transportation Account—State Appropriation. . . . .	\$973,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$28,284,000</b>

**\*NEW SECTION. Sec. 218. FOR THE DEPARTMENT OF TRANSPORTATION—TRANSPORTATION PLANNING, DATA, AND RESEARCH—PROGRAM T**

Motor Vehicle Account—State Appropriation . . . . .	\$20,109,000
Motor Vehicle Account—Federal Appropriation . . . . .	\$24,885,000
Multimodal Transportation Account—State Appropriation. . . . .	\$662,000
Multimodal Transportation Account—Federal Appropriation. . . . .	\$2,809,000
Multimodal Transportation Account—Private/Local Appropriation. . . . .	\$100,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$48,565,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) Within available resources, the department must collaborate with the affected metropolitan planning organizations, regional transportation planning organizations, transit agencies, and private transportation providers to develop a



plan to reduce vehicle demand, increase public transportation options, and reduce vehicle miles traveled on corridors affected by growth at Joint Base Lewis-McChord.

*(2) The legislature finds that there are sixteen companies involved in wood preserving in the state that employ four hundred workers and have an annual payroll of fifteen million dollars. Prior to the department's switch to steel guardrails, ninety percent of the twenty-five hundred mile guardrail system was constructed of preserved wood and one hundred ten thousand wood guardrail posts were produced annually for state use. Moreover, the policy of using steel posts requires the state to use imported steel. Given these findings, the department shall contract with an independent research organization with expertise in the evaluation of wood products to determine on a life-cycle basis the cost effectiveness of using wood posts versus steel posts in new guardrail installations.*

*(a) The study must include the following objectives:*

*(i) Examine wood posts that are randomly selected, are representative of commonly found posts in service, and are of sufficient sampling size to produce a statistically valid data set;*

*(ii) Assess the residual flexural properties of guardrail posts after twenty years in service at various sites representing the climatic and soil variability of the state;*

*(iii) Measure test results against AASHTO standards;*

*(iv) Determine residual preservative levels in wood posts in terms of retention and penetration in order to determine the role of treatment quality on performance following test procedures outlined in American wood protection association standards;*

*(v) Examine the levels of decay in the guardrail posts, in terms of location of pockets and the presence of viable decay fungi, through culturing;*

*(vi) Investigate the effects of decay on flexural properties of guardrail posts;*

*(vii) Determine an acceptable level or number of nonstandard posts (i.e. posts with decay pockets that cause post strength to fall below AASHTO standards) that can be present in a guardrail run without compromising performance; and*

*(viii) Conduct thorough data search or identify case studies, or both, on service life of wood guardrail posts. Durability test results should also be factored in when evaluating service life.*

*(b) The study must be submitted to the office of financial management and the transportation committees of the legislature by January 1, 2015.*

\*Sec. 218 was partially vetoed. See message at end of chapter.

**NEW SECTION. Sec. 219. FOR THE DEPARTMENT OF TRANSPORTATION—CHARGES FROM OTHER AGENCIES—PROGRAM U**

Motor Vehicle Account—State Appropriation . . . . .	\$81,628,000
Motor Vehicle Account—Federal Appropriation . . . . .	\$400,000
Multimodal Transportation Account—State Appropriation . . . . .	\$40,000
TOTAL APPROPRIATION . . . . .	\$82,068,000

The appropriations in this section are subject to the following conditions and limitations: The department of enterprise services must provide a detailed accounting of the revenues and expenditures of the self-insurance fund to the transportation committees of the legislature on December 31st and June 30th of each year.

**NEW SECTION. Sec. 220. FOR THE DEPARTMENT OF TRANSPORTATION—PUBLIC TRANSPORTATION—PROGRAM V**

State Vehicle Parking Account—State Appropriation . . . . .	\$452,000
Regional Mobility Grant Program Account—State Appropriation. . . . .	\$49,948,000
Rural Mobility Grant Program Account—State Appropriation. . . . .	\$17,000,000
Multimodal Transportation Account—State Appropriation. . . . .	\$39,057,000
Multimodal Transportation Account—Federal Appropriation. . . . .	\$3,280,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$109,737,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$25,000,000 of the multimodal transportation account—state appropriation is provided solely for a grant program for special needs transportation provided by transit agencies and nonprofit providers of transportation. Of this amount:

(a) \$5,500,000 of the multimodal transportation account—state appropriation is provided solely for grants to nonprofit providers of special needs transportation. Grants for nonprofit providers must be based on need, including the availability of other providers of service in the area, efforts to coordinate trips among providers and riders, and the cost effectiveness of trips provided.

(b) \$19,500,000 of the multimodal transportation account—state appropriation is provided solely for grants to transit agencies to transport persons with special transportation needs. To receive a grant, the transit agency must, to the greatest extent practicable, have a maintenance of effort for special needs transportation that is no less than the previous year's maintenance of effort for special needs transportation. Grants for transit agencies must be prorated based on the amount expended for demand response service and route deviated service in calendar year 2011 as reported in the "Summary of Public Transportation - 2011" published by the department of transportation. No transit agency may receive more than thirty percent of these distributions.

(2) \$17,000,000 of the rural mobility grant program account—state appropriation is provided solely for grants to aid small cities in rural areas as prescribed in RCW 47.66.100.

(3)(a) \$6,000,000 of the multimodal transportation account—state appropriation is provided solely for a vanpool grant program for: (a) Public transit agencies to add vanpools or replace vans; and (b) incentives for employers to increase employee vanpool use. The grant program for public transit agencies will cover capital costs only; operating costs for public transit agencies are not eligible for funding under this grant program. Additional

employees may not be hired from the funds provided in this section for the vanpool grant program, and supplanting of transit funds currently funding vanpools is not allowed. The department shall encourage grant applicants and recipients to leverage funds other than state funds.

(b) At least \$1,600,000 of the amount provided in this subsection must be used for vanpool grants in congested corridors.

(c) \$520,000 of the amount provided in this subsection is provided solely for the purchase of additional vans for use by vanpools serving soldiers and civilian employees at Joint Base Lewis-McChord.

(4) \$9,948,000 of the regional mobility grant program account—state appropriation is reappropriated and provided solely for the regional mobility grant projects identified in LEAP Transportation Document 2013-2 ALL PROJECTS - Public Transportation - Program (V) as developed April 23, 2013.

(5)(a) \$40,000,000 of the regional mobility grant program account—state appropriation is provided solely for the regional mobility grant projects identified in LEAP Transportation Document 2013-2 ALL PROJECTS - Public Transportation - Program (V) as developed April 23, 2013. The department shall review all projects receiving grant awards under this program at least semiannually to determine whether the projects are making satisfactory progress. Any project that has been awarded funds, but does not report activity on the project within one year of the grant award, must be reviewed by the department to determine whether the grant should be terminated. The department shall promptly close out grants when projects have been completed, and any remaining funds must be used only to fund projects identified in the LEAP transportation document referenced in this subsection. The department shall provide annual status reports on December 15, 2013, and December 15, 2014, to the office of financial management and the transportation committees of the legislature regarding the projects receiving the grants. It is the intent of the legislature to appropriate funds through the regional mobility grant program only for projects that will be completed on schedule. A grantee may not receive more than twenty-five percent of the amount appropriated in this subsection. The department shall not approve any increases or changes to the scope of a project for the purpose of a grantee expending remaining funds on an awarded grant.

(b) In order to be eligible to receive a grant under (a) of this subsection during the 2013-2015 fiscal biennium, a transit agency must establish a process for private transportation providers to apply for the use of park and ride facilities. For purposes of this subsection, (i) "private transportation provider" means: An auto transportation company regulated under chapter 81.68 RCW; a passenger charter carrier regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; a private nonprofit transportation provider regulated under chapter 81.66 RCW; or a private employer transportation service provider; and (ii) "private employer transportation service" means regularly scheduled, fixed-route transportation service that is offered by an employer for the benefit of its employees.

(6) Funds provided for the commute trip reduction (CTR) program may also be used for the growth and transportation efficiency center program.

(7) \$6,122,000 of the total appropriation in this section is provided solely for CTR grants and activities. Of this amount:

(a) \$3,900,000 of the multimodal transportation account—state appropriation is provided solely for grants to local jurisdictions, selected by the CTR board, for the purpose of assisting employers meet CTR goals;

(b) \$1,770,000 of the multimodal transportation account—state appropriation is provided solely for state costs associated with CTR. The department shall develop more efficient methods of CTR assistance and survey procedures; and

(c) \$452,000 of the state vehicle parking account—state appropriation is provided solely for CTR-related expenditures, including all expenditures related to the guaranteed ride home program and the STAR pass program.

(8) An affected urban growth area that has not previously implemented a commute trip reduction program as of the effective date of this section is exempt from the requirements in RCW 70.94.527.

(9) \$200,000 of the multimodal transportation account—state appropriation is contingent on the timely development of an annual report summarizing the status of public transportation systems as identified under RCW 35.58.2796.

**NEW SECTION. Sec. 221. FOR THE DEPARTMENT OF TRANSPORTATION—MARINE—PROGRAM X**

Puget Sound Ferry Operations Account—State

Appropriation . . . . . \$485,076,000

Puget Sound Ferry Operations Account—Private/Local

Appropriation . . . . . \$121,000

TOTAL APPROPRIATION . . . . . \$485,197,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The office of financial management budget instructions require agencies to recast enacted budgets into activities. The Washington state ferries shall include a greater level of detail in its 2013-2015 supplemental and 2015-2017 omnibus transportation appropriations act requests, as determined jointly by the office of financial management, the Washington state ferries, and the transportation committees of the legislature. This level of detail must include the administrative functions in the operating as well as capital programs.

(2) Until a reservation system is operational on the San Juan islands inter-island route, the department shall provide the same priority loading benefits on the San Juan islands inter-island route to home health care workers as are currently provided to patients traveling for purposes of receiving medical treatment.

(3) For the 2013-2015 fiscal biennium, the department may enter into a distributor controlled fuel hedging program and other methods of hedging approved by the fuel hedging committee.

(4) \$112,342,000 of the Puget Sound ferry operations account—state appropriation is provided solely for auto ferry vessel operating fuel in the 2013-2015 fiscal biennium, which reflect cost savings from a reduced biodiesel fuel requirement and, therefore, are contingent upon the enactment of section 701 of this act. The amount provided in this subsection represent the fuel budget for the purposes of calculating any ferry fare fuel surcharge. The department shall develop a fuel reduction plan to be submitted as part of its 2014 supplemental budget proposal. The plan must include fuel saving proposals, such as vessel

modifications, vessel speed reductions, and changes to operating procedures, along with anticipated fuel saving estimates.

(5) \$100,000 of the Puget Sound ferry operations account—state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit.

(6) When purchasing uniforms that are required by collective bargaining agreements, the department shall contract with the lowest cost provider.

(7) \$3,049,000 of the Puget Sound ferry operations account—state appropriation is provided solely for the operating program share of the \$7,259,000 in lease payments for the ferry division's headquarters building. Consistent with the 2012 facilities oversight plan, the department shall strive to consolidate office space in downtown Seattle by the end of 2015. The department shall consider renewing the lease for the ferry division's current headquarters building only if the lease rate is reduced at least fifty percent and analysis shows that this is the least cost and risk option for the department. Consolidation with other divisions or state agencies, or a reduction in leased space, must also be considered as part of any headquarters lease renewal analysis.

(8) \$5,000,000 of the Puget Sound ferry operations account—state appropriation is provided solely for the purchase of a 2013-2015 marine insurance policy. Within this amount, the department is expected to purchase a policy with the lowest deductible possible, while maintaining at least existing coverage levels for ferry vessels, and providing coverage for all terminals.

**NEW SECTION. Sec. 222. FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—OPERATING**

Multimodal Transportation Account—State

Appropriation. . . . . \$32,924,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$27,319,000 of the multimodal transportation account—state appropriation is provided solely for the Amtrak service contract and Talgo maintenance contract associated with providing and maintaining state-supported passenger rail service. In recognition of the increased costs the state is expected to absorb due to changes in federal law, the department is directed to analyze the Amtrak contract proposal and find cost saving alternatives. The department shall report to the transportation committees of the legislature before the 2014 regular legislative session on its revisions to the Amtrak contract, including a review of the appropriate costs within the contract for concession services, policing, host railroad incentives, and station services and staffing needs. Within thirty days of each annual cost/revenue reconciliation under the Amtrak service contract, the department shall report any changes that would affect the state subsidy amount appropriated in this subsection.

(2) Amtrak Cascades runs may not be eliminated.

(3) The department shall continue a pilot program by partnering with the travel industry on the Amtrak Cascades service between Vancouver, British Columbia, and Seattle to test opportunities for increasing ridership, maximizing farebox recovery, and stimulating private investment. The pilot program must run from December 31, 2013, to December 31, 2014, and evaluate seasonal

differences in the program and the effect of advertising. The department may offer to Washington universities an opportunity for business students to work as interns on the analysis of the pilot program process and results. The department shall report on the results of the pilot program to the office of financial management and the legislature by January 31, 2015.

**NEW SECTION. Sec. 223. FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z—OPERATING**

Motor Vehicle Account—State Appropriation . . . . .	\$8,737,000
Motor Vehicle Account—Federal Appropriation . . . . .	\$2,567,000
TOTAL APPROPRIATION . . . . .	\$11,304,000

**TRANSPORTATION AGENCIES—CAPITAL**

**NEW SECTION. Sec. 301. FOR THE FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD**

Freight Mobility Investment Account—State Appropriation . . . . .	\$11,794,000
Freight Mobility Multimodal Account—State Appropriation . . . . .	\$9,736,000
Freight Mobility Multimodal Account—Private/Local Appropriation . . . . .	\$1,320,000
Highway Safety Account—State Appropriation . . . . .	\$2,450,000
Motor Vehicle Account—State Appropriation . . . . .	\$84,000
Motor Vehicle Account—Federal Appropriation . . . . .	\$3,250,000
TOTAL APPROPRIATION . . . . .	\$28,634,000

The appropriations in this section are subject to the following conditions and limitations: Except as provided otherwise in this section, the total appropriation in this section is provided solely for the implementation of chapter . . . (Substitute House Bill No. 1256), Laws of 2013 (addressing project selection by the freight mobility strategic investment board). If chapter . . . (Substitute House Bill No. 1256), Laws of 2013 is not enacted by June 30, 2013, the amounts provided in this section lapse.

**NEW SECTION. Sec. 302. FOR THE WASHINGTON STATE PATROL**

State Patrol Highway Account—State Appropriation . . . . .	\$1,926,000
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The appropriation in this section is subject to the following conditions and limitations:

- (1) \$200,000 of the state patrol highway account—state appropriation is provided solely for unforeseen emergency repairs on facilities.
- (2) \$426,000 of the state patrol highway account—state appropriation is provided solely for the replacement of the roofs of the Marysville district office and vehicle inspection building and Spokane East office.
- (3) \$450,000 of the state patrol highway account—state appropriation is provided solely for upgrades to scales at South Pasco, Deer Park, and Kelso required to meet current certification requirements.
- (4) \$850,000 of the state patrol highway account—state appropriation is provided solely for the replacement of the damaged and unrepairable scale house

at the Everett southbound I-5 weigh scales, including equipment, weigh-in-motion technology, and an ALPR camera.

(5) The Washington state patrol, in cooperation with the Washington state department of transportation, must study the federal funding options available for weigh station construction and improvements on the national highway system. A study report must be provided by July 1, 2014, to the office of financial management and the transportation committees of the legislature with recommendations on utilizing federal funds for weigh station projects.

**NEW SECTION. Sec. 303. FOR THE COUNTY ROAD ADMINISTRATION BOARD**

Rural Arterial Trust Account—State	
Appropriation.....	\$35,894,000
Highway Safety Account—State Appropriation.....	\$10,000,000
Motor Vehicle Account—State Appropriation.....	\$706,000
County Arterial Preservation Account—State	
Appropriation.....	\$30,000,000
TOTAL APPROPRIATION.....	\$76,600,000

**NEW SECTION. Sec. 304. FOR THE TRANSPORTATION IMPROVEMENT BOARD**

Small City Pavement and Sidewalk Account—State	
Appropriation.....	\$3,500,000
Highway Safety Account—State Appropriation.....	\$10,000,000
Transportation Improvement Account—State	
Appropriation.....	\$174,225,000
TOTAL APPROPRIATION.....	\$187,725,000

The appropriations in this section are subject to the following conditions and limitations: The highway safety account—state appropriation is provided solely for:

- (1) The arterial preservation program to help low tax-based, medium-sized cities preserve arterial pavements;
- (2) The small city pavement program to help cities meet urgent preservation needs; and
- (3) The small city low-energy street light retrofit demonstration program.

**NEW SECTION. Sec. 305. FOR THE DEPARTMENT OF TRANSPORTATION—FACILITIES—PROGRAM D—(DEPARTMENT OF TRANSPORTATION-ONLY PROJECTS)—CAPITAL**

Transportation Partnership Account—State	
Appropriation.....	\$13,425,000
Motor Vehicle Account—State Appropriation.....	\$8,106,000
TOTAL APPROPRIATION.....	\$21,531,000

The appropriations in this section are subject to the following conditions and limitations:

- (1) The legislature recognizes that the Marginal Way site (King county parcel numbers 3024049182 & 5367202525) is surplus state-owned real property under the jurisdiction of the department and that the public would benefit significantly if this site is used to provide important social services.

Therefore, the legislature declares that committing the Marginal Way site to this use is consistent with the public interest.

Pursuant to RCW 47.12.063, the department shall work with the owner of King county parcel number 7643400010, which abuts both parcels of the Marginal Way site, and shall convey the Marginal Way site to that abutting property owner for the appraised fair market value of the parcels, the proceeds of which must be deposited in the motor vehicle fund. The conveyance is conditional upon the purchaser's agreement to commit the use of the Marginal Way site to operations with the goal of ending hunger in western Washington. The department may not make this conveyance before September 1, 2013, and may not make this conveyance after January 15, 2014.

The Washington department of transportation is not responsible for any costs associated with the cleanup or transfer of the Marginal Way site.

(2) \$13,425,000 of the transportation partnership account—state appropriation is provided solely for the construction of a new traffic management and emergency operations center on property owned by the department on Dayton Avenue in Shoreline (project 100010T). Consistent with the office of financial management's 2012 study, it is the intent of the legislature to appropriate no more than \$15,000,000 for the total construction costs. The department shall report to the transportation committees of the legislature and the office of financial management by June 30, 2014, on the progress of the construction of the traffic management and emergency operations center, including a schedule for terminating the current lease of the Goldsmith building in Seattle.

**\*NEW SECTION. Sec. 306. FOR THE DEPARTMENT OF TRANSPORTATION—IMPROVEMENTS—PROGRAM I**

Multimodal Transportation Account—State

Appropriation . . . . . \$1,000,000

Transportation Partnership Account—State

Appropriation . . . . . \$1,536,032,000

Motor Vehicle Account—State Appropriation . . . . . \$61,508,000

Motor Vehicle Account—Federal Appropriation . . . . . \$473,359,000

Motor Vehicle Account—Private/Local Appropriation . . . . . \$208,452,000

Transportation 2003 Account (Nickel Account)—State

Appropriation . . . . . \$242,253,000

State Route Number 520 Corridor Account—State

Appropriation . . . . . \$737,205,000

State Route Number 520 Corridor Account—Federal

Appropriation . . . . . \$300,000,000

Special Category C Account—State Appropriation . . . . . \$124,000

TOTAL APPROPRIATION . . . . . \$3,559,933,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as provided otherwise in this section, the entire transportation 2003 account (nickel account) appropriation and the entire transportation partnership account appropriation are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation Document 2013-1 as developed April 23, 2013, Program - Highway



Improvement Program (I). However, limited transfers of specific line-item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 603 of this act.

(2) Except as provided otherwise in this section, the entire motor vehicle account—state appropriation and motor vehicle account—federal appropriation are provided solely for the projects and activities listed in LEAP Transportation Document 2013-2 ALL PROJECTS as developed April 23, 2013, Program - Highway Improvement Program (I). It is the intent of the legislature to direct the department to give first priority of federal funds gained through efficiencies or the redistribution process to the "Contingency (Unfunded) Highway Preservation Projects" as identified in LEAP Transportation Document 2013-2 ALL PROJECTS as developed April 23, 2013, Program - Highway Preservation Program (P). However, no additional federal funds may be allocated to the I-5/Columbia River Crossing project (400506A).

(3) Within the motor vehicle account—state appropriation and motor vehicle account—federal appropriation, the department may transfer funds between programs I and P, except for funds that are otherwise restricted in this act.

(4) The transportation 2003 account (nickel account)—state appropriation includes up to \$217,604,000 in proceeds from the sale of bonds authorized by RCW 47.10.861.

(5) The transportation partnership account—state appropriation includes up to \$1,156,217,000 in proceeds from the sale of bonds authorized in RCW 47.10.873.

(6) The motor vehicle account—state appropriation includes up to \$30,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.843.

*(7)(a) \$1,334,000 of the transportation partnership account—state appropriation, \$48,433,500 of the motor vehicle account—private/local appropriation, and \$32,020,000 of the motor vehicle account—federal appropriation are provided solely for the I-5/Columbia River Crossing project (400506A). The federal funds appropriated in this subsection reflect the maximum amount of federal funds that may be allocated to this project. Section 603 of this act does not apply to the I-5/Columbia River Crossing project (400506A) and, therefore, funds shall not be transferred to this project. Of the amounts appropriated in this subsection, \$1,254,000 of the transportation partnership account—state appropriation, \$30,099,000 of the motor vehicle account—federal appropriation, and \$45,528,000 of the motor vehicle account—private/local appropriation in this subsection are held in unallotted status and are contingent upon the United States coast guard approving the I-5/Columbia River Crossing project's permit. If the permit is approved, the director of the office of financial management may allot the funds. If the permit is not approved, the appropriations in this subsection must be put into allotted status by the director of the office of financial management and may be used only for the development of a new supplemental environmental impact statement to redesign the Interstate 5 bridge between Washington and Oregon in accordance with the requirements of the United States coast guard. The department shall not submit the supplemental environmental impact statement to the appropriate federal agencies for approval until July 1, 2014.*

*(b) It is the intent of the legislature that Washington and Oregon have equal funding commitments and equal total expenditures to date on the shared components of the I-5/Columbia River Crossing project. The department shall provide a quarterly report on this project beginning September 30, 2013. The report must include:*

*(i) An update on preliminary engineering and right-of-way acquisition for the previous quarter;*

*(ii) Planned objectives for right-of-way and preliminary engineering for the ensuing quarter;*

*(iii) An updated comparison of the total appropriation authority for the project by state;*

*(iv) An updated comparison of the total expenditures to date on the project by state; and*

*(v) The committed funding provided by the state of Oregon to right-of-way acquisition.*

(8)(a) \$5,000,000 of the motor vehicle account—federal appropriation and \$200,000 of the motor vehicle account—state appropriation are provided solely for the I-90 Comprehensive Tolling Study and Environmental Review project (100067T). The department shall prepare a detailed environmental impact statement that complies with the national environmental policy act regarding tolling Interstate 90 between Interstate 5 and Interstate 405 for the purposes of both managing traffic and providing funding for the construction of the unfunded state route number 520 from Interstate 5 to Medina project. As part of the preparation of the statement, the department must review any impacts to the network of highways and roads surrounding Lake Washington. In developing this statement, the department must provide significant outreach to potential affected communities. The department may consider traffic management options that extend as far east as Issaquah.

(b)(i) As part of the project in this subsection (8), the department shall perform a study of all funding alternatives to tolling Interstate 90 to provide funding for construction of the unfunded state route number 520 and explore and evaluate options to mitigate the effect of tolling on affected residents and all other users of the network of highways and roads surrounding Lake Washington including, but not limited to:

(A) Allowing all Washington residents to traverse a portion of the tolled section of Interstate 90 without paying a toll. Residents may choose either (I) the portion of Interstate 90 between the easternmost landing west of Mercer Island and the westernmost landing on Mercer Island, or (II) the portion of Interstate 90 between the westernmost landing east of Mercer Island and the easternmost landing on Mercer Island;

(B) Assessing a toll only when a driver traverses, in either direction, the entire portion of Interstate 90 between the easternmost landing west of Mercer Island and the westernmost landing east of Mercer Island; and

(C) Allowing affected residents to choose one portion of the tolled section of Interstate 90 upon which they may travel without paying a toll. Residents may choose either (I) the portion of Interstate 90 between the easternmost landing west of Mercer Island and the westernmost landing on Mercer Island, or (II) the portion of Interstate 90 between the westernmost landing east of Mercer Island and the easternmost landing on Mercer Island.

(ii) The department may also consider any alternative mitigation options that conform to the purpose of this subsection (8).

(iii) For the purposes of this subsection (8), "affected resident" means anyone who must use a portion of Interstate 90 west of Interstate 405 upon which tolling is considered in order to access necessary medical services, such as a hospital.

(9) \$541,901,000 of the transportation partnership account—state appropriation, \$144,954,000 of the motor vehicle account—federal appropriation, \$129,779,000 of the motor vehicle account—private/local appropriation, and \$78,004,000 of the transportation 2003 account (nickel account)—state appropriation are provided solely for the SR 99/Alaskan Way Viaduct - Replacement project (809936Z).

(10) The department shall reconvene an expert review panel of no more than three members as described under RCW 47.01.400 for the purpose of updating the work that was previously completed by the panel on the Alaskan Way viaduct replacement project and to ensure that an appropriate and viable financial plan is created and regularly reviewed. The expert review panel must be selected cooperatively by the chairs of the senate and house of representatives transportation committees, the secretary of transportation, and the governor. The expert review panel must report findings and recommendations to the transportation committees of the legislature, the governor's Alaskan Way viaduct project oversight committee, and the transportation commission annually until the project is operationally complete. This subsection takes effect if chapter ... (Substitute House Bill No. 1957), Laws of 2013 is not enacted by June 30, 2013.

(11) \$7,408,000 of the transportation partnership account—state appropriation, \$14,594,000 of the transportation 2003 account (nickel account)—state appropriation, \$3,730,000 of the motor vehicle account—state appropriation, \$1,000,000 of the multimodal transportation account—state appropriation, and \$41,395,000 of the motor vehicle account—federal appropriation are provided solely for the US 395/North Spokane Corridor projects (600010A & 600003A). Any future savings on the projects must stay on the US 395/Interstate 90 corridor and be made available to the current phase of the North Spokane corridor projects or any future phase of the projects.

(12) \$114,369,000 of the transportation partnership account—state appropriation and \$53,755,000 of the transportation 2003 account (nickel account)—state appropriation are provided solely for the I-405/Kirkland Vicinity Stage 2 - Widening project (8BI1002). This project must be completed as soon as practicable as a design-build project. Any future savings on this project or other Interstate 405 corridor projects must stay on the Interstate 405 corridor and be made available to either the I-405/SR 167 Interchange - Direct Connector project (140504C) or the I-405 Renton to Bellevue project.

(13)(a) The SR 520 Bridge Replacement and HOV project (0BI1003) is supported over time from multiple sources, including a \$300,000,000 TIFIA loan, \$819,524,625 in Garvee bonds, toll revenues, state bonds, interest earnings, and other miscellaneous sources.

(b) The state route number 520 corridor account—state appropriation includes up to \$668,142,000 in proceeds from the sale of bonds authorized in RCW 47.10.879 and 47.10.886.

(c) The state route number 520 corridor account—federal appropriation includes up to \$300,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.879 and 47.10.886.

(d) \$153,124,000 of the transportation partnership account—state appropriation, \$300,000,000 of the state route number 520 corridor account—federal appropriation, and \$737,205,000 of the state route number 520 corridor account—state appropriation are provided solely for the SR 520 Bridge Replacement and HOV project (OBI1003). Of the amounts appropriated in this subsection (13)(d), \$105,085,000 of the state route number 520 corridor account—federal appropriation and \$227,415,000 of the state route number 520 corridor account—state appropriation must be put into unallotted status and are subject to review by the office of financial management. The director of the office of financial management shall consult with the joint transportation committee prior to making a decision to allot these funds.

(e) When developing the financial plan for the project, the department shall assume that all maintenance and operation costs for the new facility are to be covered by tolls collected on the toll facility and not by the motor vehicle account.

(14) \$1,100,000 of the motor vehicle account—federal appropriation is provided solely for the 31st Ave SW Overpass Widening and Improvement project (L1100048).

(15) \$22,602,000 of the motor vehicle account—state appropriation is provided solely to advance the design, preliminary engineering, and rights-of-way acquisition for the priority projects identified in LEAP Transportation Document 2013-3 as developed April 23, 2013. Funds must be used to advance the emergent, initial development of these projects for the purpose of expediting delivery of the associated major investments when funding for such investments becomes available. Funding may be reallocated between projects to maximize the accomplishment of design and preliminary engineering work and rights-of-way acquisition, provided that all projects are addressed. It is the intent of the legislature that, while seeking to maximize the outcomes in this section, the department shall provide for continuity of both the state and consulting engineer workforce, while strategically utilizing private sector involvement to ensure consistency with the department's business plan for staffing in the highway construction program in the current fiscal biennium.

(16) If a planned roundabout in the vicinity of state route number 526 and 84th Street SW would divert commercial traffic onto neighborhood streets, the department may not proceed with improvements at state route number 526 and 84th Street SW until the traffic impacts in the vicinity of state route number 526 and 40th Avenue West are addressed.

(17) The legislature finds that there are sixteen companies involved in wood preserving in the state that employ four hundred workers and have an annual payroll of fifteen million dollars. Prior to the department's switch to steel guardrails, ninety percent of the twenty-five hundred mile guardrail system was constructed of preserved wood and one hundred ten thousand wood guardrail posts were produced annually for state use. Moreover, the policy of using steel posts requires the state to use imported steel. Given these findings, where practicable, and until June 30, 2015, the department shall include the design option to use wood guardrail posts, in addition to steel posts, in new guardrail

installations. The selection of posts must be consistent with the agency design manual policy that existed before December 2009.

(18) The legislature finds that "right-sizing" is a lean, metric-based approach to determining project investments. This concept entails compromise between project cost and design, incorporating local community needs, desired outcomes, and available funding. Furthermore, the legislature finds that the concepts and principles the department has utilized in the safety analyst program have been effective tools to prioritize projects and reduce project costs. Therefore, the department shall establish a pilot project on the SR 3/Belfair Bypass - New Alignment (300344C) to begin implementing the concept of "right-sizing" in the highway construction program.

(19) For urban corridors that are all or partially within a metropolitan planning organization boundary, for which the department has not initiated environmental review, and that require an environmental impact statement, at least one alternative must be consistent with the goals set out in RCW 47.01.440.

(20) The department shall itemize all future requests for the construction of buildings on a project list and submit them through the transportation executive information system as part of the department's 2014 budget submittal. It is the intent of the legislature that new facility construction must be transparent and not appropriated within larger highway construction projects.

(21) \$28,963,000 of the motor vehicle account—state appropriation is provided solely for improvement program support activities (095901X). \$18,000,000 of this amount must be held in unallotted status until the office of financial management certifies that the department's 2014 supplemental budget request conforms to the terms of subsection (20) of this section.

***(22) The department shall report to the chairs of the senate transportation committee and the house of representatives transportation committee whenever the department is in negotiations to provide a public or private entity mitigation for ten million dollars or more.***

(23) Any new advisory group that the department convenes during the 2013-2015 fiscal biennium must be representative of the interests of the entire state of Washington.

\*Sec. 306 was partially vetoed. See message at end of chapter.

**NEW SECTION. Sec. 307. FOR THE DEPARTMENT OF TRANSPORTATION—PRESERVATION—PROGRAM P**

Transportation Partnership Account—State

Appropriation . . . . .	\$36,480,000
Highway Safety Account—State Appropriation . . . . .	\$10,000,000
Motor Vehicle Account—State Appropriation . . . . .	\$58,503,000
Motor Vehicle Account—Federal Appropriation . . . . .	\$580,062,000
Motor Vehicle Account—Private/Local Appropriation . . . . .	\$11,270,000
Transportation 2003 Account (Nickel Account)—State	
Appropriation . . . . .	\$2,285,000
TOTAL APPROPRIATION . . . . .	\$698,600,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as provided otherwise in this section, the entire transportation 2003 account (nickel account) appropriation and the entire transportation

partnership account appropriation are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation Document 2013-1 as developed April 23, 2013, Program - Highway Preservation Program (P). However, limited transfers of specific line-item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 603 of this act.

(2) Except as provided otherwise in this section, the entire motor vehicle account—state appropriation and motor vehicle account—federal appropriation are provided solely for the projects and activities listed in LEAP Transportation Document 2013-2 ALL PROJECTS as developed April 23, 2013, Program - Highway Preservation Program (P). It is the intent of the legislature to direct the department to give first priority of federal funds gained through efficiencies or the redistribution process to the "Contingency (Unfunded) Highway Preservation Projects" as identified in LEAP Transportation Document 2013-2 ALL PROJECTS as developed April 23, 2013, Program - Highway Preservation Program (P). However, no additional federal funds may be allocated to the I-5/ Columbia River Crossing project (400506A).

(3) Within the motor vehicle account—state appropriation and motor vehicle account—federal appropriation, the department may transfer funds between programs I and P, except for funds that are otherwise restricted in this act.

(4) \$27,278,000 of the motor vehicle account—federal appropriation and \$1,141,000 of the motor vehicle account—state appropriation are provided solely for the SR 167/Puyallup River Bridge Replacement project (316725A). This project must be completed as a design-build project. The department must work with local jurisdictions and the community during the environmental review process to develop appropriate esthetic design elements, at no additional cost to the department, and traffic management plans pertaining to this project. The department must report to the transportation committees of the legislature on estimated cost and/or time savings realized as a result of using the design-build process.

(5) The department shall examine the use of electric arc furnace slag for use as an aggregate for new roads and paving projects in high traffic areas and report back to the legislature on its current use in other areas of the country and any characteristics that can provide greater wear resistance and skid resistance in new pavement construction.

**NEW SECTION. Sec. 308. FOR THE DEPARTMENT OF TRANSPORTATION—TRAFFIC OPERATIONS—PROGRAM Q—CAPITAL**

Motor Vehicle Account—State Appropriation . . . . .	\$3,194,000
Motor Vehicle Account—Federal Appropriation . . . . .	\$7,959,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$11,153,000</b>

The appropriations in this section are subject to the following conditions and limitations: \$694,000 of the motor vehicle account—state appropriation is provided solely for project 000005Q as state matching funds for federally selected competitive grants or congressional earmark projects. These moneys must be placed into reserve status until such time as federal funds are secured that require a state match.

**NEW SECTION. Sec. 309. FOR THE DEPARTMENT OF TRANSPORTATION—WASHINGTON STATE FERRIES CONSTRUCTION—PROGRAM W**

Puget Sound Capital Construction Account—State	
Appropriation . . . . .	\$53,036,000
Puget Sound Capital Construction Account—Federal	
Appropriation . . . . .	\$91,692,000
Puget Sound Capital Construction Account—Private/Local	
Appropriation . . . . .	\$1,145,000
Multimodal Transportation Account—State Appropriation . . . . .	\$1,534,000
Transportation 2003 Account (Nickel Account)—State	
Appropriation . . . . .	\$143,941,000
TOTAL APPROPRIATION . . . . .	\$291,348,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed in LEAP Transportation Document 2013-2 ALL PROJECTS as developed April 23, 2013, Program - Washington State Ferries Capital Program (W).

(2) The Puget Sound capital construction account—state appropriation includes up to \$20,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.843.

(3) \$143,633,000 of the transportation 2003 account (nickel account)—state appropriation is provided solely for the acquisition of two 144-car vessels (projects L2200038 and L2200039). The department shall use as much already procured equipment as practicable on the 144-car vessels.

(4) \$8,270,000 of the Puget Sound capital construction account—federal appropriation, \$3,935,000 of the Puget Sound capital construction account—state appropriation, and \$1,534,000 of the multimodal transportation account—state appropriation are provided solely for the Mukilteo ferry terminal (project 952515P). To the greatest extent practicable, the department shall seek additional federal funding for this project.

(5) \$4,000,000 of the Puget Sound capital construction account—state appropriation is provided solely for emergency capital repair costs (project 999910K). Funds may only be spent after approval by the office of financial management.

(6) Consistent with RCW 47.60.662, which requires the Washington state ferry system to collaborate with passenger-only ferry and transit providers to provide service at existing terminals, the department shall ensure that multimodal access, including for passenger-only ferries and transit service providers, is not precluded by any future modifications at the terminal.

(7) \$3,800,000 of the Puget Sound capital construction account—state appropriation is provided solely for the reservation and communications system projects (L200041 & L200042).

(8) \$4,210,000 of the Puget Sound capital construction account—state appropriation is provided solely for the capital program share of \$7,259,000 in lease payments for the ferry division's headquarters building. Consistent with the 2012 facilities oversight plan, the department shall strive to consolidate

office space in downtown Seattle by the end of 2015. The department shall consider renewing the lease for the ferry division's current headquarters building only if the lease rate is reduced at least fifty percent and analysis shows that this is the least cost and risk option for the department. Consolidation with other divisions or state agencies, or a reduction in leased space, must also be considered as part of any headquarters lease renewal analysis.

(9) \$21,950,000 of the total appropriation is for preservation work on the Hyak super class vessel (project 944431D), including installation of a power management system and more efficient propulsion systems, that in combination are anticipated to save up to twenty percent in fuel and reduce maintenance costs. Upon completion of this project, the department shall provide a report to the transportation committees of the legislature on the fuel and maintenance savings achieved for this vessel and the potential to save additional funds through other vessel conversions.

**NEW SECTION. Sec. 310. FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—CAPITAL**

Essential Rail Assistance Account—State	
Appropriation.....	\$861,000
Transportation Infrastructure Account—State	
Appropriation.....	\$8,582,000
Multimodal Transportation Account—State	
Appropriation.....	\$33,156,000
Multimodal Transportation Account—Federal	
Appropriation.....	\$333,881,000
<b>TOTAL APPROPRIATION .....</b>	<b>\$376,480,000</b>

The appropriations in this section are subject to the following conditions and limitations:

(1)(a) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by project and amount in LEAP Transportation Document 2013-2 ALL PROJECTS as developed April 23, 2013, Program -Rail Capital Program (Y).

(b) Within the amounts provided in this section, \$7,332,000 of the transportation infrastructure account—state appropriation is for low-interest loans through the freight rail investment bank program identified in the LEAP transportation document referenced in (a) of this subsection. The department shall issue freight rail investment bank program loans with a repayment period of no more than ten years, and only so much interest as is necessary to recoup the department's costs to administer the loans.

(c) Within the amounts provided in this section, \$2,439,000 of the multimodal transportation account—state appropriation, \$1,250,000 of the transportation infrastructure account—state appropriation, and \$311,000 of the essential rail assistance account—state appropriation are for statewide emergent freight rail assistance projects identified in the LEAP transportation document referenced in (a) of this subsection.

(2) Unsuccessful 2012 freight rail assistance program grant applicants may be awarded freight rail investment bank program loans, if eligible. If any funds remain in the freight rail investment bank or freight rail assistance program reserves (projects F01001A and F01000A), or any approved grants or loans are



terminated, the department shall issue a call for projects for the freight rail investment bank loan program and the freight rail assistance grant program, and shall evaluate the applications in a manner consistent with past practices as specified in section 309, chapter 367, Laws of 2011. By November 1, 2013, the department shall submit a prioritized list of recommended projects to the office of financial management and the transportation committees of the legislature.

(3) \$314,647,000 of the multimodal transportation account—federal appropriation and \$4,867,000 of the multimodal transportation account—state appropriation are provided solely for expenditures related to passenger high-speed rail grants. The multimodal transportation account—state appropriation funds reflect one and one-half percent of the total project funds, and are provided solely for expenditures that are not eligible for federal reimbursement.

(4) As allowable under federal rail authority rules and existing competitive bidding practices, when purchasing new train sets, the department shall give preference to bidders that propose train sets with characteristics and maintenance requirements most similar to those currently owned by the department.

(5) The department shall provide quarterly reports to the office of financial management and the transportation committees of the legislature regarding applications that the department submits for federal funds and the status of such applications.

(6)(a) \$550,000 of the essential rail assistance account—state appropriation and \$1,893,000 of the multimodal transportation account—state appropriation are provided solely for the purpose of rehabilitation and maintenance of the Palouse river and Coulee City railroad line. The department shall complete an evaluation and assessment of future maintenance needs on the line to ensure appropriate levels of state investment.

(b) Expenditures from the essential rail assistance account—state appropriation in this section may not exceed the combined total of:

(i) Revenues deposited into the essential rail assistance account from leases and sale of property pursuant to RCW 47.76.290; and

(ii) Revenues transferred from the miscellaneous program account to the essential rail assistance account, pursuant to RCW 47.76.360, for the purpose of sustaining the grain train program by maintaining the Palouse river and Coulee City railroad line.

(7) \$31,500,000 of the multimodal transportation account—federal appropriation is provided solely for the purchase of two new train sets for the state-supported intercity passenger rail service. The department must apply for any federal waivers required to purchase the new train sets, as allowable under existing competitive bidding practices, and seek federal funds in addition to those available from the high-speed rail grants.

**NEW SECTION. Sec. 311. FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z—CAPITAL**

Highway Infrastructure Account—State Appropriation . . . . .	\$207,000
Highway Infrastructure Account—Federal	
Appropriation . . . . .	\$1,602,000
Freight Mobility Investment Account—State	
Appropriation . . . . .	\$11,794,000

Transportation Partnership Account—State	
Appropriation . . . . .	\$7,214,000
Highway Safety Account—State Appropriation . . . . .	\$11,255,000
Motor Vehicle Account—State Appropriation . . . . .	\$6,918,000
Motor Vehicle Account—Federal Appropriation . . . . .	\$28,413,000
Freight Mobility Multimodal Account—State	
Appropriation . . . . .	\$9,736,000
Freight Mobility Multimodal Account—Private/Local	
Appropriation . . . . .	\$1,320,000
Multimodal Transportation Account—State	
Appropriation . . . . .	\$13,913,000
TOTAL APPROPRIATION . . . . .	\$92,372,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by project and amount in LEAP Transportation Document 2013-2 ALL PROJECTS as developed April 23, 2013, Program -Local Programs (Z).

(2) With each department budget submittal, the department shall provide an update on the status of the repayment of the twenty million dollars of unobligated federal funds authority advanced by the department in September 2010 to the city of Tacoma for the Murray Morgan/11th Street bridge project. The department may negotiate with the city of Tacoma an agreement for repayment of the funds over a period of up to twenty-five years at terms agreed upon by the department and the city. The funds previously advanced by the department to the city are not to be considered a general obligation of the city but instead an obligation payable from identified revenues set aside for the repayment of the funds.

(3) The amounts identified in the LEAP transportation document referenced under subsection (1) of this section for pedestrian safety/safe routes to school are as follows:

(a) \$12,160,000 of the multimodal transportation account—state appropriation, \$6,824,000 of the transportation partnership account—state appropriation, and \$62,000 of the motor vehicle account—federal appropriation are provided solely for pedestrian and bicycle safety program projects.

(b) \$11,700,000 of the motor vehicle account—federal appropriation, \$5,200,000 of the motor vehicle account—state appropriation, and \$6,750,000 of the highway safety account—state appropriation are provided solely for newly selected safe routes to school projects, and \$3,400,000 of the motor vehicle account—federal appropriation and \$2,055,000 of the highway safety account—state appropriation are reappropriated for safe routes to school projects selected in the previous biennia. The amount provided for new projects is consistent with federal funding levels from the 2011-2013 omnibus transportation appropriations act and the intent of the fee increases in chapter 74, Laws of 2012 and chapter 80, Laws of 2012. The motor vehicle account—state appropriation in this subsection (3)(b) is the amount made available by the repeal of the deduction from motor vehicle fuel tax liability for handling losses of motor vehicle fuel, as identified in chapter . . . (Substitute House Bill No.

2041), Laws of 2013 (handling losses of motor vehicle fuel). If chapter . . . (Substitute House Bill No. 2041), Laws of 2013 is not enacted by June 30, 2013, the motor vehicle account—state appropriation in this subsection (3)(b) lapses.

(4) \$84,000 of the motor vehicle account—state appropriation, \$3,250,000 of the motor vehicle account—federal appropriation, \$2,450,000 of the highway safety account—state appropriation, \$11,794,000 of the freight mobility investment account—state appropriation, \$9,736,000 of the freight mobility multimodal account—state appropriation, and \$1,320,000 of the freight mobility multimodal account—private/local appropriation are provided solely for the projects and activities as listed by project and amount in LEAP Transportation Document 2013-B as developed April 23, 2013. If chapter . . . (Substitute House Bill No. 1256), Laws of 2013 is enacted by June 30, 2013, the amounts provided in this subsection lapse.

(5) The department may enter into contracts and make expenditures for projects on behalf of and selected by the freight mobility strategic investment board from the amounts provided in section 301 of this act.

(6) The department shall submit a report to the transportation committees of the legislature by December 1, 2013, and December 1, 2014, on the status of projects funded as part of the pedestrian safety/safe routes to school grant program (OLP600P). The report must include, but is not limited to, a list of projects selected and a brief description of each project's status.

(7) \$50,000 of the motor vehicle account—state appropriation is provided solely for the installation of a guard rail on Deer Harbor Road in San Juan county (L2220054).

**NEW SECTION. Sec. 312. ANNUAL REPORTING REQUIREMENTS FOR CAPITAL PROGRAM**

(1) As part of its budget submittal for the 2014 supplemental budget, the department of transportation shall provide an update to the report provided to the legislature in 2013 that: (a) Compares the original project cost estimates approved in the 2003 and 2005 project lists to the completed cost of the project, or the most recent legislatively approved budget and total project costs for projects not yet completed; (b) identifies highway projects that may be reduced in scope and still achieve a functional benefit; (c) identifies highway projects that have experienced scope increases and that can be reduced in scope; (d) identifies highway projects that have lost significant local or regional contributions that were essential to completing the project; and (e) identifies contingency amounts allocated to projects.

(2) As part of its budget submittal for the 2014 supplemental budget, the department of transportation shall provide an annual report on the number of toll credits the department has accumulated and how the department has used the toll credits.

**\*NEW SECTION. Sec. 313. QUARTERLY REPORTING REQUIREMENTS FOR CAPITAL PROGRAM**

On a quarterly basis, the department of transportation shall provide to the office of financial management and the legislative transportation committees the following reports for all capital programs:

(1) For active projects, the report must include:

(a) A TEIS version containing actual capital expenditures for all projects consistent with the structure of the most recently enacted budget;

(b) Anticipated cost savings, cost increases, reappropriations, and schedule adjustments for all projects consistent with the structure of the most recently enacted budget;

(c) The award amount, the engineer's estimate, and the number of bidders for all active projects consistent with the structure of the most recently enacted budget;

(d) Projected costs and schedule for individual projects that are funded at a programmatic level for projects relating to bridge rail, guard rail, fish passage barrier removal, roadside safety projects, and seismic bridges. Projects within this programmatic level funding must be completed on a priority basis and scoped to be completed within the current programmatic budget;

(e) Highway projects that may be reduced in scope and still achieve a functional benefit;

(f) Highway projects that have experienced scope increases and that can be reduced in scope;

(g) Highway projects that have lost significant local or regional contributions that were essential to completing the project; and

(h) Contingency amounts for all projects consistent with the structure of the most recently enacted budget.

(2) For completed projects, the report must:

(a) Compare the costs and operationally complete date for projects with budgets of twenty million dollars or more that are funded with preexisting funds to the original project cost estimates and schedule; and

(b) Provide a list of nickel and TPA projects charging to the nickel/TPA environmental mitigation reserve (OBI4ENV) and the amount each project is charging.

(3) For prospective projects, the report must:

(a) Identify the estimated advertisement date for all projects consistent with the structure of the most recently enacted transportation budget that are going to advertisement during the current fiscal biennium;

(b) Identify the anticipated operationally complete date for all projects consistent with the structure of the most recently enacted transportation budget that are going to advertisement during the current fiscal biennium; and

(c) Identify the estimated cost of completion for all projects consistent with the structure of the most recently enacted transportation budget that are going to advertisement during the current fiscal biennium.

***(4) The department shall provide a list of change orders executed for each fiscal quarter beginning September 30, 2013. The report must include the name of the contractor, the dollar value of the change order, and a brief explanation for why there needs to be a change order.***

***(5) The department shall provide a quarterly report, beginning September 30, 2013, on project mitigation costs. The report must show:***

***(a) All mitigation payments made during the current fiscal biennium;***

***(b) The party with whom the mitigation was negotiated; and***

***(c) The parties with whom the department are in on-going negotiations.***

\*Sec. 313 was partially vetoed. See message at end of chapter.

**NEW SECTION. Sec. 314. FEDERAL FUNDS RECEIVED FOR CAPITAL PROJECT EXPENDITURES**

To the greatest extent practicable, the department of transportation shall expend federal funds received for capital project expenditures before state funds.

**TRANSFERS AND DISTRIBUTIONS**

**NEW SECTION. Sec. 401. 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 ACCOUNT AND TRANSPORTATION FUND REVENUE**

Transportation Partnership Account—State	
Appropriation . . . . .	\$10,406,000
Motor Vehicle Account—State Appropriation . . . . .	\$450,000
State Route Number 520 Corridor Account—State	
Appropriation . . . . .	\$3,866,000
Highway Bond Retirement Account—State	
Appropriation . . . . .	\$1,074,580,000
Ferry Bond Retirement Account—State Appropriation . . . . .	\$31,824,000
Transportation Improvement Board Bond Retirement	
Account—State Appropriation . . . . .	\$16,267,000
Nondebt-Limit Reimbursable Bond Retirement Account—State	
Appropriation . . . . .	\$25,825,000
Toll Facility Bond Retirement Account—State	
Appropriation . . . . .	\$52,050,000
Toll Facility Bond Retirement Account—Federal	
Appropriation . . . . .	\$64,982,000
Transportation 2003 Account (Nickel Account)—State	
Appropriation . . . . .	\$1,958,000
Special Category C Account—State Appropriation . . . . .	\$2,000
TOTAL APPROPRIATION . . . . .	\$1,282,210,000

**NEW SECTION. Sec. 402. FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR BOND SALE EXPENSES AND FISCAL AGENT CHARGES**

Transportation Partnership Account—State	
Appropriation . . . . .	\$1,156,000
Motor Vehicle Account—State Appropriation . . . . .	\$50,000
State Route Number 520 Corridor Account—State	
Appropriation . . . . .	\$531,000
Transportation 2003 Account (Nickel Account)—State	
Appropriation . . . . .	\$218,000
TOTAL APPROPRIATION . . . . .	\$1,955,000

**NEW SECTION. Sec. 403. FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR MVFT BONDS AND TRANSFERS**

Motor Vehicle Account—State Appropriation: For transfer to the Puget Sound Capital Construction Account . . . . . \$20,000,000

The department of transportation is authorized to sell up to \$20,000,000 in bonds authorized by RCW 47.10.843 for vessel and terminal acquisition, major and minor improvements, and long lead-time materials acquisition for the Washington state ferries.

**NEW SECTION. Sec. 404. FOR THE STATE TREASURER—STATE REVENUES FOR DISTRIBUTION**

Motor Vehicle Account—State Appropriation: For motor vehicle fuel tax distributions to cities and counties . . . . . \$474,610,000

**NEW SECTION. Sec. 405. FOR THE STATE TREASURER—TRANSFERS**

Motor Vehicle Account—State Appropriation: For motor vehicle fuel tax refunds and statutory transfers . . . . . \$1,235,491,000

**NEW SECTION. Sec. 406. FOR THE DEPARTMENT OF LICENSING—TRANSFERS**

Motor Vehicle Account—State Appropriation: For motor vehicle fuel tax refunds and transfers . . . . . \$138,627,000

**NEW SECTION. Sec. 407. FOR THE STATE TREASURER—ADMINISTRATIVE TRANSFERS**

(1) Recreational Vehicle Account—State Appropriation: For transfer to the Motor Vehicle Account—State . . . . . \$1,300,000

(2) Multimodal Transportation Account—State Appropriation: For transfer to the Puget Sound Ferry Operations Account—State . . . . . \$13,000,000

(3) Rural Mobility Grant Program Account—State Appropriation: For transfer to the Multimodal Transportation Account—State . . . . . \$3,000,000

(4) Motor Vehicle Account—State Appropriation: For transfer to the Special Category C Account—State . . . . . \$1,500,000

(5) Capital Vessel Replacement Account—State Appropriation: For transfer to the Transportation 2003 Account (Nickel Account)—State . . . . . \$7,702,000

(6) Multimodal Transportation Account—State Appropriation: For transfer to the Public Transportation Grant Program Account—State . . . . . \$26,000,000

(7) Motor Vehicle Account—State Appropriation: For transfer to the Puget Sound Ferry Operations Account—State . . . . . \$28,000,000

(8) Motor Vehicle Account—State Appropriation: For transfer to the Puget Sound Capital Construction Account—State . . . . . \$28,000,000

(9) State Route Number 520 Civil Penalties  
 Account—State Appropriation: For transfer to the  
 State Route Number 520 Corridor Account—State . . . . . \$886,000

(10) Multimodal Transportation Account—State  
 Appropriation: For transfer to the Highway Safety  
 Account—State . . . . . \$10,000,000

(11) Motor Vehicle Account—State Appropriation:  
 For transfer to the State Patrol Highway  
 Account—State . . . . . \$27,000,000

(12) Highway Safety Account—State Appropriation:  
 For transfer to the Puget Sound Ferry Operations  
 Account—State . . . . . \$42,000,000

(13) Advanced Environmental Mitigation Revolving  
 Account—State Appropriation: For transfer to the Motor  
 Vehicle Account—State . . . . . \$2,000,000

(14) Advanced Right-of-Way Revolving Fund—State  
 Appropriation: For transfer to the Motor Vehicle  
 Account—State . . . . . \$6,000,000

(15) Tacoma Narrows Toll Bridge Account—State  
 Appropriation: For transfer to the Motor Vehicle  
 Account—State . . . . . \$950,000

(16) License Plate Technology Account—State  
 Appropriation: For transfer to the Highway Safety  
 Account—State . . . . . \$3,000,000

(17) Motor Vehicle Account—State Appropriation:  
 For transfer to the Transportation Equipment  
 Fund—State . . . . . \$3,915,000

(18) Multimodal Transportation Account—State  
 Appropriation: For transfer to the Motor Vehicle  
 Account—State . . . . . \$10,000,000

**NEW SECTION. Sec. 408. FOR THE STATE TREASURER: FOR DISTRIBUTION TO TRANSIT ENTITIES**

Public Transportation Grant Program Account—State  
 Appropriation. . . . . \$26,000,000

The appropriation in this section is subject to the following conditions and limitations:

- (1) One-eighth of the appropriation in this section must be distributed quarterly to transit authorities according to the distribution formula in subsection (2) of this section. Funding must be used for operations.
- (2) Of the amounts provided in subsection (1) of this section:
  - (a) One-third must be distributed based on vehicle miles of service provided;
  - (b) One-third must be distributed based on the number of vehicle hours of service provided; and
  - (c) One-third must be distributed based on the number of passenger trips.
- (3) For the purposes of this section:
  - (a) "Transit authorities" has the same meaning as in RCW 9.91.025(2)(c).

(b) "Vehicle miles of service," "vehicle hours of service," and "passenger trips" are transit service metrics as reported by the public transportation program of the department of transportation in the annual report required in RCW 35.58.2796 for calendar year 2011.

**NEW SECTION. Sec. 409. STATUTORY APPROPRIATIONS**

In addition to the amounts appropriated in this act for revenue for distribution, state contributions to the law enforcement officers' and firefighters' retirement system, and bond retirement and interest including ongoing bond registration and transfer charges, transfers, interest on registered warrants, and certificates of indebtedness, there is also appropriated such further amounts as may be required or available for these purposes under any statutory formula or under any proper bond covenant made under law.

**NEW SECTION. Sec. 410.** The department of transportation is authorized to undertake federal advance construction projects under the provisions of 23 U.S.C. Sec. 115 in order to maintain progress in meeting approved highway construction and preservation objectives. The legislature recognizes that the use of state funds may be required to temporarily fund expenditures of the federal appropriations for the highway construction and preservation programs for federal advance construction projects prior to conversion to federal funding.

## COMPENSATION

**NEW SECTION. Sec. 501. COLLECTIVE BARGAINING AGREEMENTS NOT IMPAIRED**

Nothing in this act prohibits the expenditure of any funds by an agency or institution of the state for benefits guaranteed by any collective bargaining agreement in effect on the effective date of this section.

**NEW SECTION. Sec. 502. COLLECTIVE BARGAINING AGREEMENTS**

Sections 503 through 516 of this act represent the results of the 2013-2015 collective bargaining process required under chapters 47.64, 41.80, and 41.56 RCW. Provisions of the collective bargaining agreements contained in sections 503 through 516 of this act are described in general terms. Only major economic terms are included in the descriptions. These descriptions do not contain the complete contents of the agreements. The collective bargaining agreements or the continuation of terms and conditions of the 2011-2013 agreements contained in sections 503 through 516 of this act may also be funded by expenditures from nonappropriated accounts. If positions are funded with lidded grants or dedicated fund sources with insufficient revenue, additional funding from other sources is not provided.

**NEW SECTION. Sec. 503. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—OPEIU**

An agreement has been reached between the governor and the office and professional employees international union local eight (OPEIU) pursuant to chapter 47.64 RCW for the 2013-2015 fiscal biennium. Funding is provided for an additional step on the OPEIU salary schedule. The agreement also includes a one percent salary increase for all bargaining unit members effective July 1,



2014, through June 30, 2015, contingent on the state collecting \$200,000,000 or more in unanticipated general fund—state revenue from increased economic activity.

**NEW SECTION. Sec. 504. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—FASPAA**

An agreement has been reached between the governor and the ferry agents, supervisors, and project administrators association pursuant to chapter 47.64 RCW for the 2013-2015 fiscal biennium. Funding is provided for a one percent salary increase for all bargaining unit members beginning July 1, 2013, and a one percent salary increase for all bargaining unit members beginning July 1, 2014.

**NEW SECTION. Sec. 505. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—SEIU LOCAL 6**

An agreement has been reached between the governor and the service employees international union local six pursuant to chapter 47.64 RCW for the 2013-2015 fiscal biennium. Funding is provided for a new step on the salary schedule. The agreement also includes a one percent salary increase for all bargaining unit members effective July 1, 2014, through June 30, 2015, contingent on the state collecting \$200,000,000 or more in unanticipated general fund—state revenue from economic activity.

**NEW SECTION. Sec. 506. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—CARPENTERS**

An agreement has been reached between the governor and the pacific northwest regional council of carpenters pursuant to chapter 47.64 RCW for the 2013-2015 fiscal biennium. Funding is provided for a one and one-half percent salary increase for all bargaining unit members beginning July 1, 2013, and a one and one-half percent salary increase for all bargaining unit members beginning July 1, 2014.

**NEW SECTION. Sec. 507. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—METAL TRADES**

An agreement has been reached between the governor and the Puget Sound metal trades council through an interest arbitration decision pursuant to chapter 47.64 RCW for the 2013-2015 fiscal biennium. Funding is provided for the awarded one and one-half percent salary increase for all bargaining unit members beginning July 1, 2013, and a one and one-half percent salary increase for all bargaining unit members beginning July 1, 2014.

**NEW SECTION. Sec. 508. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—MEBA-UL**

An agreement has been reached between the governor and the marine engineers' beneficial association unlicensed engine room employees through an interest arbitration decision pursuant to chapter 47.64 RCW for the 2013-2015 fiscal biennium. Funding is provided for the awarded one percent salary increase for all bargaining unit members beginning July 1, 2013, a one percent

salary increase for all bargaining unit members beginning July 1, 2014, and additional vacation accrual beginning July 1, 2014.

**NEW SECTION. Sec. 509. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—MEBA-L**

An agreement has been reached between the governor and the marine engineers' beneficial association licensed engineer officers through an interest arbitration decision pursuant to chapter 47.64 RCW for the 2013-2015 fiscal biennium. Funding is provided for the awarded one percent salary increase for all bargaining unit members beginning July 1, 2013, a one percent salary increase for all bargaining unit members beginning July 1, 2014, and additional vacation accrual beginning July 1, 2014.

**NEW SECTION. Sec. 510. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—MM&P MATES**

An agreement has been reached between the governor and the masters, mates, and pilots - mates through an interest arbitration decision pursuant to chapter 47.64 RCW for the 2013-2015 fiscal biennium. Funding is provided for the awarded three percent salary increase for all bargaining unit members beginning July 1, 2014, additional pay for relief employees, increased uniform allowance, and increased Friday Harbor relief pay.

**NEW SECTION. Sec. 511. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—MM&P MASTERS**

An agreement has been reached between the governor and the masters, mates, and pilots - masters through an interest arbitration decision pursuant to chapter 47.64 RCW for the 2013-2015 fiscal biennium. Funding is provided for a one percent salary increase for all bargaining unit members beginning July 1, 2013, a one percent salary increase for all bargaining unit members beginning July 1, 2014, relief assignment pay for all compensated hours beginning July 1, 2014, increased uniform allowance, increased license renewal allowance, and increased Friday Harbor relief pay.

**NEW SECTION. Sec. 512. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—MM&P WATCH SUPERVISORS**

An agreement has been reached between the governor and the masters, mates, and pilots - watch supervisors through an interest arbitration decision pursuant to chapter 47.64 RCW for the 2013-2015 fiscal biennium. Funding is provided for the awarded 16.125 percent salary increase for all bargaining unit members beginning July 1, 2013, and a 16.125 percent salary increase for all bargaining unit members beginning July 1, 2014.

**NEW SECTION. Sec. 513. DEPARTMENT OF TRANSPORTATION MARINE DIVISION COLLECTIVE BARGAINING AGREEMENTS—IBU**

An agreement has been reached between the governor and the inlandboatmen's union of the pacific pursuant to chapter 47.64 RCW for the 2013-2015 fiscal biennium. Funding is provided for an eighteen percent increase for entry-level wage rates for all bargaining unit members beginning

July 1, 2013. For all other wage rates, funding is provided to increase rates two and one-half percent for all bargaining unit members beginning July 1, 2013, and to increase rates two and one-half percent for all bargaining unit members beginning July 1, 2014. Funding is also provided for marine license fees.

**NEW SECTION. Sec. 514. COLLECTIVE BARGAINING AGREEMENTS—PTE LOCAL 17**

An agreement has been reached between the governor and the professional and technical employees local seventeen under chapter 41.80 RCW for the 2013-2015 fiscal biennium. Funding is provided to add a longevity step. The agreement also includes a one percent salary increase for all bargaining unit members effective July 1, 2014, through June 30, 2015, contingent on the state collecting \$200,000,000 or more in unanticipated general fund—state revenue from increased economic activity.

**NEW SECTION. Sec. 515. COLLECTIVE BARGAINING AGREEMENTS—WSP TROOPERS ASSOCIATION**

An agreement has been reached between the governor and the Washington state patrol troopers association through an interest arbitration decision under chapter 41.56 RCW for the 2013-2015 fiscal biennium. Funding is provided for the awarded three percent salary increase for all bargaining unit members effective July 1, 2013, and a one percent increase to longevity pay for years five through nine effective July 1, 2014.

**NEW SECTION. Sec. 516. COLLECTIVE BARGAINING AGREEMENTS—WSP LIEUTENANTS ASSOCIATION**

An agreement has been reached between the governor and the Washington state patrol lieutenants association through an interest arbitration decision under chapter 41.56 RCW for the 2013-2015 fiscal biennium. Funding is provided for the awarded three percent salary increase for all bargaining unit members effective July 1, 2014, and for parking of department-issued vehicles for employees assigned vehicles at the general administration building or capitol campus.

**NEW SECTION. Sec. 517. COMPENSATION—REPRESENTED EMPLOYEES—SUPER COALITION—INSURANCE BENEFITS**

No agreement has been reached between the governor and the health care super coalition under chapter 41.80 RCW for the 2013-2015 fiscal biennium. Appropriations in this act for state agencies, including institutions of higher education, are sufficient to continue the provisions of the 2011-2013 collective bargaining agreement and are subject to the following conditions and limitations:

(1)(a) The monthly employer funding rate for insurance benefit premiums, public employees' benefits board administration, and the uniform medical plan must not exceed \$809 per eligible employee for fiscal year 2014. For fiscal year 2015, the monthly employer funding rate must not exceed \$820 per eligible employee.

(b) In order to achieve the level of funding provided for health benefits, the public employees' benefits board must require any of the following: Employee premium copayments; increases in point-of-service cost sharing; the implementation of managed competition; or other changes to benefits consistent with RCW 41.05.065.

(c) The health care authority shall deposit any moneys received on behalf of the uniform medical plan as a result of rebates on prescription drugs, audits of hospitals, subrogation payments, or any other moneys recovered as a result of prior uniform medical plan claims payments into the public employees' and retirees' insurance account to be used for insurance benefits. Such receipts must not be used for administrative expenditures.

(2) The health care authority, subject to the approval of the public employees' benefits board, shall provide subsidies for health benefit premiums to eligible retired or disabled public employees and school district employees who are eligible for medicare, pursuant to RCW 41.05.085. For calendar years 2014 and 2015, the subsidy must be \$150.00 per month.

**NEW SECTION. Sec. 518. COMPENSATION—REPRESENTED EMPLOYEES OUTSIDE SUPER COALITION—INSURANCE BENEFITS**

Appropriations for state agencies in this act are sufficient for represented employees outside the super coalition for health benefits and are subject to the following conditions and limitations:

(1)(a) The monthly employer funding rate for insurance benefit premiums, public employees' benefits board administration, and the uniform medical plan must not exceed \$809 per eligible employee for fiscal year 2014. For fiscal year 2015, the monthly employer funding rate must not exceed \$820 per eligible employee.

(b) In order to achieve the level of funding provided for health benefits, the public employees' benefits board shall require any of the following: Employee premium copayments; increases in point-of-service cost sharing; the implementation of managed competition; or other changes to benefits consistent with RCW 41.05.065.

(c) The health care authority shall deposit any moneys received on behalf of the uniform medical plan as a result of rebates on prescription drugs, audits of hospitals, subrogation payments, or any other moneys recovered as a result of prior uniform medical plan claims payments into the public employees' and retirees' insurance account to be used for insurance benefits. Such receipts must not be used for administrative expenditures.

(2) The health care authority, subject to the approval of the public employees' benefits board, shall provide subsidies for health benefit premiums to eligible retired or disabled public employees and school district employees who are eligible for medicare, pursuant to RCW 41.05.085. For calendar years 2014 and 2015, the subsidy must be \$150.00 per month.

**NEW SECTION. Sec. 519. COMPENSATION—NONREPRESENTED EMPLOYEES—INSURANCE BENEFITS**

Appropriations for state agencies in this act are sufficient for nonrepresented state employee health benefits for state agencies, including institutions of higher education, and are subject to the following conditions and limitations:

(1)(a) The monthly employer funding rate for insurance benefit premiums, public employees' benefits board administration, and the uniform medical plan must not exceed \$809 per eligible employee for fiscal year 2014. For fiscal year 2015, the monthly employer funding rate must not exceed \$820 per eligible employee.

(b) In order to achieve the level of funding provided for health benefits, the public employees' benefits board shall require any of the following: Employee premium copayments; increases in point-of-service cost sharing; the implementation of managed competition; or make other changes to benefits consistent with RCW 41.05.065.

(c) The health care authority shall deposit any moneys received on behalf of the uniform medical plan as a result of rebates on prescription drugs, audits of hospitals, subrogation payments, or any other moneys recovered as a result of prior uniform medical plan claims payments into the public employees' and retirees' insurance account to be used for insurance benefits. Such receipts must not be used for administrative expenditures.

(2) The health care authority, subject to the approval of the public employees' benefits board, shall provide subsidies for health benefit premiums to eligible retired or disabled public employees and school district employees who are eligible for medicare, pursuant to RCW 41.05.085. For calendar years 2014 and 2015, the subsidy must be \$150.00 per month.

**NEW SECTION. Sec. 520. COMPENSATION—NONREPRESENTED EMPLOYEES—SALARIES AND WAGES**

For classified state employees, except those within the Washington management service and those represented by a bargaining unit under chapter 41.80, 41.56, or 47.64 RCW, funding is provided within agency appropriations for implementation of a longevity step, in accordance with rules adopted under RCW 41.06.133.

**Sec. 521.** RCW 47.64.170 and 2011 c 367 s 712 are each amended to read as follows:

(1) Any ferry employee organization certified as the bargaining representative shall be the exclusive representative of all ferry employees in the bargaining unit and shall represent all such employees fairly.

(2) A ferry employee organization or organizations and the governor may each designate any individual as its representative to engage in collective bargaining negotiations.

(3) Negotiating sessions, including strategy meetings of the employer or employee organizations, mediation, and the deliberative process of arbitrators are exempt from the provisions of chapter 42.30 RCW. Hearings conducted by arbitrators may be open to the public by mutual consent of the parties.

(4) Terms of any collective bargaining agreement may be enforced by civil action in Thurston county superior court upon the initiative of either party.

(5) Ferry system employees or any employee organization shall not negotiate or attempt to negotiate directly with anyone other than the person who has been appointed or authorized a bargaining representative for the purpose of bargaining with the ferry employees or their representative.

(6)(a) Within ten working days after the first Monday in September of every odd-numbered year, the parties shall attempt to agree on an interest arbitrator to be used if the parties are not successful in negotiating a comprehensive collective bargaining agreement. If the parties cannot agree on an arbitrator within the ten-day period, either party may request a list of seven arbitrators from the federal mediation and conciliation service. The parties shall select an interest arbitrator using the coin toss/alternate strike method within thirty

calendar days of receipt of the list. Immediately upon selecting an interest arbitrator, the parties shall cooperate to reserve dates with the arbitrator for potential arbitration between August 1st and September 15th of the following even-numbered year. The parties shall also prepare a schedule of at least five negotiation dates for the following year, absent an agreement to the contrary. The parties shall execute a written agreement before November 1st of each odd-numbered year setting forth the name of the arbitrator and the dates reserved for bargaining and arbitration. This subsection (6)(a) imposes minimum obligations only and is not intended to define or limit a party's full, good faith bargaining obligation under other sections of this chapter.

(b) The negotiation of a proposed collective bargaining agreement by representatives of the employer and a ferry employee organization shall commence on or about February 1st of every even-numbered year.

(c) For negotiations covering the 2009-2011 biennium and subsequent biennia, the time periods specified in this section, and in RCW 47.64.210 and 47.64.300 through 47.64.320, must ensure conclusion of all agreements on or before October 1st of the even-numbered year next preceding the biennial budget period during which the agreement should take effect. These time periods may only be altered by mutual agreement of the parties in writing. Any such agreement and any impasse procedures agreed to by the parties under RCW 47.64.200 must include an agreement regarding the new time periods that will allow final resolution by negotiations or arbitration by October 1st of each even-numbered year.

(7) It is the intent of this section that the collective bargaining agreement or arbitrator's award shall commence on July 1st of each odd-numbered year and shall terminate on June 30th of the next odd-numbered year to coincide with the ensuing biennial budget year, as defined by RCW 43.88.020(7), to the extent practical. It is further the intent of this section that all collective bargaining agreements be concluded by October 1st of the even-numbered year before the commencement of the biennial budget year during which the agreements are to be in effect. After the expiration date of a collective bargaining agreement negotiated under this chapter, except to the extent provided in subsection (11) of this section and RCW 47.64.270(4), all of the terms and conditions specified in the collective bargaining agreement remain in effect until the effective date of a subsequently negotiated agreement, not to exceed one year from the expiration date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(8) The office of financial management shall conduct a salary survey, for use in collective bargaining and arbitration, which must be conducted through a contract with a firm nationally recognized in the field of human resources management consulting.

(9) Except as provided in subsection (11) of this section:

(a) The governor shall submit a request either for funds necessary to implement the collective bargaining agreements including, but not limited to, the compensation and fringe benefit provisions or for legislation necessary to implement the agreement, or both. Requests for funds necessary to implement the collective bargaining agreements shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(b) The governor shall submit a request either for funds necessary to implement the arbitration awards or for legislation necessary to implement the arbitration awards, or both. Requests for funds necessary to implement the arbitration awards shall not be submitted to the legislature by the governor unless such requests:

(i) Have been submitted to the director of the office of financial management by October 1st before the legislative session at which the requests are to be considered; and

(ii) Have been certified by the director of the office of financial management as being feasible financially for the state.

(c) The legislature shall approve or reject the submission of the request for funds necessary to implement the collective bargaining agreements or arbitration awards as a whole for each agreement or award. The legislature shall not consider a request for funds to implement a collective bargaining agreement or arbitration award unless the request is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060. If the legislature rejects or fails to act on the submission, either party may reopen all or part of the agreement and award or the exclusive bargaining representative may seek to implement the procedures provided for in RCW 47.64.210 and 47.64.300.

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

(11)(a) For the collective bargaining agreements negotiated for the 2011-2013 fiscal biennium, the legislature may consider a request for funds to implement a collective bargaining agreement even if the request for funds was not received by the office of financial management by October 1st and was not transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060.

(b) For the ~~((2011-2013))~~ 2013-2015 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee must be a separate agreement for which the governor may request funds necessary to implement the agreement. ~~((If such an agreement is negotiated and funded by the legislature, this agreement will supersede any terms and conditions of an expired 2009-2011 biennial master collective bargaining agreement under this chapter regarding health care benefits.))~~ The legislature may act upon a 2013-2015 collective bargaining agreement related to employee health care benefits if an agreement is reached and submitted to the office of financial management and legislative budget committees before final legislative action on the biennial or supplemental operating budget by the sitting legislature.

(c) For the collective bargaining agreements negotiated for the 2013-2015 fiscal biennium, the legislature may consider a request for funds to implement a collective bargaining agreement reached after October 1st after a determination of financial infeasibility by the director of the office of financial management if the request for funds is transmitted to the legislature as part of the governor's budget document submitted under RCW 43.88.030 and 43.88.060.

**Sec. 522.** RCW 47.64.270 and 2011 c 367 s 713 are each amended to read as follows:

(1) The employer and one coalition of all the exclusive bargaining representatives subject to this chapter and chapter 41.80 RCW shall conduct negotiations regarding the dollar amount expended on behalf of each employee for health care benefits.

(2) Absent a collective bargaining agreement to the contrary, the department of transportation shall provide contributions to insurance and health care plans for ferry system employees and dependents, as determined by the state health care authority, under chapter 41.05 RCW.

(3) The employer and employee organizations may collectively bargain for insurance plans other than health care benefits, and employer contributions may exceed that of other state agencies as provided in RCW 41.05.050.

(4) For the ~~((2011-2013))~~ 2013-2015 fiscal biennium, a collective bargaining agreement related to employee health care benefits negotiated between the employer and coalition pursuant to RCW 41.80.020(3) regarding the dollar amount expended on behalf of each employee must be a separate agreement for which the governor may request funds necessary to implement the agreement. ~~((If such an agreement is negotiated and funded by the legislature, this agreement will supersede any terms and conditions of an expired 2009-2011 biennial collective bargaining agreement under this chapter regarding health care benefits.))~~

## IMPLEMENTING PROVISIONS

### NEW SECTION. **Sec. 601. STAFFING LEVELS**

(1) As the department of transportation completes delivery of the projects funded by the 2003 and 2005 transportation revenue packages, it is clear that the current staffing levels necessary to deliver these projects are not sustainable into the future. Therefore, the department is directed to quickly move forward to develop and implement new business practices so that a smaller, more nimble state workforce can effectively and efficiently deliver transportation improvement programs as they are approved in the future, in strong partnership with the private sector, while protecting the public's interests and assets.

(2) To this end, the department of transportation is directed to reduce the size of its engineering and technical workforce to a level sustained by current law revenue levels currently estimated at two thousand FTEs by the end of the 2013-2015 fiscal biennium. The department shall submit a report on the progress made in 2011-2013 by July 1, 2013.

(3) In order to successfully deliver the highway construction program as funded, the department of transportation may continue to contract out engineering and technical services. In addition, the department may continue the incentive program for retirements and employee separations.



**\*NEW SECTION. Sec. 602. FOR THE DEPARTMENT OF TRANSPORTATION**

*The department shall begin to transition from owning a fleet of passenger vehicles in Thurston county to using the state motor pool. The funding appropriated in this act may not be used by programs headquartered in Thurston county to purchase passenger cars as defined in RCW 46.04.382.*

\*Sec. 602 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 603. FUND TRANSFERS**

(1) The transportation 2003 projects or improvements and the 2005 transportation partnership projects or improvements are listed in the LEAP list titled 2013-1 as developed April 23, 2013, which consists of a list of specific projects by fund source and amount over a ten-year period. Current fiscal biennium funding for each project is a line-item appropriation, while the outer year funding allocations represent a ten-year plan. The department is expected to use the flexibility provided in this section to assist in the delivery and completion of all transportation partnership account and transportation 2003 account (nickel account) projects on the LEAP transportation documents referenced in this act. However, this section does not apply to the I-5/Columbia River Crossing project (400506A). For the 2011-2013 and 2013-2015 project appropriations, unless otherwise provided in this act, the director of financial management may authorize a transfer of appropriation authority between projects funded with transportation 2003 account (nickel account) appropriations, or transportation partnership account appropriations, in order to manage project spending and efficiently deliver all projects in the respective program under the following conditions and limitations:

(a) Transfers may only be made within each specific fund source referenced on the respective project list;

(b) Transfers from a project may not be made as a result of the reduction of the scope of a project or be made to support increases in the scope of a project;

(c) Each transfer between projects may only occur if the director of financial management finds that any resulting change will not hinder the completion of the projects as approved by the legislature. Until the legislature reconvenes to consider the 2014 supplemental omnibus transportation appropriations act, any unexpended 2011-2013 appropriation balance as approved by the office of financial management, in consultation with the legislative staff of the house of representatives and senate transportation committees, may be considered when transferring funds between projects;

(d) Transfers from a project may be made if the funds appropriated to the project are in excess of the amount needed to complete the project;

(e) Transfers may not occur for projects not identified on the applicable project list;

(f) Transfers may not be made while the legislature is in session; and

(g) Transfers between projects may be made, without the approval of the director of the office of financial management, by the department of transportation until the transfer amount by project exceeds two hundred fifty thousand dollars, or ten percent of the total project, whichever is less. These transfers must be reported quarterly to the director of financial management and the chairs of the house of representatives and senate transportation committees.

(2) At the time the department submits a request to transfer funds under this section, a copy of the request must be submitted to the transportation committees of the legislature.

(3) The office of financial management shall work with legislative staff of the house of representatives and senate transportation committees to review the requested transfers in a timely manner.

(4) The office of financial management shall document approved transfers and schedule changes in the transportation executive information system, compare changes to the legislative baseline funding and schedules identified by project identification number identified in the LEAP transportation documents referenced in this act, and transmit revised project lists to chairs of the transportation committees of the legislature on a quarterly basis.

**NEW SECTION. Sec. 604. ACQUISITION OF PROPERTIES AND FACILITIES THROUGH FINANCIAL CONTRACTS**

(1) The agency in subsection (2) of this section may enter into financial contracts, paid from any funds of an agency, appropriated or nonappropriated, for the purposes indicated and in not more than the principal amounts indicated, plus financing expenses and required reserves pursuant to chapter 39.94 RCW. When securing properties under this section, agencies shall use the most economical financial contract option available, including long-term leases, lease-purchase agreements, lease-development with option to purchase agreements, or financial contracts using certificates of participation. Expenditures made by an agency for one of the indicated purposes before the issue date of the authorized financial contract and any certificates of participation therein are intended to be reimbursed from proceeds of the financial contract and any certificates of participation therein to the extent provided in the agency's financing plan approved by the state finance committee.

(2) The Washington state patrol may enter into agreements with the department of enterprise services and the state treasurer's office to develop requests to the legislature for the acquisition of properties and facilities through financial contracts. The agreements may include charges for services rendered. The Washington state patrol may enter into a financing contract for up to \$4,680,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to purchase and install mobile office platforms in state patrol and pursuit vehicles.

**NEW SECTION. Sec. 605. FOR THE DEPARTMENT OF TRANSPORTATION**

(1) The department of transportation shall prepare an updated facilities and property plan to improve the oversight of real estate procurement and property management across all department programs and regions, including the Washington state ferries. The plan must be submitted to the office of financial management and the transportation committees of the legislature by December 31, 2013. The plan must include:

(a) An inventory of all currently owned and leased buildings, including tunnel and bridge operation or maintenance facilities, and traffic management centers as provided by the state's facilities inventory process prescribed by the office of financial management annually by September 1st;

(b) A land inventory, as of July 2013, including an indication of whether the land is being held for right-of-way, disposition, or future operational facilities;

(c) A prioritized list of all facilities that are planned to be constructed, renovated, or remodeled in the next ten years, including each facilities' purpose and use, and the funding source indicating whether the funding that is assumed for the facility improvements is project or operational funding;

(d) A list of options for consolidating staff, equipment, and operational activities to reduce costs with an emphasis on consolidating facilities from leased facilities into state-owned facilities. New locations for a permanent state program or activity, unless a life-cycle cost analysis supports leasing in lieu of ownership or funds are not available for construction, should be state-owned facilities;

(e) A department-wide coordinated process and plan for regularly evaluating facility needs, which includes all facilities in the inventory under (a) of this subsection; and

(f) A list of department-owned property that can be declared surplus property.

(2) Except as provided otherwise in this act, the department of transportation may not enter into new leases, equal value exchanges, or property transactions, including land acquisitions, except for right-of-way purchases for projects on the legislative project lists, without first consulting with the office of financial management.

**NEW SECTION. Sec. 606. FOR THE DEPARTMENT OF TRANSPORTATION**

As part of its 2014 supplemental budget submittal, the department shall provide a report to the legislature and the office of financial management that:

(1) Identifies, by capital project, the amount of state funding that has been reappropriated from the 2011-2013 fiscal biennium into the 2013-2015 fiscal biennium; and

(2) Identifies, for each project, the amount of cost savings or increases in funding that have been identified as compared to the 2013 enacted omnibus transportation appropriations act.

**NEW SECTION. Sec. 607. FOR THE DEPARTMENT OF TRANSPORTATION**

The department of transportation, in conjunction with the office of minority and women's business enterprises, shall review the city of Seattle's minority and women's business enterprise inclusion plans that the city has implemented. The review should include a comparison between the existing state process and the city of Seattle inclusion process for bidding construction projects. As part of the review, any identified advantages or disadvantages along with any realized benefits that the city of Seattle has experienced should be included in a report that is due to the transportation committees of the legislature by December 1, 2013.

**NEW SECTION. Sec. 608. VOLUNTARY RETIREMENT AND SEPARATION INCENTIVES**

As a management tool to reduce costs and make more effective use of resources, while improving employee productivity and morale, agencies may implement a voluntary retirement and/or separation program that is cost neutral

or results in cost savings, including costs to the state pension systems, over a two-year period following the commencement of the program, provided that the program is approved by the director of financial management. Agencies participating in this authorization may offer voluntary retirement and/or separation incentives and options according to procedures and guidelines established by the office of financial management, in consultation with the office of the state human resources director and the department of retirement systems. The options may include, but are not limited to, financial incentives for voluntary separation or retirement. An employee does not have any contractual right to a financial incentive offered pursuant to this section. Offers must be reviewed and monitored jointly by the office of the state human resources director and the department of retirement systems. Agencies must submit a report by June 30, 2015, to the legislature and the office of financial management on the outcome of their approved incentive program. The report should include information on the details of the program, including the incentive payment amount for each participant, the total cost to the state, and the projected or actual net dollar savings over the two-year period.

The department of retirement systems may collect from employers the actuarial cost of any incentive provided under this program, or any other incentive to retire provided by employers to members of the state's pension systems, for deposit in the appropriate pension account.

**NEW SECTION. Sec. 609. COMPENSATION—REVISE PENSION CONTRIBUTION RATES**

The appropriations for school districts and state agencies, including institutions of higher education, are subject to the following conditions and limitations: Appropriations are adjusted to reflect changes to agency appropriations to reflect pension contribution rates adopted by the pension funding council and the law enforcement officers' and firefighters' retirement system plan 2 board.

**NEW SECTION. Sec. 610. FOR THE DEPARTMENT OF TRANSPORTATION**

The department of transportation may provide up to \$3,000,000 in toll credits to Kitsap Transit for its role in passenger-only ferry service and ferry corridor-related projects. The number of toll credits provided must be equal to, but no more than, the number sufficient to meet federal match requirements for grant funding for passenger-only ferry service, but must not exceed the amount authorized in this section.

**NEW SECTION. Sec. 611.** To the extent that any appropriation authorizes expenditures of state funds from the motor vehicle account, special category C account, Tacoma Narrows toll bridge account, transportation 2003 account (nickel account), transportation partnership account, transportation improvement account, Puget Sound capital construction account, multimodal transportation account, state route number 520 corridor account, or other transportation capital project account in the state treasury for a state transportation program that is specified to be funded with proceeds from the sale of bonds authorized in chapter 47.10 RCW, the legislature declares that any such expenditures made prior to the issue date of the applicable transportation bonds for that state transportation program are intended to be reimbursed from proceeds of those

transportation bonds in a maximum amount equal to the amount of such appropriation.

**NEW SECTION. Sec. 612.**

**WEB SITE REPORTING REQUIREMENTS FOR THE DEPARTMENT OF TRANSPORTATION**

(1) The department of transportation shall post on its web site every report that is due from the department to the legislature during the 2013-2015 fiscal biennium on one web page. The department must post both completed reports and planned reports on a single web page.

(2) The department shall provide a web link for each change order that is more than five hundred thousand dollars on the affected project web page.

**MISCELLANEOUS 2013-2015 FISCAL BIENNIUM**

**Sec. 701.** RCW 43.19.642 and 2012 c 86 s 802 are each amended to read as follows:

(1) Effective June 1, 2006, for agencies complying with the ultra-low sulfur diesel mandate of the United States environmental protection agency for on-highway diesel fuel, agencies shall use biodiesel as an additive to ultra-low sulfur diesel for lubricity, provided that the use of a lubricity additive is warranted and that the use of biodiesel is comparable in performance and cost with other available lubricity additives. The amount of biodiesel added to the ultra-low sulfur diesel fuel shall be not less than two percent.

(2) Except as provided in subsection (5) of this section, effective June 1, 2009, state agencies are required to use a minimum of twenty percent biodiesel as compared to total volume of all diesel purchases made by the agencies for the operation of the agencies' diesel-powered vessels, vehicles, and construction equipment.

(3) All state agencies using biodiesel fuel shall, beginning on July 1, 2006, file biannual reports with the department of enterprise services documenting the use of the fuel and a description of how any problems encountered were resolved.

(4) By December 1, 2009, the department of enterprise services shall:

(a) Report to the legislature on the average true price differential for biodiesel by blend and location; and

(b) Examine alternative fuel procurement methods that work to address potential market barriers for in-state biodiesel producers and report these findings to the legislature.

(5) During the 2011-2013 ~~and 2013-2015~~ fiscal (~~biennium~~) biennia, the Washington state ferries is required to use a minimum of five percent biodiesel as compared to total volume of all diesel (~~purchased~~) purchases made by the Washington state ferries for the operation of the Washington state ferries diesel-powered vessels, as long as the price of a B5 biodiesel blend does not exceed the price of conventional diesel fuel by five percent or more.

**Sec. 702.** RCW 46.12.630 and 2012 c 86 s 803 are each amended to read as follows:

In addition to any other authority which it may have, the department of licensing may furnish lists of registered and legal owners of motor vehicles only for the purposes specified in this section to:

(1)(a) The manufacturers of motor vehicles, or their authorized agents, to be used:

((a)) (i) To enable those manufacturers to carry out the provisions of the national traffic and motor vehicle safety act of 1966 (15 U.S.C. Sec. 1382-1418), including amendments or additions thereto, respecting safety-related defects in motor vehicles; or

((b)) (ii) During the 2011-2013 fiscal biennium, in research activities, and in producing statistical reports, as long as the personal information is not published, redisclosed, or used to contact individuals; or

(b) During fiscal year 2014, an entity that is an authorized agent of a motor vehicle manufacturer, for purposes of using lists of registered and legal owner information to conduct research activities and produce statistical reports, as long as the entity does not allow personal information received under this section to be published, redisclosed, or used to contact individuals. The department must charge an amount sufficient to cover the full cost of providing the data requested under this subsection (1)(b). Full cost of providing the data includes the information technology, administrative, and contract oversight costs;

(2) Any governmental agency of the United States or Canada, or political subdivisions thereof, to be used by it or by its authorized commercial agents or contractors only in connection with the enforcement of motor vehicle or traffic laws by, or programs related to traffic safety of, that government agency. Only such parts of the list as are required for completion of the work required of the agent or contractor shall be provided to such agent or contractor;

(3) A commercial parking company requiring the names and addresses of registered owners to notify them of outstanding parking violations. Subject to the disclosure agreement provisions of RCW 46.12.635 and the requirements of Executive Order 97-01, the department may provide only the parts of the list that are required for completion of the work required of the company;

(4) An authorized agent or contractor of the department, to be used only in connection with providing motor vehicle excise tax, licensing, title, and registration information to motor vehicle dealers;

(5) Any business regularly making loans to other persons to finance the purchase of motor vehicles, to be used to assist the person requesting the list to determine ownership of specific vehicles for the purpose of determining whether or not to provide such financing; or

(6) A company or its agents operating a toll facility under chapter 47.46 RCW or other applicable authority requiring the names, addresses, and vehicle information of motor vehicle registered owners to identify toll violators.

Where both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests for disclosure from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.

If a list of registered and legal owners of motor vehicles is used for any purpose other than that authorized in this section, the manufacturer,

governmental agency, commercial parking company, authorized agent, contractor, financial institution, toll facility operator, or their authorized agents or contractors responsible for the unauthorized disclosure or use will be denied further access to such information by the department of licensing.

**Sec. 703.** RCW 46.18.060 and 2012 c 65 s 6 are each amended to read as follows:

(1) The department must review and either approve or reject special license plate applications submitted by sponsoring organizations.

(2) Duties of the department include, but are not limited to, the following:

(a) Review and approve the annual financial reports submitted by sponsoring organizations with active special license plate series and present those annual financial reports to the joint transportation committee;

(b) Report annually to the joint transportation committee on the special license plate applications that were considered by the department;

(c) Issue approval and rejection notification letters to sponsoring organizations, the executive committee of the joint transportation committee, and the legislative sponsors identified in each application. The letters must be issued within seven days of making a determination on the status of an application; and

(d) Review annually the number of plates sold for each special license plate series created after January 1, 2003. The department may submit a recommendation to discontinue a special plate series to the executive committee of the joint transportation committee.

(3) Except as provided in RCW 46.18.245, in order to assess the effects and impact of the proliferation of special license plates, the legislature declares a temporary moratorium on the issuance of any additional plates until July 1, ~~(2013)~~ 2015. During this period of time, the department is prohibited from accepting, reviewing, processing, or approving any applications. Additionally, a special license plate may not be enacted by the legislature during the moratorium, unless the proposed license plate has been approved by the former special license plate review board before February 15, 2005.

(4) The limitations under subsection (3) of this section do not apply to the following special license plates:

(a) 4-H license plates created under RCW 46.18.200;

(b) Music Matters license plates created under RCW 46.18.200;

(c) State flower license plates created under RCW 46.18.200;

(d) Volunteer firefighter license plates created under RCW 46.18.200.

**Sec. 704.** RCW 46.68.113 and 2011 c 353 s 7 are each amended to read as follows:

(1) During the 2013-2015 fiscal biennium, cities and towns shall provide to the transportation commission, or its successor entity, preservation rating information on at least seventy percent of the total city and town arterial network. Thereafter, the preservation rating information requirement shall increase in five percent increments in subsequent biennia, but in no case shall it exceed eighty percent. The rating system used by cities and towns must be based upon the Washington state pavement rating method or an equivalent standard approved by the department of transportation. Beginning January 1, 2007, the preservation rating information shall be submitted to the department.

(2) Cities and towns are exempt from the requirement to report preservation rating information to the department or the transportation commission through the 2013-2015 fiscal biennium.

**Sec. 705.** RCW 46.68.170 and 2011 c 367 s 715 are each amended to read as follows:

There is hereby created in the motor vehicle fund the RV account. All moneys hereafter deposited in said account shall be used by the department of transportation for the construction, maintenance, and operation of recreational vehicle sanitary disposal systems at safety rest areas in accordance with the department's highway system plan as prescribed in chapter 47.06 RCW. During the ~~((2009-2011 and))~~ 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the RV account to the motor vehicle fund such amounts as reflect the excess fund balance of the RV account to accomplish the purposes identified in this section.

**Sec. 706.** RCW 46.68.325 and 2011 c 367 s 721 are each amended to read as follows:

(1) The rural mobility grant program account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the grants provided under RCW 47.66.100.

(2) Beginning September 2011, by the last day of September, December, March, and June of each year, the state treasurer shall transfer from the multimodal transportation account to the rural mobility grant program account two million five hundred thousand dollars.

(3) During the 2011-2013 and 2013-2015 fiscal ~~((biennium))~~ biennia, the legislature may transfer from the rural mobility grant program account to the multimodal transportation account such amounts as reflect the excess fund balance of the rural mobility grant program account.

**NEW SECTION. Sec. 707.** A new section is added to chapter 47.06A RCW to read as follows:

During the 2013-2015 fiscal biennium, members of the freight advisory committee group created as a standing committee of the board may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

**Sec. 708.** RCW 47.29.170 and 2011 c 367 s 701 are each amended to read as follows:

Before accepting any unsolicited project proposals, the commission must adopt rules to facilitate the acceptance, review, evaluation, and selection of unsolicited project proposals. These rules must include the following:

(1) Provisions that specify unsolicited proposals must meet predetermined criteria;

(2) Provisions governing procedures for the cessation of negotiations and consideration;

(3) Provisions outlining that unsolicited proposals are subject to a two-step process that begins with concept proposals and would only advance to the second step, which are fully detailed proposals, if the commission so directed;

(4) Provisions that require concept proposals to include at least the following information: Proposers' qualifications and experience; description of



the proposed project and impact; proposed project financing; and known public benefits and opposition; and

(5) Provisions that specify the process to be followed if the commission is interested in the concept proposal, which must include provisions:

(a) Requiring that information regarding the potential project would be published for a period of not less than thirty days, during which time entities could express interest in submitting a proposal;

(b) Specifying that if letters of interest were received during the thirty days, then an additional sixty days for submission of the fully detailed proposal would be allowed; and

(c) Procedures for what will happen if there are insufficient proposals submitted or if there are no letters of interest submitted in the appropriate time frame.

The commission may adopt other rules as necessary to avoid conflicts with existing laws, statutes, or contractual obligations of the state.

The commission may not accept or consider any unsolicited proposals before July 1, (~~2013~~) 2015.

**Sec. 709.** RCW 47.56.403 and 2011 c 367 s 709 are each amended to read as follows:

(1) The department may provide for the establishment, construction, and operation of a pilot project of high occupancy toll lanes on state route 167 high occupancy vehicle lanes within King county. The department may issue, buy, and redeem bonds, and deposit and expend them; secure and remit financial and other assistance in the construction of high occupancy toll lanes, carry insurance, and handle any other matters pertaining to the high occupancy toll lane pilot project.

(2) Tolls for high occupancy toll lanes will be established as follows:

(a) The schedule of toll charges for high occupancy toll lanes must be established by the transportation commission and collected in a manner determined by the commission.

(b) Toll charges shall not be assessed on transit buses and vanpool vehicles owned or operated by any public agency.

(c) The department shall establish performance standards for the state route 167 high occupancy toll lane pilot project. The department must automatically adjust the toll charge, using dynamic tolling, to ensure that toll-paying single-occupant vehicle users are only permitted to enter the lane to the extent that average vehicle speeds in the lane remain above forty-five miles per hour at least ninety percent of the time during peak hours. The toll charge may vary in amount by time of day, level of traffic congestion within the highway facility, vehicle occupancy, or other criteria, as the commission may deem appropriate. The commission may also vary toll charges for single-occupant inherently low-emission vehicles such as those powered by electric batteries, natural gas, propane, or other clean burning fuels.

(d) The commission shall periodically review the toll charges to determine if the toll charges are effectively maintaining travel time, speed, and reliability on the highway facilities.

(3) The department shall monitor the state route 167 high occupancy toll lane pilot project and shall annually report to the transportation commission and

the legislature on operations and findings. At a minimum, the department shall provide facility use data and review the impacts on:

- (a) Freeway efficiency and safety;
- (b) Effectiveness for transit;
- (c) Person and vehicle movements by mode;
- (d) Ability to finance improvements and transportation services through tolls; and
- (e) The impacts on all highway users. The department shall analyze aggregate use data and conduct, as needed, separate surveys to assess usage of the facility in relation to geographic, socioeconomic, and demographic information within the corridor in order to ascertain actual and perceived questions of equitable use of the facility.

(4) The department shall modify the pilot project to address identified safety issues and mitigate negative impacts to high occupancy vehicle lane users.

(5) Authorization to impose high occupancy vehicle tolls for the state route 167 high occupancy toll pilot project expires if either of the following two conditions apply:

(a) If no contracts have been let by the department to begin construction of the toll facilities associated with this pilot project within four years of July 24, 2005; or

(b) If high occupancy vehicle tolls are being collected on June 30, ~~((2013))~~ 2015.

(6) The department of transportation shall adopt rules that allow automatic vehicle identification transponders used for electronic toll collection to be compatible with other electronic payment devices or transponders from the Washington state ferry system, other public transportation systems, or other toll collection systems to the extent that technology permits.

(7) The conversion of a single existing high occupancy vehicle lane to a high occupancy toll lane as proposed for SR-167 must be taken as the exception for this pilot project.

(8) A violation of the lane restrictions applicable to the high occupancy toll lanes established under this section is a traffic infraction.

(9) Procurement activity associated with this pilot project shall be open and competitive in accordance with chapter 39.29 RCW.

**Sec. 710.** RCW 47.56.876 and 2011 c 367 s 720 are each amended to read as follows:

~~((+))~~ A special account to be known as the state route number 520 civil penalties account is created in the state treasury. All state route number 520 bridge replacement and HOV program civil penalties generated from the nonpayment of tolls on the state route number 520 corridor must be deposited into the account, as provided under RCW 47.56.870(4)(b)(vii). Moneys in the account may be spent only after appropriation. Expenditures from the account may be used to fund any project within the state route number 520 bridge replacement and HOV program, including mitigation. During the 2011-2013 and 2013-2015 fiscal ((biennium)) biennia, the legislature may transfer from the state route number 520 civil penalties account to the state route number 520 corridor account such amounts as reflect the excess fund balance of the state route number 520 civil penalties account. Funds transferred must be used solely

for capital expenditures for the state route number 520 bridge replacement and HOV project (8BI1003).

~~((2) This section is contingent on the enactment by June 30, 2010, of either chapter 249, Laws of 2010 or chapter . . . (Substitute House Bill No. 2897), Laws of 2010, but if the enacted bill does not designate the department as the toll penalty adjudicating agency, this section is null and void-))~~

**Sec. 711.** RCW 46.63.170 and 2012 c 85 s 3 and 2012 c 83 s 7 are each reenacted and amended to read as follows:

(1) The use of automated traffic safety cameras for issuance of notices of infraction is subject to the following requirements:

(a) The appropriate local legislative authority must prepare an analysis of the locations within the jurisdiction where automated traffic safety cameras are proposed to be located: (i) Before enacting an ordinance allowing for the initial use of automated traffic safety cameras; and (ii) before adding additional cameras or relocating any existing camera to a new location within the jurisdiction. Automated traffic safety cameras may be used to detect one or more of the following: Stoptlight, railroad crossing, or school speed zone violations. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage. Cities and counties using automated traffic safety cameras before July 24, 2005, are subject to the restrictions described in this section, but are not required to enact an authorizing ordinance. Beginning one year after June 7, 2012, cities and counties using automated traffic safety cameras must post an annual report of the number of traffic accidents that occurred at each location where an automated traffic safety camera is located as well as the number of notices of infraction issued for each camera and any other relevant information about the automated traffic safety cameras that the city or county deems appropriate on the city's or county's web site.

(b) Use of automated traffic safety cameras is restricted to the following locations only: (i) Intersections of two arterials with traffic control signals that have yellow change interval durations in accordance with RCW 47.36.022, which interval durations may not be reduced after placement of the camera; (ii) railroad crossings; and (iii) school speed zones.

(c) During the 2011-2013 and 2013-2015 fiscal (~~(biennium)~~) biennia, automated traffic safety cameras may be used to detect speed violations for the purposes of section 201(2), chapter 367, Laws of 2011 and section 201(4) of this act if the local legislative authority first enacts an ordinance authorizing the use of cameras to detect speed violations.

(d) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle. The primary purpose of camera placement is to take pictures of the vehicle and vehicle license plate when an infraction is occurring. Cities and counties shall consider installing cameras in a manner that minimizes the impact of camera flash on drivers.

(e) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of establishing the renter's name and address under subsection (3)(a) of this section. The law enforcement officer issuing the notice of

infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail.

(f) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(d) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (3) of this section. If appropriate under the circumstances, a renter identified under subsection (3)(a) of this section is responsible for an infraction.

(g) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(h) All locations where an automated traffic safety camera is used must be clearly marked at least thirty days prior to activation of the camera by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera. Signs placed in automated traffic safety camera locations after June 7, 2012, must follow the specifications and guidelines under the manual of uniform traffic control devices for streets and highways as adopted by the department of transportation under chapter 47.36 RCW.

(i) If a county or city has established an authorized automated traffic safety camera program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.

(2) Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.50.100, 35.20.220, 46.16A.120, and 46.20.270(3). The amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction. However, the amount of the fine issued for a traffic control signal violation detected through the use of an automated traffic safety camera shall not exceed

the monetary penalty for a violation of RCW 46.61.050 as provided under RCW 46.63.110, including all applicable statutory assessments.

(3) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(4) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(5) For the purposes of this section, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit in a school speed zone as detected by a speed measuring device. During the 2011-2013 and 2013-2015 fiscal (~~biennium~~) biennia, an automated traffic safety camera includes a camera used to detect speed violations for the purposes of section 201(2), chapter 367, Laws of 2011 and section 201(4) of this act.

(6) During the 2011-2013 and 2013-2015 fiscal (~~biennium~~) biennia, this section does not apply to automated traffic safety cameras for the purposes of section 216(5), chapter 367, Laws of 2011 and section 216(6) of this act.

**Sec. 712.** RCW 46.20.745 and 2012 c 183 s 10 are each amended to read as follows:

(1) The ignition interlock device revolving account program is created within the department to assist in covering the monetary costs of installing, removing, and leasing an ignition interlock device, and applicable licensing, for indigent persons who are required under RCW 46.20.385, 46.20.720, and 46.61.5055 to install an ignition interlock device in all vehicles owned or operated by the person. For purposes of this subsection, "indigent" has the same meaning as in RCW 10.101.010, as determined by the department. During the 2013-2015 fiscal biennium, the ignition interlock device revolving account

program also includes ignition interlock enforcement work conducted by the Washington state patrol.

(2) A pilot program is created within the ignition interlock device revolving account program for the purpose of monitoring compliance by persons required to use ignition interlock devices and by ignition interlock companies and vendors.

(3) The department, the state patrol, and the Washington traffic safety commission shall coordinate to establish a compliance pilot program that will target at least one county from eastern Washington and one county from western Washington, as determined by the department, state patrol, and Washington traffic safety commission.

(4) At a minimum, the compliance pilot program shall:

(a) Review the number of ignition interlock devices that are required to be installed in the targeted county and the number of ignition interlock devices actually installed;

(b) Work to identify those persons who are not complying with ignition interlock requirements or are repeatedly violating ignition interlock requirements; and

(c) Identify ways to track compliance and reduce noncompliance.

(5) As part of monitoring compliance, the Washington traffic safety commission shall also track recidivism for violations of RCW 46.61.502 and 46.61.504 by persons required to have an ignition interlock driver's license under RCW 46.20.385 and 46.20.720.

**Sec. 713.** RCW 46.68.370 and 2011 c 367 s 716 are each amended to read as follows:

The license plate technology account is created in the state treasury. All receipts collected under RCW 46.17.015 must be deposited into this account. Expenditures from this account must support current and future license plate technology and systems integration upgrades for both the department and correctional industries. Moneys in the account may be spent only after appropriation. Additionally, the moneys in this account may be used to reimburse the motor vehicle account for any appropriation made to implement the digital license plate system. During the 2011-2013 and 2013-2015 fiscal ~~((biennium))~~ biennia, the legislature may transfer from the license plate technology account to the highway safety account [fund] such amounts as reflect the excess fund balance of the license plate technology account.

**Sec. 714.** RCW 47.12.244 and 2011 c 367 s 717 are each amended to read as follows:

There is created the "advance right-of-way revolving fund" in the custody of the treasurer, into which the department is authorized to deposit directly and expend without appropriation:

(1) An initial deposit of ten million dollars from the motor vehicle fund included in the department of transportation's 1991-93 budget;

(2) All moneys received by the department as rental income from real properties that are not subject to federal aid reimbursement, except moneys received from rental of capital facilities properties as defined in chapter 47.13 RCW; and

(3) Any federal moneys available for acquisition of right-of-way for future construction under the provisions of section 108 of Title 23, United States Code.

During the (~~(2009-2011 and)~~) 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the advance right-of-way revolving fund to the motor vehicle account amounts as reflect the excess fund balance of the advance right-of-way revolving fund.

**Sec. 715.** RCW 47.12.340 and 2010 c 247 s 703 are each amended to read as follows:

The advanced environmental mitigation revolving account is created in the custody of the treasurer, into which the department shall deposit directly and may expend without appropriation:

(1) An initial appropriation included in the department of transportation's 1997-99 budget, and deposits from other identified sources;

(2) All moneys received by the department from internal and external sources for the purposes of conducting advanced environmental mitigation; and

(3) Interest gained from the management of the advanced environmental mitigation revolving account.

(4) During the (~~(2009-2011 fiscal biennium)~~) 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the advanced environmental mitigation revolving account to the motor vehicle account such amounts as reflect the excess fund balance of the advanced environmental mitigation revolving account.

**Sec. 716.** RCW 46.63.180 and 2011 c 375 s 2 are each amended to read as follows:

(1) School districts may install and operate automated school bus safety cameras on school buses to be used for the detection of violations of RCW 46.61.370(1) if the use of the cameras is approved by a vote of the school district board of directors. School districts are not required to take school buses out of service if the buses are not equipped with automated school bus safety cameras or functional automated safety cameras. Further, school districts shall be held harmless from and not liable for any criminal or civil liability arising under the provisions of this section.

(a) Automated school bus safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle.

(b) A notice of infraction must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of a vehicle within fourteen days of establishing the renter's name and address under subsection (2)(a)(i) of this section. The law enforcement officer issuing the notice of infraction shall include a certificate or facsimile of the notice, based upon inspection of photographs, microphotographs, or electronic images produced by an automated school bus safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a

notice of infraction based on evidence detected by an automated school bus safety camera may respond to the notice by mail.

(c) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(e) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (2) of this section. If appropriate under the circumstances, a renter identified under subsection (2)(a)(i) of this section is responsible for an infraction.

(d) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

(e) If a school district installs and operates an automated school bus safety camera under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment. Further, any repair, replacement, or administrative work costs related to installing or repairing automated school bus safety cameras must be solely paid for by the manufacturer or vendor of the cameras. Before entering into a contract with the manufacturer or vendor of the equipment used under this subsection (1)(e), the school district must follow the competitive bid process as outlined in RCW 28A.335.190(1).

(f) Any revenue collected from infractions detected through the use of automated school bus safety cameras, less the administration and operating costs of the cameras, must be remitted to school districts for school zone safety projects as determined by the school district using the automated school bus safety cameras. The administration and operating costs of the cameras includes infraction enforcement and processing costs that are incurred by local law enforcement or local courts. During the 2013-2015 fiscal biennium, the infraction revenue may also be used for school bus safety projects by those school districts eligible to apply for funding from the school zone safety account appropriation in section 201 of this act.

(2)(a) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction is issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen days of receiving the written notice, provide to the issuing agency by return mail:

(i) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred;

(ii) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this



subsection (2)(a)(ii) must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(iii) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

(b) Timely mailing of a statement under this subsection to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(3) For purposes of this section, "automated school bus safety camera" means a device that is affixed to a school bus that is synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a vehicle at the time the vehicle is detected for an infraction identified in RCW 46.61.370(1).

**Sec. 717.** RCW 46.68.060 and 2011 c 367 s 718 and 2011 c 298 s 26 are each reenacted and amended to read as follows:

There is hereby created in the state treasury a fund to be known as the highway safety fund to the credit of which must be deposited all moneys directed by law to be deposited therein. This fund must be used for carrying out the provisions of law relating to driver licensing, driver improvement, financial responsibility, cost of furnishing abstracts of driving records and maintaining such case records, and to carry out the purposes set forth in RCW 43.59.010, and chapters 46.72 and 46.72A RCW. During the ((2009-2011 and)) 2011-2013 and 2013-2015 fiscal biennia, the legislature may transfer from the highway safety fund to the Puget Sound ferry operations account, the motor vehicle fund, and the multimodal transportation account such amounts as reflect the excess fund balance of the highway safety fund.

**Sec. 718.** RCW 82.70.020 and 2005 c 297 s 3 are each amended to read as follows:

(1) Employers in this state who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to their own or other employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting before July 1, ((2013)) 2014, are allowed a credit against taxes payable under chapters 82.04 and 82.16 RCW for amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, not to exceed sixty dollars per employee per fiscal year.

(2) Property managers who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to persons employed at a worksite in this state managed by the property manager for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting before July 1, ((2013)) 2014, are allowed a credit against taxes payable under chapters 82.04 and 82.16 RCW for amounts paid to or on behalf of these persons for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, not to exceed sixty dollars per person per fiscal year.

(3) The credit under this section is 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 fiscal year. No refunds may be granted for credits under this section.

(4) A person may not receive credit under this section for amounts paid to or on behalf of the same employee under both chapters 82.04 and 82.16 RCW.

(5) A person may not take a credit under this section for amounts claimed for credit by other persons.

**Sec. 719.** RCW 82.70.040 and 2005 c 297 s 5 are each amended to read as follows:

(1)(a)(i) The department shall keep a running total of all credits allowed under RCW 82.70.020 during each fiscal year. The department shall not allow any credits that would cause the total amount allowed to exceed two million seven hundred fifty thousand dollars in any fiscal year. This limitation includes any deferred credits carried forward under subsection (2)(b)(i) of this section from prior years.

(ii) During the 2013-2015 fiscal biennium, the department shall not allow any credits that would cause the total amount allowed to exceed one million five hundred thousand dollars in any fiscal year. This limitation includes any deferred credits carried forward under subsection (2)(b)(i) of this section from prior years.

(b) If the total amount of credit applied for by all applicants in any year exceeds the limit in this subsection, the department shall ratably reduce the amount of credit allowed for all applicants so that the limit in this subsection is not exceeded. If a credit is reduced under this subsection, the amount of the reduction may not be carried forward and claimed in subsequent fiscal years.

(2)(a) Tax credits under RCW 82.70.020 may not be claimed in excess of the amount of tax otherwise due under chapter 82.04 or 82.16 RCW.

(b)(i) Through June 30, 2005, a person with taxes equal to or in excess of the credit under RCW 82.70.020, and therefore not subject to the limitation in (a) of this subsection, may elect to defer tax credits for a period of not more than three years after the year in which the credits accrue. No credits deferred under this subsection (2)(b)(i) may be used after June 30, 2008. A person deferring tax credits under this subsection (2)(b)(i) must submit an application as provided in RCW 82.70.025 in the year in which the deferred tax credits will be used. This application is subject to the provisions of subsection (1) of this section for the year in which the tax credits will be applied. If a deferred credit is reduced under subsection (1)(b) of this section, the amount of deferred credit disallowed because of the reduction may be carried forward as long as the period of deferral does not exceed three years after the year in which the credit was earned.

(ii) For credits approved by the department after June 30, 2005, the approved credit may be carried forward to subsequent years until used. Credits carried forward as authorized by this subsection are subject to the limitation in subsection (1)(a) of this section for the fiscal year for which the credits were originally approved.

(3) No person shall be approved for tax credits under RCW 82.70.020 in excess of two hundred thousand dollars in any fiscal year. This limitation does not apply to credits carried forward from prior years under subsection (2)(b) of this section.

(4) No person may claim tax credits after June 30, (~~2013~~) 2014.

(5) Credits may not be carried forward other than as authorized in subsection (2)(b) of this section.

(6) No person is eligible for tax credits under RCW 82.70.020 if the additional revenues for the multimodal transportation account created by Engrossed Substitute House Bill No. 2231 are terminated.

**Sec. 720.** RCW 82.70.900 and 2003 c 364 s 8 are each amended to read as follows:

This chapter expires July 1, (~~2013~~) 2014, except for RCW 82.70.050, which expires January 1, (~~2014~~) 2015.

**2011-2013 FISCAL BIENNIUM  
TRANSPORTATION AGENCIES—OPERATING**

**Sec. 801.** 2012 c 86 s 201 (uncodified) is amended to read as follows:

**FOR THE WASHINGTON TRAFFIC SAFETY COMMISSION**

Highway Safety Account—State Appropriation . . . . .	<del>(\$2,983,000)</del>
	<u>\$2,982,000</u>
Highway Safety Account—Federal Appropriation . . . . .	<del>(\$42,507,000)</del>
	<u>\$35,497,000</u>
Highway Safety Account—Private/Local Appropriation . . . . .	\$50,000
School Zone Safety Account—State Appropriation . . . . .	<del>(\$3,340,000)</del>
	<u>\$2,340,000</u>
<b>TOTAL APPROPRIATION . . . . .</b>	<del><b>(\$48,880,000)</b></del>
	<u><b>\$40,869,000</b></u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$1,673,900 of the highway safety account—federal appropriation is provided solely for the conclusion of the target zero trooper pilot program, which the commission has developed and implemented in collaboration with the Washington state patrol. The pilot program must continue to demonstrate the effectiveness of intense, high visibility, driving under the influence enforcement in Washington. The commission shall continue to apply to the national highway traffic safety administration for federal highway safety grants to cover the cost of the pilot program. State funding is provided in section (~~207~~) 807 of this act for the state patrol to continue the target zero trooper program in fiscal year 2013.

(2) The commission may oversee pilot projects implementing the use of automated traffic safety cameras to detect speed violations within cities west of the Cascade mountains that have a population over one hundred ninety-five thousand. For the purposes of pilot projects in this subsection, no more than one automated traffic safety camera may be used to detect speed violations within any one jurisdiction.

(a) The commission shall comply with RCW 46.63.170 in administering the pilot projects.

(b) In order to ensure adequate time in the 2011-2013 fiscal biennium to evaluate the effectiveness of the pilot projects, any projects authorized by the commission must be authorized by December 31, 2011.

(c) By January 1, 2013, the commission shall provide a report to the legislature regarding the use, public acceptance, outcomes, and other relevant

issues regarding automated traffic safety cameras demonstrated by the pilot projects.

(3) \$460,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter ... (Engrossed Second Substitute House Bill No. 1789), Laws of 2011 (addressing DUI accountability). If chapter ... (Engrossed Second Substitute House Bill No. 1789), Laws of 2011 is not enacted by June 30, 2011, the amount provided in this subsection lapses.

(4) The commission shall conduct a review of the literature on potential safety benefits realized from drivers using their headlights and windshield wipers simultaneously and shall report to the transportation committees of the legislature by December 1, 2011.

(5) (~~(\$22,000,000)~~) \$15,000,000 of the highway safety account—federal appropriation is provided solely for federal funds that may be obligated to the commission pursuant to 23 U.S.C. Sec. 164 during the 2011-2013 fiscal biennium.

**Sec. 802.** 2012 c 86 s 202 (uncodified) is amended to read as follows:

**FOR THE COUNTY ROAD ADMINISTRATION BOARD**

Rural Arterial Trust Account—State Appropriation . . . . .	<del>(\$915,000)</del>
	<u>\$907,000</u>
Motor Vehicle Account—State Appropriation . . . . .	<del>(\$2,088,000)</del>
	<u>\$2,086,000</u>
County Arterial Preservation Account—State Appropriation . . . . .	<del>(\$1,428,000)</del>
	<u>\$1,413,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$4,431,000)</del>
	<u>\$4,406,000</u>

The appropriations in this section are subject to the following conditions and limitations: The county road administration board shall submit a report to the transportation committees of the legislature by December 1, 2011, on the implementation of the recommendations that resulted from the evaluation of efficiencies in the delivery of transportation funding and services to local governments that was required under section 204(8), chapter 247, Laws of 2010. The report must include a description of how recommendations were implemented, what efficiencies were achieved, and an explanation of any recommendations that were not implemented.

**Sec. 803.** 2012 c 86 s 203 (uncodified) is amended to read as follows:

**FOR THE TRANSPORTATION IMPROVEMENT BOARD**

Transportation Improvement Account—State Appropriation . . . . .	<del>(\$3,625,000)</del>
	<u>\$3,611,000</u>

The appropriation in this section is subject to the following conditions and limitations: The transportation improvement board shall submit a report to the transportation committees of the legislature by December 1, 2011, on the implementation of the recommendations that resulted from the evaluation of efficiencies in the delivery of transportation funding and services to local governments that was required under section 204(8), chapter 247, Laws of 2010. The report must include a description of how recommendations were

implemented, what efficiencies were achieved, and an explanation of any recommendations that were not implemented.

Sec. 804. 2012 c 86 s 205 (uncodified) is amended to read as follows:

**FOR THE TRANSPORTATION COMMISSION**

Motor Vehicle Account—State Appropriation . . . . .	(( <del>\$3,028,000</del> ))
	<u>\$2,930,000</u>
Multimodal Transportation Account—State Appropriation . . . . .	\$112,000
TOTAL APPROPRIATION . . . . .	(( <del>\$3,140,000</del> ))
	<u>\$3,042,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Consistent with RCW 43.135.055, 47.60.290, and 47.60.315, during the 2011-2013 fiscal biennium, the legislature authorizes the transportation commission to periodically review and, if necessary, adjust the schedule of fares for the Washington state ferry system only in amounts not greater than those sufficient to generate the amount of revenue required by the biennial transportation budget. When adjusting ferry fares, the commission must consider input from affected ferry users by public hearing and by review with the affected ferry advisory committees, in addition to the data gathered from the current ferry user survey.

(2) Consistent with RCW 43.135.055 and 47.46.100, during the 2011-2013 fiscal biennium, the legislature authorizes the transportation commission to periodically review and, if necessary, adjust the schedule of toll charges applicable to the Tacoma Narrows bridge only in amounts not greater than those sufficient to support (a) any required costs for operating and maintaining the toll bridge, including the cost of insurance, (b) any amount required by law to meet the redemption of bonds and applicable interest payments, and (c) repayment of the motor vehicle fund.

(3) Consistent with its authority in RCW 47.56.840, the transportation commission shall consider the need for a citizen advisory group that provides oversight on new tolled facilities.

(4) \$775,000 of the motor vehicle account—state appropriation is provided solely to determine the feasibility of transitioning from the gas tax to a road user assessment system of paying for transportation.

(a) The transportation commission, with direction from the steering committee created in (b) of this subsection, must: Review relevant reports and data related to models of road user assessments and methods of transitioning to a road user assessment system; analyze the research to identify issues for policy decisions in Washington; make recommendations for the design of systemwide trials; develop a plan to assess public perspectives and educate the public on the current transportation funding system and options for a new system; and perform other tasks as deemed necessary by the steering committee.

(b) The transportation commission must convene a steering committee to provide direction to and guide the transportation commission's work. Membership of the steering committee must include, but is not limited to, members representing the following interests: The trucking industry; business; cities and counties; public transportation; environmental; user fee technology; auto and light truck manufacturers; and the motoring public. In addition, a

member from each of the two largest caucuses of the senate, appointed by the president of the senate, and a member from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives, must serve on the steering committee.

(c) The transportation commission must update the governor and the legislature on this work by January 1, 2013. In addition, this update must include a plan and budget request for work to be completed during the 2013-2015 fiscal biennium.

(5) \$160,000 of the motor vehicle account—state appropriation is provided solely for the transportation commission to establish a statewide transportation survey panel and conduct two surveys on transportation funding and policy issues during the 2011-2013 fiscal biennium. At a minimum, the results of the first survey must be submitted to the legislature by January 2013.

Sec. 805. 2012 c 86 s 206 (uncodified) is amended to read as follows:

**FOR THE FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD**

Motor Vehicle Account—State Appropriation . . . . . ~~(\$781,000)~~  
\$805,000

The appropriation in this section is subject to the following conditions and limitations:

(1) \$100,000 of the motor vehicle account—state appropriation is provided solely for an additional staff person for the freight mobility strategic investment board.

(2) The freight mobility strategic investment board shall submit a report to the transportation committees of the legislature by December 1, 2011, on the implementation of the recommendations that resulted from the evaluation of efficiencies in the delivery of transportation funding and services to local governments that was required under section 204(8), chapter 247, Laws of 2010. The report must include a description of how recommendations were implemented, what efficiencies were achieved, and an explanation of any recommendations that were not implemented.

(3) \$25,000 of the motor vehicle account—state appropriation is provided solely to supplement existing staff and resources for activities related to the development of a freight plan identified under the federal moving forward for progress in the 21st century (MAP-21) act of 2012.

Sec. 806. 2012 c 86 s 207 (uncodified) is amended to read as follows:

**FOR THE WASHINGTON STATE PATROL**

Multimodal Transportation Account—State Appropriation . . . . . \$132,000  
~~(Ignition Interlock Device Revolving Account—~~  
~~State Appropriation . . . . . \$212,000))~~  
State Patrol Highway Account—State  
Appropriation . . . . . ~~(\$350,605,000)~~  
\$348,619,000  
State Patrol Highway Account—Federal  
Appropriation . . . . . \$10,903,000  
State Patrol Highway Account—Private/Local  
Appropriation . . . . . ~~(\$3,494,000)~~  
\$3,674,000

Highway Safety Account—State Appropriation. . . . .	(( <del>\$432,000</del> ))
	<u>\$5,984,000</u>
TOTAL APPROPRIATION . . . . .	(( <del>\$365,778,000</del> ))
	<u>\$369,312,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) Washington state patrol officers engaged in off-duty uniformed employment providing traffic control services to the department of transportation or other state agencies may use state patrol vehicles for the purpose of that employment, subject to guidelines adopted by the chief of the Washington state patrol. The Washington state patrol must be reimbursed for the use of the vehicle at the prevailing state employee rate for mileage and hours of usage, subject to guidelines developed by the chief of the Washington state patrol. Cessna pilots funded from the state patrol highway account who are certified to fly the King Airs may pilot those aircraft for general fund purposes with the general fund reimbursing the state patrol highway account an hourly rate to cover the costs incurred during the flights since the aviation section is no longer part of the Washington state patrol cost allocation system as of July 1, 2009.

(2) The Washington state patrol shall continue to collaborate with the Washington traffic safety commission on the target zero trooper pilot program referenced in section ((204)) 801(1) of this act.

(3) \$370,000 of the state patrol highway account—state appropriation is provided solely for costs associated with the pilot program described under section 216(5) ((of this act)), chapter 86, Laws of 2012. The Washington state patrol may incur costs related only to the assignment of cadets and necessary computer equipment and to the reimbursement of the Washington state department of transportation for contract costs. The appropriation in this subsection must be funded from the portion of the automated traffic safety camera fines deposited into the state patrol highway account; however, if the fines deposited into the state patrol highway account from automated traffic safety camera infractions do not reach three hundred seventy thousand dollars, the department of transportation shall remit funds necessary to the Washington state patrol to ensure the completion of the pilot program. The Washington state patrol may not incur overtime as a result of this pilot program. The Washington state patrol shall not assign troopers to operate or deploy the pilot program equipment used in the roadway construction zones.

(4) ((~~\$12,160,000~~)) \$12,244,000 of the total appropriation is provided solely for automobile fuel in the 2011-2013 fiscal biennium. The Washington state patrol shall analyze their fuel consumption and submit a report to the legislative transportation committees by December 31, 2011, on fuel conservation methods that could be used to minimize costs and ensure that the Washington state patrol is managing fuel consumption effectively.

(5) ((~~\$7,672,000~~)) \$8,312,000 of the total appropriation is provided solely for the purchase of pursuit vehicles.

(6) ((~~\$6,686,000~~)) \$6,806,000 of the total appropriation is provided solely for vehicle repair and maintenance costs of vehicles used for highway purposes.

(7) (~~(\$1,724,000)~~) \$1,856,000 of the total appropriation is provided solely for the purchase of mission vehicles used for highway purposes in the commercial vehicle and traffic investigation sections of the Washington state patrol.

(8) \$1,200,000 of the total appropriation is provided solely for outfitting officers. The Washington state patrol shall prepare a cost-benefit analysis of the standard trooper uniform as compared to a battle dress uniform and uniforms used by other states and jurisdictions. The Washington state patrol shall report the results of the analysis to the transportation committees of the legislature by December 1, 2011.

(9) The Washington state patrol shall not account for or record locally provided DUI cost reimbursement payments as expenditure credits to the state patrol highway account. The patrol shall report the amount of expected locally provided DUI cost reimbursements to the office of financial management and transportation committees of the legislature by September 30th of each year.

(10) During the 2011-2013 fiscal biennium, the Washington state patrol shall continue to perform traffic accident investigations on Thurston county roads, and shall work with Thurston county to transition the traffic accident investigations on Thurston county roads to Thurston county by July 1, 2013.

(11) \$2,187,000 of the state patrol highway account—state appropriation is provided solely for mobile office platforms.

(12) \$2,731,000 of the state patrol highway account—state appropriation is provided solely for the continuation of the target zero trooper program.

(13) \$432,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter . . . (Second Substitute House Bill No. 2443), Laws of 2012 (DUI accountability). If chapter . . . (Second Substitute House Bill No. 2443), Laws of 2012 is not enacted by June 30, 2012, the amount provided in this subsection lapses. Additionally, the total highway safety account—state appropriation in this section assumes the revenue generated by the fees that the Washington state patrol is authorized to charge manufacturers, technicians, and other providers under Second Substitute House Bill No. 2443. Within the amounts provided in this subsection is funding for three additional troopers to provide oversight of the ignition interlock industry.

(14) \$212,000 of the (~~(ignition interlock device revolving)~~) highway safety account—state appropriation is provided solely for two additional troopers to provide oversight of the ignition interlock industry. If chapter . . . (Second Substitute House Bill No. 2443), Laws of 2012 is enacted by June 30, 2012, the amount provided in this subsection lapses.

(15) \$132,000 of the multimodal transportation account—state appropriation is provided solely for the implementation of chapter . . . (Engrossed Substitute House Bill No. 1820), Laws of 2012 (blue alert system). If chapter . . . (Engrossed Substitute House Bill No. 1820), Laws of 2012 is not enacted by June 30, 2012, the amount provided in this subsection lapses.

**Sec. 807.** 2012 c 86 s 208 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF LICENSING**

Marine Fuel Tax Refund Account—State Appropriation . . . . . \$32,000



Motorcycle Safety Education Account—State Appropriation.....	<del>(\$4,367,000)</del>	<u>\$4,364,000</u>
Wildlife Account—State Appropriation.....	<del>(\$826,000)</del>	<u>\$824,000</u>
Highway Safety Account—State Appropriation.....	<del>(\$148,666,000)</del>	<u>\$146,578,000</u>
Highway Safety Account—Federal Appropriation.....	\$4,299,000	
Highway Safety Account—Private/Local Appropriation.....	\$200,000	
Motor Vehicle Account—State Appropriation.....	<del>(\$76,511,000)</del>	<u>\$74,457,000</u>
Motor Vehicle Account—Private/Local Appropriation.....	\$1,714,000	
Motor Vehicle Account—Federal Appropriation.....	\$380,000	
Department of Licensing Services Account—State Appropriation.....	\$6,095,000	
Ignition Interlock Device Revolving Account—State Appropriation.....	\$1,971,000	
TOTAL APPROPRIATION.....	<del>(\$245,061,000)</del>	<u>\$240,914,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$231,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter ... (Substitute Senate Bill No. 5800), Laws of 2011 (off-road motorcycles). If chapter ... (Substitute Senate Bill No. 5800), Laws of 2011 is not enacted by June 30, 2011, the amount provided in this subsection lapses.

(2) \$193,000 of the department of licensing services account—state appropriation is provided solely for a phased implementation of chapter ... (Substitute House Bill No. 1046), Laws of 2011 (vehicle and vessel quick titles). Funding is contingent upon revenues associated with the vehicle and vessel quick title program paying all direct and indirect expenditures associated with the department's implementation of this subsection. If chapter ... (Substitute House Bill No. 1046), Laws of 2011 is not enacted by June 30, 2011, the amount provided in this subsection lapses.

(3) \$4,299,000 of the highway safety account—federal appropriation is for federal funds that may be received during the 2011-2013 fiscal biennium. Upon receipt of the funds, the department shall provide a report on the use of the funds to the transportation committees of the legislature and the office of financial management.

(4) By December 31, 2011, the department shall submit to the office of financial management and the transportation committees of the legislature draft legislation that rewrites the tow truck statutes (chapter 46.55 RCW) in plain language and is revenue and policy neutral.

(5) \$128,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter ... (Engrossed Substitute House Bill No. 1635), Laws of 2011 (driver's license exams). If chapter ... (Engrossed Substitute House Bill No. 1635), Laws of 2011 is not enacted by June 30, 2011, the amount provided in this subsection lapses.

(6) \$68,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter ... (Engrossed Second Substitute House Bill No. 1789), Laws of 2011 (addressing DUI accountability). If chapter ... (Engrossed Second Substitute House Bill No. 1789), Laws of 2011 is not enacted by June 30, 2011, the amount provided in this subsection lapses.

(7) \$63,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter ... (Substitute House Bill No. 1237), Laws of 2011 (selective service system). If chapter ... (Substitute House Bill No. 1237), Laws of 2011 is not enacted by June 30, 2011, the amount provided in this subsection lapses.

(8) \$340,000 of the motor vehicle account—private/local appropriation is provided solely for the implementation of chapter ... (Engrossed Substitute Senate Bill No. 5457), Laws of 2011 (congestion reduction charge). If chapter ... (Engrossed Substitute Senate Bill No. 5457), Laws of 2011 is not enacted by June 30, 2011, the amount provided in this subsection lapses.

(9) \$1,738,000 of the department of licensing services account—state appropriation is provided solely for purchasing equipment for field licensing service offices and subagent offices.

(10) (~~(\$2,500,000)~~) \$1,500,000 of the highway safety account—state appropriation is provided solely for information technology field system modernization.

(11) \$963,000 of the highway safety account—state appropriation is provided solely for implementation of chapter 374, Laws of 2011 (limousine carriers) and chapter 298, Laws of 2011 (master license service program).

(12) \$99,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter ... (Substitute House Bill No. 2299), Laws of 2012 (special license plates). If chapter ... (Substitute House Bill No. 2299), Laws of 2012 is not enacted by June 30, 2012, the amount provided in this subsection lapses.

(13) \$174,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter ... (Substitute Senate Bill No. 6075), Laws of 2012 (vehicle owner information). If chapter ... (Substitute Senate Bill No. 6075), Laws of 2012 is not enacted by June 30, 2012, the amount provided in this subsection lapses. Additionally, the total appropriation in this section assumes the revenue generated by the fee established in Substitute Senate Bill No. 6075. Within the amounts provided in this subsection, the department must improve on the information that the department makes publicly available to victims of domestic violence and sexual assault on how to better protect their personal information, especially their residential addresses. Specifically, the department must provide a link to the secretary of state's address confidentiality program web site. The department also must provide information regarding a person's ability to provide a mailing address in addition to the person's residential address when registering a vehicle with the department.

(14) \$289,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter ... (Engrossed Substitute Senate Bill No. 6150), Laws of 2012 (facial recognition matching system). If chapter ... (Engrossed Substitute Senate Bill No. 6150), Laws of 2012 is not enacted by June 30, 2012, the amount provided in this subsection lapses.

(15) \$397,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter . . . (Engrossed Substitute Senate Bill No. 6284), Laws of 2012 (civil traffic infractions). If chapter . . . (Engrossed Substitute Senate Bill No. 6284), Laws of 2012 is not enacted by June 30, 2012, the amount provided in this subsection lapses. Additionally, the total highway safety account—state appropriation in this section assumes the revenue generated by the policy changes in chapter . . . (Engrossed Substitute Senate Bill No. 6284), Laws of 2012.

(16) \$222,000 of the motor vehicle account—state appropriation and \$36,000 of the highway safety account—state appropriation are provided solely for the implementation of chapter . . . (Engrossed Substitute Senate Bill No. 6455), Laws of 2012 (transportation revenue). If chapter . . . (Engrossed Substitute Senate Bill No. 6455), Laws of 2012 is not enacted by June 30, 2012, the amount provided in this subsection lapses.

(17) \$274,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Engrossed Substitute Senate Bill No. 6582), Laws of 2012 (local transportation revenue options). If chapter . . . (Engrossed Substitute Senate Bill No. 6582), Laws of 2012 is not enacted by June 30, 2012, the amount provided in this subsection lapses.

(18) Within the amounts provided in this section, the department must develop a transition plan for moving to a paperless renewal notice for drivers' licenses and vehicle registrations. The plan must consider people that do not have access to the internet and must include an opportunity for people to opt-in to a paper renewal notice. Prior to the implementation of a paperless renewal system, the department must consult with the joint transportation committee.

(19) Within existing resources, the department shall develop a plan to transition to a ten-year license plate replacement cycle. At a minimum, the plan must include the following provisions: (a) A ten-year replacement cycle for license plates only on vehicles that are subject to annual vehicle registration renewal; (b) a requirement that new license plates and registration, including all fees and taxes due upon annual registration, are required when a vehicle changes ownership, except when a vehicle is sold to a vehicle dealer for resale, in which case they are due only when the dealer sells the vehicle; (c) an original issue license plate fee that is equal to the current license plate replacement fee; and (d) an estimate of the plan's costs to implement and revenues generated. The department shall submit the plan with draft legislation implementing the plan to the transportation committees of the legislature by December 31, 2012.

(20) Consistent with RCW 43.135.055 and 43.24.086, during the 2011-2013 fiscal biennium, the legislature authorizes the department to adjust the business and vehicle fees for the for hire licensing program in amounts sufficient to recover the costs of administering the for hire licensing program.

(21) The legislature intends to establish a veteran designation for drivers' licenses and identicards issued under chapter 46.20 RCW, as proposed under House Bill No. 2378, during the 2013 legislative session. The designation would serve to establish a person's service in the armed forces and be granted to a person who provides a United States department of defense discharge document, DD Form 214, that shows a discharge status of "honorable" or "general under honorable conditions." The department shall report to the transportation committees of the legislature by December 1, 2012, with a plan to

implement the designation. The plan must include the most cost-effective options for implementation, a proposed fee amount to cover the costs of the designation, and any other recommendations on the implementation of the designation.

(22) \$59,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Substitute House Bill No. 2312), Laws of 2012 (military service award emblems). If chapter . . . (Substitute House Bill No. 2312), Laws of 2012 is not enacted by June 30, 2012, the amount provided in this subsection lapses.

(23) \$656,000 of the ignition interlock device revolving account—state appropriation is provided solely for the implementation of chapter . . . (Second Substitute House Bill No. 2443), Laws of 2012 (DUI accountability). If chapter . . . (Second Substitute House Bill No. 2443), Laws of 2012 is not enacted by June 30, 2012, the amount provided in this subsection lapses.

(24) \$134,000 of the highway safety account—state appropriation and \$134,000 of the motor vehicle account—state appropriation are provided solely for the implementation of chapter . . . (Engrossed Second Substitute House Bill No. 2373), Laws of 2012 (state recreational resources). If chapter . . . (Engrossed Second Substitute House Bill No. 2373), Laws of 2012 is not enacted by June 30, 2012, the amount provided in this subsection lapses.

(25) \$3,082,000 of the highway safety account—state appropriation is provided solely for exam and licensing activities, including the workload associated with providing driver record abstracts, and is subject to the following additional conditions and limitations:

(a) The department may furnish driving record abstracts only to those persons or entities expressly authorized to receive the abstracts under Title 46 RCW:

(b) The department may furnish driving record abstracts only for an amount that does not exceed the specified fee amounts in RCW 46.52.130 (2)(e)(v) and (4); and

(c) The department may not enter into a contract, or otherwise participate in any arrangement, with a third party or other state agency for any service that results in an additional cost, in excess of the fee amounts specified in RCW 46.52.130 (2)(e)(v) and (4), to statutorily authorized persons or entities purchasing a driving record abstract.

**Sec. 808.** 2012 c 86 s 209 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—TOLL OPERATIONS AND MAINTENANCE—PROGRAM B**

High Occupancy Toll Lanes Operations Account—State

Appropriation . . . . .((\$1,276,000))  
\$1,569,000

Motor Vehicle Account—State Appropriation . . . . .((\$538,000))  
\$537,000

Tacoma Narrows Toll Bridge Account—State  
Appropriation . . . . .((\$23,365,000))  
\$23,361,000

State Route Number 520 Corridor Account—State	
Appropriation . . . . .	<del>(\$27,295,000)</del>
	<u>\$27,120,000</u>
State Route Number 520 Civil Penalties	
Account—State Appropriation . . . . .	<del>(\$3,622,000)</del>
	<u>\$2,564,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$56,096,000)</del>
	<u>\$55,151,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The department shall make detailed quarterly expenditure reports available to the transportation commission and to the public on the department's web site using current department resources. The reports must include a summary of toll revenue by facility on all operating toll facilities and high occupancy toll lane systems, and an itemized depiction of the use of that revenue.

(2) \$3,622,000 of the state route number 520 civil penalties account—state appropriation and \$1,458,000 of the Tacoma Narrows toll bridge account—state appropriation are provided solely for expenditures related to the toll adjudication process. All costs associated with the toll adjudication process are anticipated to be covered by revenue collected from the toll adjudication process. The department shall report quarterly on the civil penalty process to the office of financial management and the house of representatives and senate transportation committees beginning September 30, 2011. The reports must include a summary table for each toll facility that includes: The number of notices of civil penalty issued; the number of recipients who pay before the notice becomes a penalty; the number of recipients who request a hearing and the number who do not respond; workload costs related to hearings; the cost and effectiveness of debt collection activities; and revenues generated from notices of civil penalty.

(3) It is the intent of the legislature that transitioning to a statewide tolling operations center and preparing for all-electronic tolling on certain toll facilities will have no adverse revenue or expenditure impact on the Tacoma Narrows toll bridge account. Any increased costs related to this transition shall not be allocated to the Tacoma Narrows toll bridge account. All costs associated with the toll adjudication process are anticipated to be covered by revenue collected from the toll adjudication process.

(4) The department shall ensure that, at no cost to the Tacoma Narrows toll bridge account, new electronic tolling tag readers are installed on the Tacoma Narrows bridge as soon as practicable that are able to read existing and new electronic tolling tags.

(5) ~~(\$17,786,000)~~ \$15,238,000 of the state route number 520 corridor account—state appropriation is provided solely for nonvendor costs associated with tolling the state route number 520 bridge. Funds from the state route number 520 corridor account—state appropriation shall not be used to pay for items prohibited by Executive Order No. 1057, including subscriptions to technical publications, employee educational expenses, professional membership dues and fees, employee recognition and safety awards, meeting

meals and light refreshments, commute trip reduction incentives, and employee travel.

Sec. 809. 2012 c 86 s 210 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—INFORMATION TECHNOLOGY—PROGRAM C**

Motor Vehicle Account—State Appropriation . . . . .	<del>(\$67,398,000)</del>
	<u>\$65,667,000</u>
Transportation Partnership Account—State Appropriation . . . . .	\$1,460,000
Multimodal Transportation Account—State Appropriation . . . . .	\$363,000
Transportation 2003 Account (Nickel Account)—State Appropriation . . . . .	\$1,460,000
TOTAL APPROPRIATION . . . . .	<del>(\$70,681,000)</del>
	<u>\$68,950,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The department shall consult with the office of financial management and the department of enterprise services to: (a) Ensure that the department's current and future system development is consistent with the overall direction of other key state systems; and (b) when possible, use or develop common statewide information systems to encourage coordination and integration of information used by the department and other state agencies and to avoid duplication.

(2) \$1,460,000 of the transportation partnership account—state appropriation and \$1,460,000 of the transportation 2003 account (nickel account)—state appropriation are provided solely for maintaining the department's project management reporting system.

(3) \$210,000 of the motor vehicle account—state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit.

(4) \$502,000 of the motor vehicle account—state appropriation is provided solely to provide support for the transportation executive information system.

Sec. 810. 2012 c 86 s 211 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—FACILITY MAINTENANCE, OPERATIONS AND CONSTRUCTION—PROGRAM D—OPERATING**

Motor Vehicle Account—State Appropriation . . . . .	<del>(\$25,466,000)</del>
	<u>\$25,440,000</u>

The appropriation in this section is subject to the following conditions and limitations:

(1) The department shall submit a predesign proposal for a new traffic management center to the office of financial management consistent with the process followed by nontransportation capital construction projects. The department shall not award a contract for construction of a new traffic management center until the predesign proposal has been submitted and the office of financial management has completed a budget evaluation study that

indicates a new building is the recommended option for accommodating additional traffic management operations.

(2) \$850,000 of the motor vehicle account—state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit.

**Sec. 811.** 2012 c 86 s 212 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—AVIATION—PROGRAM F**

Aeronautics Account—State Appropriation . . . . .	<del>(\$6,002,000)</del>
	<u>\$5,999,000</u>
Aeronautics Account—Federal Appropriation . . . . .	\$2,150,000
TOTAL APPROPRIATION . . . . .	<del>(\$8,152,000)</del>
	<u>\$8,149,000</u>

The appropriations in this section are subject to the following conditions and limitations:

((+)) \$200,000 of the aeronautics account—state appropriation is a reapportionment provided solely to complete runway preservation projects.

**Sec. 812.** 2012 c 86 s 213 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—PROGRAM DELIVERY MANAGEMENT AND SUPPORT—PROGRAM H**

Motor Vehicle Account—State Appropriation . . . . .	<del>(\$45,796,000)</del>
	<u>\$45,725,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	\$500,000
Multimodal Transportation Account—State Appropriation . . . . .	\$250,000
TOTAL APPROPRIATION . . . . .	<del>(\$46,546,000)</del>
	<u>\$46,475,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$3,754,000 of the motor vehicle account—state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit.

(2) It is the intent of the legislature that the real estate services division of the department will recover the cost of its efforts from future sale proceeds.

(3) The legislature recognizes that the Dryden pit site (WSDOT Inventory Control (IC) No. 2-04-00103) is unused state-owned real property under the jurisdiction of the department of transportation, and that the public would benefit significantly from the complete enjoyment of the natural scenic beauty and recreational opportunities available at the site. Therefore, pursuant to RCW 47.12.080, the legislature declares that transferring the property to the department of fish and wildlife for recreational use and fish and wildlife restoration efforts is consistent with the public interest in order to preserve the area for the use of the public and the betterment of the natural environment. The department of transportation shall work with the department of fish and wildlife, and shall transfer and convey the Dryden pit site to the department of fish and wildlife as is for an adjusted fair market value reflecting site conditions, the proceeds of which must be deposited in the motor vehicle fund. The department

of transportation is not responsible for any costs associated with the cleanup or transfer of this property. By July 1, 2011, and annually thereafter until the entire Dryden pit property has been transferred, the department shall submit a status report regarding the transaction to the chairs of the legislative transportation committees.

(4) The legislature recognizes that the trail known as the Apple Capital Loop, and its extensions, serve to separate motor vehicle traffic from pedestrians and bicyclists, increasing motor vehicle safety on existing state route number 28. Consistent with chapter 47.30 RCW and pursuant to RCW 47.12.080, the legislature declares that transferring portions of WSDOT Inventory Control (IC) Nos. 2-09-04537 and 2-09-04569 to Douglas county and the city of East Wenatchee is consistent with the public interest. The legislature directs the department to transfer the property to Douglas county and the city of East Wenatchee. The department must be paid fair market value for any portions of the transferred real property that is later abandoned, vacated, or ceases to be publicly maintained for trail purposes. Douglas county and the city of East Wenatchee must agree to accept responsibility for trail segments within their respective jurisdictions and sign an agreement with the state that the transfer of these parcels to their respective jurisdictions extinguishes any state obligations to improve, maintain, or be in any way responsible for these assets. The department shall report to the transportation committees of the legislature by June 30, 2013, and annually thereafter, on the status of the transfer until complete.

Sec. 813. 2012 c 86 s 214 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—ECONOMIC PARTNERSHIPS—PROGRAM K**

Motor Vehicle Account—State Appropriation . . . . .	(( <del>\$827,000</del> ))
	<u>\$826,000</u>
Multimodal Transportation Account—State Appropriation . . . . .	\$110,000
TOTAL APPROPRIATION . . . . .	(( <del>\$937,000</del> ))
	<u>\$936,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1)(a) \$225,000 of the motor vehicle account—state appropriation is provided solely to carry out work related to assessing the operational feasibility of a road user assessment, including technology, agency administration, multistate and federal standards, and other necessary elements. This work must be carried out under the guidance of the steering committee and in coordination with the transportation commission's policy assessment and public outreach planning authorized in section 205(4) (~~of this act~~) chapter 86, Laws of 2012.

(b) If subsequent appropriations are provided, the department may conduct a limited scope pilot project to test the feasibility of a road user assessment system to be applied to electric vehicles. The pilot project must be carried out under the guidance of the steering committee described under section 205(4) (~~of this act~~) chapter 86, Laws of 2012 and in coordination with the transportation commission.

(2) The department shall conduct a study on the potential to generate revenue from off-premise outdoor advertising signs that are erected or



maintained adjacent and visible to the interstate system highways, primary system highways, or scenic system highways. The study must provide an evaluation of the market for outdoor advertising signs, including an evaluation of the number of potential advertisers and the amount charged by other jurisdictions for sign permits, and must provide a recommendation for a revised fee structure that recognizes the market value for off-premise signs and considers charging differential fees based on the size, type, and location of the sign.

(3) The public-private partnerships office must explore retail partnerships at state-owned park-and-ride facilities, as authorized in RCW 47.04.295, and if feasible, solicit proposals to implement a retail partnership pilot project at one park-and-ride facility by June 30, 2013.

Sec. 814. 2012 c 86 s 215 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—HIGHWAY MAINTENANCE—PROGRAM M**

Motor Vehicle Account—State Appropriation . . . . .	<del>(\$373,709,000)</del>
	<u>\$376,259,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	\$7,000,000
<u>Highway Safety Account—State Appropriation. . . . .</u>	<u>\$3,500,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$380,709,000)</del>
	<u>\$386,759,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The department shall request an unanticipated receipt for any federal moneys received for emergency snow and ice removal (~~and shall place an equal amount of the motor vehicle account—state appropriation into unallotted status. This exchange shall not affect the amount of funding available for snow and ice removal~~).

(2) ~~(\$7,000,000)~~ \$7,850,000 of the motor vehicle account—state appropriation is provided solely for third-party damages to the highway system where the responsible party is known and reimbursement is anticipated. The department shall request additional appropriation authority for any funds received for reimbursements of third-party damages that are in excess of this appropriation.

(3) \$7,000,000 of the motor vehicle account—federal appropriation is for unanticipated federal funds that may be received during the 2011-2013 fiscal biennium. Upon receipt of the funds, the department shall provide a report on the use of the funds to the transportation committees of the legislature and the office of financial management.

(4) The department may work with the department of corrections to utilize corrections crews for the purposes of litter pickup on state highways.

(5) \$4,530,000 of the motor vehicle account—state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit.

(6) The department shall continue to report maintenance accountability process (MAP) targets and achievements on an annual basis. The department shall use available funding to target and deliver a minimum MAP grade of C for the activity of roadway striping.

(7) \$6,884,000 of the motor vehicle account—state appropriation is provided solely for the high priority maintenance backlog. Addressing the maintenance backlog must result in increased levels of service. If chapter . . . (Engrossed Substitute Senate Bill No. 5251), Laws of 2011 (electric vehicle fee) is not enacted by June 30, 2011, \$500,000 of the appropriation provided in this subsection lapses.

(8) The department shall track the costs associated with active traffic management systems on a corridor basis and report to the transportation committees of the legislature on the costs and benefits of the systems by December 1, 2012.

Sec. 815. 2012 c 86 s 216 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—TRAFFIC OPERATIONS—PROGRAM Q—OPERATING**

Motor Vehicle Account—State Appropriation . . . . .	<del>(\$48,818,000)</del>
	<u>\$48,741,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	\$2,050,000
Motor Vehicle Account—Private/Local Appropriation . . . . .	\$250,000
TOTAL APPROPRIATION . . . . .	<del>(\$51,118,000)</del>
	<u>\$51,041,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$6,000,000 of the motor vehicle account—state appropriation is provided solely for low-cost enhancements. Of this amount, \$10,000 of the motor vehicle account—state appropriation is provided solely for the department to install additional farm machinery signs to promote safety in agricultural areas along state highways. The department shall give priority to low-cost enhancement projects that improve safety or provide congestion relief. The department shall prioritize low-cost enhancement projects on a statewide rather than regional basis. By September 1st of each even-numbered year, the department shall provide a report to the legislature listing all low-cost enhancement projects prioritized on a statewide rather than regional basis completed in the prior year.

(2) \$145,000 of the motor vehicle account—state appropriation is provided solely for the department to continue a pilot tow truck incentive program and to expand the program to other areas of the state. The department may provide incentive payments to towing companies that meet clearance goals on accidents that involve heavy trucks.

(3) During the 2011-2013 fiscal biennium, the department shall implement a pilot program that expands private transportation providers' access to high occupancy vehicle lanes. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, the following vehicles must be authorized to use the reserved portion of the highway if the vehicle has the capacity to carry eight or more passengers, regardless of the number of passengers in the vehicle: (a) Auto transportation company vehicles regulated under chapter 81.68 RCW; (b) passenger charter carrier vehicles regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; (c) private nonprofit transportation provider

vehicles regulated under chapter 81.66 RCW; and (d) private employer transportation service vehicles. For purposes of this subsection, "private employer transportation service" means regularly scheduled, fixed-route transportation service that is offered by an employer for the benefit of its employees. By June 30, 2013, the department shall report to the transportation committees of the legislature on whether private transportation provider use of high occupancy vehicle lanes under the pilot program reduces the speeds of high occupancy vehicle lanes. Nothing in this subsection is intended to authorize the conversion of public infrastructure to private, for-profit purposes or to otherwise create an entitlement or other claim by private users to public infrastructure. If chapter ... (Substitute Senate Bill No. 5836), Laws of 2011 is enacted by June 30, 2011, this subsection is null and void.

(4) \$9,000,000 of the motor vehicle account—state appropriation is provided solely for the department's incident response program.

(5) The department, in consultation with the Washington state patrol, must continue a pilot program for the patrol to issue infractions based on information from automated traffic safety cameras in roadway construction zones on state highways. The department must report to the joint transportation committee by January 1, 2012, and January 1, 2013, on the status of this pilot program. For the purpose of this pilot program, during the 2011-2013 fiscal biennium, a roadway construction zone includes areas where public employees or private contractors may be present or where a driving condition exists that would make it unsafe to drive at higher speeds, such as, when the department is redirecting or realigning lanes on any public roadway pursuant to ongoing construction. The department shall use the following guidelines to administer the program:

(a) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle;

(b) The department shall plainly mark the locations where the automated traffic safety cameras are used by placing signs on locations that clearly indicate to a driver that he or she is entering a roadway construction zone where traffic laws are enforced by an automated traffic safety camera;

(c) Notices of infractions must be mailed to the registered owner of a vehicle within fourteen days of the infraction occurring;

(d) The owner of the vehicle is not responsible for the violation if the owner of the vehicle, within fourteen days of receiving notification of the violation, mails to the patrol, a declaration under penalty of perjury, stating that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner, or any other extenuating circumstances;

(e) For purposes of the 2011-2013 fiscal biennium pilot program, infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras must be processed in the same manner as parking infractions for the purposes of RCW 3.50.100, 35.20.220, 46.16A.120, and 46.20.270(3). However, the amount of the fine issued under this subsection (5) for an infraction generated through the use of an automated traffic safety camera is one hundred thirty-seven dollars. The court shall remit thirty-two dollars of the fine to the state treasurer for deposit into the state patrol highway account; and

(f) If a notice of infraction is sent to the registered owner and the registered owner is a rental car business, the infraction must be dismissed against the business if it mails to the patrol, within fourteen days of receiving the notice, a declaration under penalty of perjury of the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred. If the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred, the business must sign a declaration under penalty of perjury to this effect. The declaration must be mailed to the patrol within fourteen days of receiving the notice of traffic infraction. Timely mailing of this declaration to the issuing agency relieves a rental car business of any liability under this section for the notice of infraction. A declaration form suitable for this purpose must be included with each automated traffic infraction notice issued, along with instructions for its completion and use.

(6) The department shall track the costs associated with active traffic management systems on a corridor basis and report to the transportation committees of the legislature on the cost and benefits of the systems by December 1, 2011.

**Sec. 816.** 2012 c 86 s 217 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—  
TRANSPORTATION MANAGEMENT AND SUPPORT—PROGRAM S**

Motor Vehicle Account—State Appropriation . . . . .	<del>(\$27,389,000)</del>
	<u>\$27,335,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	\$30,000
Multimodal Transportation Account—State Appropriation . . . . .	\$973,000
<b>TOTAL APPROPRIATION . . . . .</b>	<del>(\$28,392,000)</del>
	<u>\$28,338,000</u>

The appropriations in this section are subject to the following conditions and limitations: The department shall utilize existing resources and customer service staff to develop and implement new policies and procedures to ensure compliance with new federal passenger vessel Americans with disabilities act requirements.

**Sec. 817.** 2012 c 86 s 218 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—  
TRANSPORTATION PLANNING, DATA, AND RESEARCH—  
PROGRAM T**

Motor Vehicle Account—State Appropriation . . . . .	<del>(\$22,304,000)</del>
	<u>\$22,245,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	\$21,885,000
Multimodal Transportation Account—State Appropriation . . . . .	\$662,000
Multimodal Transportation Account—Federal Appropriation . . . . .	\$3,559,000
Multimodal Transportation Account—Private/Local Appropriation . . . . .	\$100,000
<b>TOTAL APPROPRIATION . . . . .</b>	<del>(\$48,510,000)</del>
	<u>\$48,451,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$70,000 of the motor vehicle account—state appropriation is a reappropriation provided solely for a corridor study of state route number 516 from the eastern border of Maple Valley to state route number 167 to determine whether improvements are needed and the costs of any needed improvements.

(2) \$200,000 of the motor vehicle account—state appropriation is provided solely for extending the freight database pilot project that began in 2009. Global positioning system (GPS) data is intended to help guide freight investment decisions and track highway project effectiveness as it relates to freight traffic.

(3) Within available resources, the department must collaborate with the affected metropolitan planning organizations, regional transportation planning organizations, transit agencies, and private transportation providers to develop a plan to reduce vehicle demand, increase public transportation options, and reduce vehicle miles traveled on corridors affected by growth at Joint Base Lewis-McChord.

(4) As part of their ongoing regional transportation planning, the regional transportation planning organizations across the state shall work together to provide a comprehensive framework for sources and uses of next-stage investments in transportation needed to improve structural conditions and ongoing operations and lay the groundwork for the transportation systems to support the long-term economic vitality of the state. This planning must include all forms of transportation to reflect the state's interests, including: Highways, streets, and roads; ferries; public transportation; systems for freight; and walking and biking systems. The department shall support this planning by providing information on potential state transportation uses and an analysis of potential sources of revenue to implement investments. In carrying out this planning, regional transportation planning organizations must be broadly inclusive of business, civic, labor, governmental, and environmental interests in regional communities across the state.

(5) \$190,000 of the motor vehicle account—state appropriation is provided solely for the regional transportation planning organizations across the state to implement the comprehensive transportation planning and data framework. The framework must provide regional transportation planning organizations with the ability to identify the spatial and temporal status of current and future high priority projects, and the next stage investment necessary to implement those projects. The framework must be accessible to the public and provide transparency and accountability to the regional transportation planning process.

(6) Within existing resources, the department shall work with the department of archaeology and historic preservation to develop a statewide policy regarding the curation of artifacts and the use of museums and information centers as potential mitigation under the national environmental policy act. This policy must address the following issues: How to minimize costs associated with information centers and museums; when to use existing facilities to preserve and display artifacts; how to minimize the time that stand-alone facilities are needed; and how to transfer artifacts and other items to facilities that are not owned or rented by the department. A report regarding this policy must be submitted to the joint transportation committee by September 1, 2012.

Sec. 818. 2012 c 86 s 219 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—CHARGES FROM OTHER AGENCIES—PROGRAM U**

Motor Vehicle Account—State Appropriation . . . . .	<del>(\$74,734,000)</del>
	<u>\$71,530,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	\$400,000
Multimodal Transportation Account—State Appropriation. . . . .	\$1,798,000
TOTAL APPROPRIATION . . . . .	<del>(\$76,932,000)</del>
	<u>\$73,728,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) The department of enterprise services must provide a detailed accounting of the revenues and expenditures of the self-insurance fund to the transportation committees of the legislature on December 31st and June 30th of each year.

(2) Payments in this section represent charges from other state agencies to the department of transportation.

(a) TO THE SECRETARY OF STATE—ARCHIVES AND RECORDS MANAGEMENT . . . . .	\$512,000
(b) TO THE OFFICE OF THE STATE AUDITOR—AUDITOR SERVICES . . . . .	\$488,000
(c) TO THE OFFICE OF THE ATTORNEY GENERAL—ATTORNEY GENERAL SERVICES . . . . .	\$7,127,000
(d) TO THE OFFICE OF FINANCIAL MANAGEMENT—LABOR RELATIONS SERVICES . . . . .	\$266,000
(e) TO THE OFFICE OF FINANCIAL MANAGEMENT—OFFICE OF CHIEF INFORMATION OFFICER .	\$473,000
(f) TO THE OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES . . . . .	\$840,000
(g) TO CONSOLIDATED TECHNICAL SERVICES . . . . .	\$182,000
(h) TO THE DEPARTMENT OF ENTERPRISE SERVICES—HUMAN RESOURCE MANAGEMENT SYSTEM .	\$3,495,000
(i) TO THE DEPARTMENT OF ENTERPRISE SERVICES—PRODUCTION SUPPORT . . . . .	\$974,000
(j) TO THE DEPARTMENT OF ENTERPRISE SERVICES—REAL ESTATE SERVICES . . . . .	\$108,000
(k) TO THE DEPARTMENT OF ENTERPRISE SERVICES—PUBLICATIONS AND HISTORICAL SERVICES . . .	\$691,000
(l) TO THE DEPARTMENT OF ENTERPRISE SERVICES—CAMPUS RENT . . . . .	\$3,293,000
(m) TO THE DEPARTMENT OF ENTERPRISE SERVICES—CAPITAL PROJECT SURCHARGE . . . . .	\$879,000
(n) TO THE DEPARTMENT OF ENTERPRISE SERVICES—PERSONAL SERVICE CONTRACTS . . . . .	\$100,000
(o) TO THE DEPARTMENT OF ENTERPRISE SERVICES—SECURE FILE TRANSFER SERVICES . . . . .	\$39,000

(p) TO THE DEPARTMENT OF ENTERPRISE SERVICES—ACCESS SERVICES . . . . . \$179,000

(q) TO THE DEPARTMENT OF ENTERPRISE SERVICES—RISK MANAGEMENT SERVICES . . . . . \$1,290,000

(r) TO THE DEPARTMENT OF ENTERPRISE SERVICES—INFORMATION TECHNOLOGY SERVICES. . . . . \$1,557,000

Sec. 819. 2012 c 86 s 220 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—PUBLIC TRANSPORTATION—PROGRAM V**

Motor Vehicle Account—Federal Appropriation . . . . . \$160,000

State Vehicle Parking Account—State Appropriation . . . . . \$452,000

Regional Mobility Grant Program Account—State Appropriation. . . . . ~~(\$48,942,000)~~  
\$38,331,000

Multimodal Transportation Account—State Appropriation. . . . . ~~(\$42,939,000)~~  
\$42,930,000

Multimodal Transportation Account—Federal Appropriation. . . . . \$2,582,000

Multimodal Transportation Account—Private/Local Appropriation. . . . . \$1,027,000

Rural Mobility Grant Program Account—State Appropriation. . . . . \$17,000,000

TOTAL APPROPRIATION . . . . . ~~(\$113,102,000)~~  
\$102,482,000

The appropriations in this section are subject to the following conditions and limitations:

(1) \$25,000,000 of the multimodal transportation account—state appropriation is provided solely for a grant program for special needs transportation provided by transit agencies and nonprofit providers of transportation.

(a) \$5,500,000 of the multimodal transportation account—state appropriation is provided solely for grants to nonprofit providers of special needs transportation. Grants for nonprofit providers must be based on need, including the availability of other providers of service in the area, efforts to coordinate trips among providers and riders, and the cost effectiveness of trips provided.

(b) \$19,500,000 of the multimodal transportation account—state appropriation is provided solely for grants to transit agencies to transport persons with special transportation needs. To receive a grant, the transit agency must have a maintenance of effort for special needs transportation that is no less than the previous year's maintenance of effort for special needs transportation. Grants for transit agencies must be prorated based on the amount expended for demand response service and route deviated service in calendar year 2009 as reported in the "Summary of Public Transportation - 2009" published by the department of transportation. No transit agency may receive more than thirty percent of these distributions.

(2) Funds are provided for the rural mobility grant program as follows:

(a) \$8,500,000 of the rural mobility grant program account—state appropriation is provided solely for grants for those transit systems serving small cities and rural areas as identified in the "Summary of Public Transportation - 2009" published by the department of transportation. Noncompetitive grants must be distributed to the transit systems serving small cities and rural areas in a manner similar to past disparity equalization programs. If the funding provided in this subsection (2)(a) exceeds the amount required for recipient counties to reach eighty percent of the average per capita sales tax, funds in excess of that amount may be used for the competitive grant process established in (b) of this subsection.

(b) \$8,500,000 of the rural mobility grant program account—state appropriation is provided solely to providers of rural mobility service in areas not served or underserved by transit agencies through a competitive grant process.

(3)(a) \$6,000,000 of the multimodal transportation account—state appropriation is provided solely for a vanpool grant program for: (a) Public transit agencies to add vanpools or replace vans; and (b) incentives for employers to increase employee vanpool use. The grant program for public transit agencies will cover capital costs only; operating costs for public transit agencies are not eligible for funding under this grant program. Additional employees may not be hired from the funds provided in this section for the vanpool grant program, and supplanting of transit funds currently funding vanpools is not allowed. The department shall encourage grant applicants and recipients to leverage funds other than state funds.

(b) At least \$1,600,000 of the amount provided in this subsection must be used for vanpool grants in congested corridors.

(c) \$520,000 of the amount provided in this subsection is provided solely for the purchase of additional vans for use by vanpools serving soldiers and civilian employees at Joint Base Lewis-McChord.

(4) (~~(\$8,942,000)~~) \$6,453,000 of the regional mobility grant program account—state appropriation is reappropriated and provided solely for the regional mobility grant projects identified in LEAP Transportation Document (~~(2012-4)~~) 2013-2 ALL PROJECTS - Public Transportation - Program (V) as developed (~~(March 8, 2012)~~) April 23, 2013. The department shall continue to review all projects receiving grant awards under this program at least semiannually to determine whether the projects are making satisfactory progress. The department shall promptly close out grants when projects have been completed, and any remaining funds must be used only to fund projects identified in the LEAP transportation document referenced in this subsection. It is the intent of the legislature to appropriate funds through the regional mobility grant program only for projects that will be completed on schedule and that all funds in the regional mobility grant program be used as soon as practicable to advance eligible projects.

(5)(a) (~~(\$40,000,000)~~) \$31,878,000 of the regional mobility grant program account—state appropriation is provided solely for the regional mobility grant projects identified in LEAP Transportation Document (~~(2012-4)~~) 2013-2 ALL PROJECTS - Public Transportation -Program (V) as developed (~~(March 8, 2012)~~) April 23, 2013. The department shall review all projects receiving grant awards under this program at least semiannually to determine whether the



projects are making satisfactory progress. Any project that has been awarded funds, but does not report activity on the project within one year of the grant award, must be reviewed by the department to determine whether the grant should be terminated. The department shall promptly close out grants when projects have been completed, and any remaining funds must be used only to fund projects identified in the LEAP transportation document referenced in this subsection. The department shall provide annual status reports on December 15, 2011, and December 15, 2012, to the office of financial management and the transportation committees of the legislature regarding the projects receiving the grants. It is the intent of the legislature to appropriate funds through the regional mobility grant program only for projects that will be completed on schedule.

(b) In order to be eligible to receive a grant under (a) of this subsection during the 2011-2013 fiscal biennium, a transit agency must establish a process for private transportation providers to apply for the use of park and ride facilities. For purposes of this subsection, (i) "private transportation provider" means: An auto transportation company regulated under chapter 81.68 RCW; a passenger charter carrier regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; a private nonprofit transportation provider regulated under chapter 81.66 RCW; or a private employer transportation service provider; and (ii) "private employer transportation service" means regularly scheduled, fixed-route transportation service that is offered by an employer for the benefit of its employees.

(6) \$2,309,000 of the multimodal transportation account—state appropriation is provided solely for the tri-county connection service for Island, Skagit, and Whatcom transit agencies.

(7) \$200,000 of the multimodal transportation account—state appropriation is contingent on the timely development of an annual report summarizing the status of public transportation systems as identified under RCW 35.58.2796.

(8) Funds provided for the commute trip reduction program may also be used for the growth and transportation efficiency center program.

(9) An affected urban growth area that has not previously implemented a commute trip reduction program is exempt from the requirements in RCW 70.94.527 if a solution to address the state highway deficiency that exceeds the person hours of delay threshold has been funded and is in progress during the 2011-2013 fiscal biennium.

(10) \$300,000 of the multimodal transportation account—state appropriation is provided solely for the continuation of state support for the Whatcom smart trips commute trip reduction program.

(11) \$818,000 of the multimodal transportation account—state appropriation is provided solely for state support of the Everett connector bus service.

(12) The department shall contact all transit agencies with a nonvoting member recommended by a labor organization and request information regarding the participation of board members, both voting and nonvoting, for all transit agency meetings in 2012 and the three previous calendar years. The department shall provide a report to the transportation committees of the legislature regarding the findings of this survey, which must include the transit

agencies, if any, that refuse to respond either in whole or in part, by January 15, 2013.

(13) \$250,000 of the multimodal transportation account—state appropriation is provided solely for the Clark county public transportation benefit area to comply with the requirements of RCW 81.104.110 regarding the formation of an expert review panel to provide an independent technical review of any plan that relies on any voter-approved local funding options.

(14) \$100,000 of the multimodal transportation account—state appropriation is provided solely for community transit to conduct a federally mandated alternatives analysis study to allow a second swift line to be funded through the federal transit administration's new starts or small starts process.

(15) \$160,000 of the motor vehicle account—federal appropriation is provided solely for King county metro to study demand potential for a state route number 18 and Interstate 90 park-and-ride location, to size the facilities appropriately, to perform site analysis, and to develop preliminary design concepts.

Sec. 820. 2012 c 86 s 221 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—MARINE—PROGRAM X**

Puget Sound Ferry Operations Account—State

Appropriation . . . . . (~~(\$468,135,000)~~)  
\$465,085,000

The appropriation in this section is subject to the following conditions and limitations:

(1) The office of financial management budget instructions require agencies to recast enacted budgets into activities. The Washington state ferries shall include a greater level of detail in its 2011-2013 supplemental and 2013-2015 omnibus transportation appropriations act requests, as determined jointly by the office of financial management, the Washington state ferries, and the transportation committees of the legislature. This level of detail must include the administrative functions in the operating as well as capital programs.

(2) When purchasing uniforms that are required by collective bargaining agreements, the department shall contract with the lowest cost provider.

(3) Until a reservation system is operational on the San Juan islands inner-island route, the department shall provide the same priority loading benefits on the San Juan islands inner-island route to home health care workers as are currently provided to patients traveling for purposes of receiving medical treatment.

(4) The department shall request from the United States coast guard variable minimum staffing levels on all of its vessels by December 31, 2011.

(5) The department shall continue to provide service to Sidney, British Columbia and shall explore the option of purchasing a foreign built vehicle and passenger ferry vessel either with safety of life at sea (SOLAS) certification or the ability to be retrofitted for SOLAS certification to operate solely on the Anacortes to Sidney, British Columbia route currently served by vessels of the Washington state ferries fleet. The vessel should have the capability of carrying at least one hundred standard vehicles and approximately four hundred to five hundred passengers. Further, the department shall explore the possibilities of

contracting a commercial company to operate the vessel exclusively on this route so long as the contractor's employees assigned to the vessel are represented by the same employee organizations as the Washington state ferries. The department shall report back to the transportation committees of the legislature regarding: The availability of a vessel; the cost of the vessel, including transport to the Puget Sound region; and the need for any statutory changes for the operation of the Sydney, British Columbia service by a private company.

(6) For the 2011-2013 fiscal biennium, the department of transportation may enter into a distributor controlled fuel hedging program and other methods of hedging approved by the fuel hedging committee.

(7) (~~(\$136,648,000)~~) \$127,748,000 of the Puget Sound ferry operations account—state appropriation is provided solely for auto ferry vessel operating fuel in the 2011-2013 fiscal biennium. The amount provided in this appropriation represents the fuel budget for the purposes of calculating any ferry fare fuel surcharge.

(8) \$150,000 of the Puget Sound ferry operations account—state appropriation is provided solely for the department to increase recreation and tourist ridership by entering into agreements for marketing and outreach strategies with local economic development agencies. The department shall identify the number of tourist and recreation riders on the applicable ferry routes both before and after implementation of marketing and outreach strategies developed through the agreements. The department shall report results of the marketing and outreach strategies to the transportation committees of the legislature by October 15, 2012.

(9) The Washington state ferries shall participate in the facilities plan included in section 604 (~~(of this act)~~), chapter 367, Laws of 2011 and shall include an investigation and identification of less costly relocation options for the Seattle headquarters office. The department shall include relocation options for the Washington state ferries Seattle headquarters office in the facilities plan. Until September 1, 2012, the department may not enter into a lease renewal for the Seattle headquarters office.

(10) The department, office of financial management, and transportation committees of the legislature shall make recommendations regarding an appropriate budget structure for the Washington state ferries. The recommendation may include a potential restructuring of the Washington state ferries budget. The recommendation must facilitate transparency in reporting and budgeting as well as provide the opportunity to link revenue sources with expenditures. Findings and recommendations must be reported to the office of financial management and the joint transportation committee by September 1, 2011.

(11) Two Kwa-di-tabil class ferry vessels must be placed on the Port Townsend/Coupeville (Keystone) route to provide service at the same levels provided when the steel electric vessels were in service. After the vessels as funded under section 308 (5) (~~(of this act)~~), chapter 86, Laws of 2012 are in service, the two most appropriate of these vessels for the Port Townsend/Coupeville (Keystone) route must be placed on the route. \$100,000 of the Puget Sound ferry operations account—state appropriation is provided solely for the additional staffing required to maintain a reservation system at this route when the second vessel is in service.

(12) \$706,000 of the Puget Sound ferry operations account—state appropriation is provided solely for terminal operations to implement new federal passenger vessel Americans with disabilities act requirements.

(13) \$152,000 of the Puget Sound ferry operations account—state appropriation is provided solely for the department's compliance with its national pollution discharge elimination system permit.

Sec. 821. 2012 c 86 s 222 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—OPERATING**

Multimodal Transportation Account—State	
Appropriation.....	(( <u>\$33,642,000</u> ))
	<u>\$33,639,000</u>
Multimodal Transportation Account—Federal	
Appropriation.....	\$400,000
TOTAL APPROPRIATION.....	(( <u>\$34,042,000</u> ))
	<u>\$34,039,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$27,816,000 of the multimodal transportation account—state appropriation is provided solely for the Amtrak service contract and Talgo maintenance contract associated with providing and maintaining state-supported passenger rail service. The department is directed to continue to pursue efforts to reduce costs, increase ridership, and review fares or fare schedules. Within thirty days of each annual cost/revenue reconciliation under the Amtrak service contract, the department shall report annual credits to the office of financial management and the legislative transportation committees. Annual credits from Amtrak to the department including, but not limited to, credits for increased revenue due to higher ridership, and fare or fare schedule adjustments, must be used to offset corresponding amounts of the multimodal transportation account—state appropriation, which must be placed in reserve. Upon completion of the rail platform project in the city of Stanwood, the department shall continue to provide daily Amtrak Cascades service to the city.

(2) Amtrak Cascade runs may not be eliminated.

(3) The department shall plan for a third roundtrip Cascades train between Seattle and Vancouver, B.C.

(4) The department shall conduct a pilot program by partnering with the travel industry on the Amtrak Cascades service between Vancouver, British Columbia, and Seattle to test opportunities for increasing ridership, maximizing farebox recovery, and stimulating private investment. The pilot program must run from July 1, 2011, to June 30, 2012. The department shall report on the results of the pilot program to the office of financial management and the legislature by September 30, 2012.

(5) \$300,000 of the multimodal transportation account—state appropriation is provided solely for the department to conduct a study to examine the interconnectivity benefits of, and potential for, a future Amtrak Cascades stop in the vicinity of the city of Auburn. As part of its consideration, the department shall conduct a thorough market analysis of the potential for adding or changing stops on the Amtrak Cascades route.

Sec. 822. 2012 c 86 s 223 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z—OPERATING**

Motor Vehicle Account—State Appropriation . . . . .	<del>(\$8,518,000)</del>
	<u>\$8,505,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	\$2,567,000
TOTAL APPROPRIATION . . . . .	<del>(\$11,085,000)</del>
	<u>\$11,072,000</u>

The appropriations in this section are subject to the following conditions and limitations: The department shall submit a report to the transportation committees of the legislature by December 1, 2011, on the implementation of the recommendations that resulted from the evaluation of efficiencies in the delivery of transportation funding and services to local governments that was required under section 204(8), chapter 247, Laws of 2010. The report must include a description of how recommendations were implemented, what efficiencies were achieved, and an explanation of any recommendations that were not implemented.

**TRANSPORTATION AGENCIES—CAPITAL**

Sec. 901. 2012 c 86 s 302 (uncodified) is amended to read as follows:

**FOR THE COUNTY ROAD ADMINISTRATION BOARD**

Motor Vehicle Account—State Appropriation . . . . .	\$874,000
Rural Arterial Trust Account—State Appropriation. . . . .	<del>(\$62,510,000)</del>
	<u>\$61,470,000</u>
<u>Highway Safety Account—State Appropriation. . . . .</u>	<u>\$3,500,000</u>
County Arterial Preservation Account—State	
Appropriation. . . . .	\$29,360,000
TOTAL APPROPRIATION . . . . .	<del>(\$92,744,000)</del>
	<u>\$95,204,000</u>

The appropriations in this section are subject to the following conditions and limitations:

- (1) \$874,000 of the motor vehicle account—state appropriation may be used for county ferry projects as developed pursuant to RCW 47.56.725(4).
- (2) ~~(\$62,510,000)~~ \$61,470,000 of the rural arterial trust account—state appropriation is provided solely for county road preservation grant projects as approved by the county road administration board. These funds may be used to assist counties recovering from federally declared emergencies by providing capitalization advances and local match for federal emergency funding, and may only be made using existing fund balances. It is the intent of the legislature that the rural arterial trust account be managed based on cash flow. The county road administration board shall specifically identify any of the selected projects and shall include information concerning the selected projects in its next annual report to the legislature.

Sec. 902. 2012 c 86 s 303 (uncodified) is amended to read as follows:

**FOR THE TRANSPORTATION IMPROVEMENT BOARD**

Small City Pavement and Sidewalk Account—State	
Appropriation . . . . .	\$5,270,000
Transportation Improvement Account—State	
Appropriation . . . . .	<del>(\$237,545,000)</del>
	<u>\$213,152,000</u>
<u>Highway Safety Account—State Appropriation . . . . .</u>	<u>\$3,500,000</u>
<b>TOTAL APPROPRIATION . . . . .</b>	<b><del>(\$242,815,000)</del></b>
	<u>\$221,922,000</u>

~~((The appropriations in this section are subject to the following conditions and limitations: The transportation improvement account—state appropriation includes up to \$22,143,000 in proceeds from the sale of bonds authorized in RCW 47.26.500.))~~

\*Sec. 903. 2012 c 86 s 305 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—IMPROVEMENTS—PROGRAM I**

<i>Transportation Partnership Account—State</i>	
<i>Appropriation . . . . .</i>	<del>(\$1,636,316,000)</del>
	<u>\$1,149,062,000</u>
Motor Vehicle Account—State Appropriation . . . . .	<del>(\$103,889,000)</del>
	<u>\$63,790,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	<del>(\$790,703,000)</del>
	<u>\$806,907,000</u>
Motor Vehicle Account—Private/Local	
Appropriation . . . . .	<del>(\$124,917,000)</del>
	<u>\$84,830,000</u>
Transportation 2003 Account (Nickel Account)—State	
Appropriation . . . . .	<del>(\$416,125,000)</del>
	<u>\$346,873,000</u>
State Route Number 520 Corridor Account—State	
Appropriation . . . . .	<del>(\$1,752,138,000)</del>
	<u>\$995,741,000</u>
<del>((Special Category C Account—State Appropriation . . . . .</del>	<del>\$124,000</del>
<del>Tacoma Narrows Toll Bridge Account—State</del>	
<del>    Appropriation . . . . .</del>	<del>(\$5,791,000)</del>
<u>State Route Number 520 Corridor Account—Federal</u>	
<u>Appropriation . . . . .</u>	<u>\$300,000,000</u>
<u>Multimodal Transportation Account—State Appropriation . . . . .</u>	<u>\$303,000</u>
<b>TOTAL APPROPRIATION . . . . .</b>	<b><del>(\$4,830,003,000)</del></b>
	<u>\$3,747,506,000</u>

The appropriations in this section are subject to the following conditions and limitations:

*(1) Except as provided otherwise in this section, the entire transportation 2003 account (nickel account) appropriation and the entire transportation partnership account appropriation are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation*

*Document ((2012-2)) 2013-1 as developed ((~~March 8, 2012~~)) April 23, 2013, Program - Highway Improvement Program (I). However, limited transfers of specific line-item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 603, chapter ... Laws of 2013 (section 603 of this act).*

(2) Within the motor vehicle account—state appropriation and motor vehicle account—federal appropriation, the department may transfer funds between programs I and P, except for funds that are otherwise restricted in this act.

(3) The department shall apply for surface transportation program enhancement funds to be expended in lieu of or in addition to state funds for eligible costs of projects in programs I and P including, but not limited to, the state route number 518, state route number 520, Columbia river crossing, and Alaskan Way viaduct projects.

(4) The department shall apply for the competitive portion of federal transit administration funds for eligible transit-related costs of the state route number 520 bridge replacement and HOV project and the Columbia river crossing project. The federal funds described in this subsection must not include those federal transit administration funds distributed by formula. The department shall provide a report regarding this effort to the legislature by October 1, 2011.

(5) The department shall work with the department of archaeology and historic preservation to ensure that the cultural resources investigation is properly conducted on all mega-highway projects and large ferry terminal projects. These projects must be conducted with active archaeological management. Additionally, the department shall establish a scientific peer review of independent archaeologists that are knowledgeable about the region and its cultural resources.

(6) For highway construction projects where the department considers agricultural lands of long-term commercial significance, as defined in RCW 36.70A.030, in reviewing and selecting sites to meet environmental mitigation requirements under the national environmental policy act (42 U.S.C. Sec. 4321 et seq.) and the state environmental policy act (chapter 43.21C RCW), the department shall, to the greatest extent possible, consider using public land first. If public lands are not available that meet the required environmental mitigation needs, the department may use other sites while making every effort to avoid any net loss of agricultural lands that have a designation of long-term commercial significance.

(7) (~~(\$561,000)~~) \$665,000 of the transportation partnership account—state appropriation and (~~(\$1,176,000)~~) \$954,000 of the transportation 2003 account (nickel account)—state appropriation are provided solely for project OBI4ENV, Environmental Mitigation Reserve -Nickel/TPA project, as indicated in the LEAP transportation document referenced in subsection (1) of this section. Funds may be used only for environmental mitigation work that is required by permits that were issued for projects funded by the transportation partnership account or transportation 2003 account (nickel account).

(8) The transportation 2003 account (nickel account)—state appropriation includes up to (~~(\$339,608,000)~~) \$308,996,000 in proceeds from the sale of bonds authorized by RCW 47.10.861.

(9) The transportation partnership account—state appropriation includes up to ~~((\$972,392,000))~~ \$734,097,000 in proceeds from the sale of bonds authorized in RCW 47.10.873.

(10) The motor vehicle account—state appropriation includes up to ~~((\$55,870,000))~~ \$5,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.843.

(11) The state route number 520 corridor account—state appropriation includes up to ~~((\$1,779,000,000))~~ \$990,801,000 and the state route number 520 corridor account—federal appropriation includes up to \$300,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.879. Of the amounts appropriated in this subsection, \$300,000,000 of the state route number 520 corridor account—federal appropriation must be put into unallotted status and is subject to review by the office of financial management. The director of financial management shall consult with the joint transportation committee prior to making a decision to allot these funds.

(12) ~~((\$767,000))~~ \$692,000 of the motor vehicle account—state appropriation and ~~((\$3,736,000))~~ \$3,002,000 of the motor vehicle account—federal appropriation are provided solely for the US 2 High Priority Safety project (100224I). Expenditure of these funds is for safety projects on state route number 2 between Monroe and Gold Bar, which may include median rumble strips, traffic cameras, and electronic message signs.

(13) ~~((\$820,000))~~ \$819,900 of the motor vehicle account—federal appropriation, ~~((\$16,308,000))~~ \$6,226,000 of the motor vehicle account—private/local appropriation, and ~~((\$48,000))~~ \$344,000 of the motor vehicle account—state appropriation are provided solely for the US 2/Bickford Avenue - Intersection Safety Improvements project (100210E).

(14) \$1,025,000 of the motor vehicle account—state appropriation is provided solely for environmental work on the Belfair Bypass project (300344C).

(15) ~~((\$372,000))~~ \$360,000 of the motor vehicle account—federal appropriation and ~~((\$9,000))~~ \$49,000 of the motor vehicle account—state appropriation are provided solely for the I-5/Vicinity of Joint Base Lewis-McChord - Install Ramp Meters project (300596M).

(16) ~~((\$202,863,000))~~ \$102,588,000 of the transportation partnership account—state appropriation ~~(and \$51,138,000),~~ \$43,847,000 of the transportation 2003 account (nickel account)—state appropriation, \$12,000 of the motor vehicle account—federal appropriation, and \$68,000 of the motor vehicle account—private/local appropriation are provided solely for the I-5/Tacoma HOV Improvements (Nickel/TPA) project (300504A). The use of funds in this subsection to renovate any buildings is subject to the requirements of section 604 ~~((of this act)),~~ chapter 367, Laws of 2011. The department shall report to the legislature and the office of financial management on any costs associated with building renovations funded in this subsection.

(17)(a) \$7,423,000 of the transportation partnership account—state appropriation and ~~((\$54,461,000))~~ \$50,332,000 of the motor vehicle account—federal appropriation are provided solely for the I-5/Columbia River Crossing project (400506A). ~~((Of the amounts appropriated in this subsection, \$15,000,000 of the motor vehicle account—federal appropriation must be put into unallotted status and is subject to the review of the office of financial~~



~~management. This funding may only be allotted once the state of Oregon's total contribution of shared expenses on the project are within five million dollars of the state of Washington's shared expenses.))~~

(b) It is the intent of the legislature that Washington and Oregon have equal funding commitments and equal total expenditures to date on the shared components of the Columbia river crossing project. The department shall provide a quarterly report on this project beginning March 31, 2012. This report must include:

(i) An update on preliminary engineering and right-of-way acquisition for the previous quarter;

(ii) Planned objectives for right-of-way and preliminary engineering for the ensuing quarter;

(iii) An updated comparison of the total appropriation authority for the project by state;

(iv) An updated comparison of the total expenditures to date on the project by state; and

(v) The committed funding provided by the state of Oregon to right-of-way acquisition.

(c) \$200,000 of the transportation partnership account—state appropriation in this subsection is provided solely for the department to work with the department of archaeology and historic preservation to ensure that the cultural resources investigation is properly conducted on the Columbia river crossing project. This project must be conducted with active archaeological management and result in one report that spans the single cultural area in Oregon and Washington. Additionally, the department shall establish a scientific peer review of independent archaeologists that are knowledgeable about the region and its cultural resources.

(d) Consistent with the draft environmental impact statement and the Columbia river crossing project's independent review panel report, the Columbia river crossing project's financial plan must include recognition of state transportation funding contributions from both Washington and Oregon, federal transportation funding, and a funding contribution from toll bond proceeds. Following the refinement of the finance plan as recommended by the independent review panel, the department may seek authorization from the legislature to collect tolls on the existing Columbia river crossing or on a replacement crossing over Interstate 5.

(e) The Washington state department of transportation budget includes resources to continue work on solutions that advance the Columbia river crossing project to completion of the required environmental impact statement. The department must report to the Columbia river crossing legislative oversight subcommittee of the joint transportation committee, established in section 204(7) ~~((of this act)),~~ chapter 86, Laws of 2012, on the progress made on the Columbia river crossing project at each meeting of the oversight subcommittee. Reporting must include updated information on cost estimates, rights-of-way purchases and procurement schedules, and financing plans for the Columbia river crossing project, including projected traffic volumes, fuel and gas price assumptions, toll rates, costs of toll collections, as well as potential need for general transportation funding. By January 1, 2013, the department shall

provide to the oversight subcommittee of the joint transportation committee a phased master plan for the Columbia river crossing project.

(18) Within the amounts provided for the Columbia river crossing project (400506A), the department shall conduct a traffic and revenue analysis for the Columbia river crossing project that will lay the foundation for investment grade traffic and revenue analysis. While conducting the analysis, the department must coordinate with the Oregon department of transportation, the Washington state transportation commission, ~~((and the Washington state legislative oversight committee))~~ the Washington state treasurer's office, and the Oregon state treasurer's office.

(a) The department's analysis must include the assessment and review of the following variables within the project:

- (i) Exemptions from tolls for vehicles with two or more occupants;
- (ii) A variable toll where the tolls vary by time of day and day of the week;

and

- (iii) A frequency-based toll rate for the facility.
- (b) The analysis must also assess the following:

(i) The impact that light rail service in the corridor will have on estimated toll revenues;

(ii) The level of diversion from the Interstate 5 corridor and the impact on estimated toll revenues; and

(iii) The estimated toll revenues from vehicle trips originating within the region and outside the region by vehicle type.

(c) The department must submit a report of findings to the transportation committees of the legislature by July 1, 2013.

(19) ~~((\$309,000))~~ \$91,000 of the motor vehicle account—federal appropriation and ~~((\$78,000))~~ \$24,000 of the motor vehicle account—state appropriation are provided solely for the SR 9/SR 204 Intersection Improvement project (L2000040).

(20) ~~((\$3,385,000))~~ \$980,000 of the motor vehicle account—federal appropriation and ~~((\$50,000))~~ \$51,000 of the motor vehicle account—state appropriation are provided solely for the US 12/Nine Mile Hill to Woodward Canyon Vic - Build New Highway project (501210T).

(21) ~~((\$5,791,000 of the Tacoma Narrows toll bridge account—state appropriation is provided solely for deferred sales tax expenses on the construction of the new Tacoma Narrows bridge. However, if chapter . . . (Senate Bill No. 6073), Laws of 2012 (sales tax exemption on SR 16 projects) is enacted by June 30, 2012, the amount provided in this subsection lapses.~~

(22) ~~((\$391,000))~~ \$226,000 of the motor vehicle account—federal appropriation and ~~((\$16,000))~~ \$19,000 of the motor vehicle account—state appropriation are provided solely for the SR 16/Rosedale Street NW Vicinity - Frontage Road project (301639C). The frontage road must be built for driving speeds of no more than thirty-five miles per hour.

~~((\$23) \$621,000)~~ (22) \$663,000 of the motor vehicle account—federal appropriation ~~((is))~~ and \$12,000 of the motor vehicle account—state appropriation are provided solely for the SR 20/Race Road to Jacob's Road safety project (L2200042).

~~((\$24) \$32,162,000)~~ (23) \$15,746,000 of the transportation partnership account—state appropriation ~~((is))~~ and \$122,000 of the motor vehicle account—

private/local appropriation are provided solely for the SR 28/ US 2 and US 97 Eastmont Avenue Extension project (202800D).

~~((25) \$1,227,000))~~ (24) \$705,000 of the motor vehicle account—federal appropriation and ~~((38,000))~~ \$165,000 of the motor vehicle account—state appropriation are provided solely for design and right-of-way work on the I-82/ Red Mountain Vicinity project (508208M). The department shall continue to work with the local partners in developing transportation solutions necessary for the economic growth in the Red Mountain American viticulture area of Benton county.

~~((26) \$1,500,000))~~ (25) \$3,000,000 of the motor vehicle account—federal appropriation ~~((is))~~ and \$120,000 of the motor vehicle account—state appropriation are provided solely for the I-90 Comprehensive Tolling Study and Environmental Review project (100067T). The department shall undertake a comprehensive environmental review of tolling Interstate 90 between Interstate 5 and Interstate 405 for the purposes of both managing traffic and providing funding for construction of the unfunded state route number 520 from Interstate 5 to Medina project. The environmental review must include significant outreach to potentially affected communities. The department may consider traffic management options that extend as far east as Issaquah.

~~((27))~~ (26) \$12,149,000 of the motor vehicle account—federal appropriation ~~(and)~~, \$362,000 of the motor vehicle account—state appropriation, and \$50,000 of the motor vehicle account—private/local appropriation are provided solely for the I-90/Sullivan Road to Barker Road - Additional Lanes project (609049N).

~~((28))~~ (27) Up to \$8,000,000 in savings realized on the I-90/Snoqualmie Pass East - Hyak to Keechelus Dam - Corridor project (509009B) may be used for design work on the next two-mile segment of the corridor. Any additional savings on this project must remain on the corridor. Project funds may not be used to build or improve buildings until the plan described in section 604 ~~((of this act))~~, chapter 367, Laws of 2011 is complete.

~~((29) \$657,000))~~ (28) \$637,000 of the motor vehicle account—federal appropriation ~~((is))~~ and \$15,000 of the motor vehicle account—state appropriation are provided solely for the US 97A/North of Wenatchee - Wildlife Fence project (209790B).

~~((30))~~ (29) The department shall reconvene an expert review panel of no more than three members as described under RCW 47.01.400 for the purpose of updating the work that was previously completed by the panel on the Alaskan Way viaduct replacement project and to ensure that an appropriate and viable financial plan is created and regularly reviewed. The expert review panel must be selected cooperatively by the chairs of the senate and house of representatives transportation committees, the secretary of transportation, and the governor. The expert review panel must report findings and recommendations to the transportation committees of the legislature, the governor's Alaskan Way viaduct project oversight committee, and the transportation commission by October 2011, and annually thereafter until the project is operationally complete.

~~((31))~~ (30) It is important that the public and policymakers have accurate and timely access to information related to the Alaskan Way viaduct replacement project as it proceeds to, and during, the construction of all aspects of the project including, but not limited to, information regarding costs, schedules, contracts,

project status, and neighborhood impacts. Therefore, it is the intent of the legislature that the state, city, and county departments of transportation establish a single source of accountability for integration, coordination, tracking, and information of all requisite components of the replacement project, which must include, at a minimum:

(a) A master schedule of all subprojects included in the full replacement project or program; and

(b) A single point of contact for the public, media, stakeholders, and other interested parties.

~~((32))~~ (31) Within the amounts provided in this section, ~~(\$20,000)~~ \$42,000 of the motor vehicle account—state appropriation and ~~(\$980,000)~~ \$958,000 of the motor vehicle account—federal appropriation are provided solely for the department to continue work on a comprehensive tolling study of the state route number 167 corridor (project 316718S). As funding allows, the department shall also continue work on a comprehensive tolling study of the state route number 509 corridor.

~~((33))~~ (32)(a) ~~(\$137,022,000)~~ \$70,663,000 of the transportation partnership account—state appropriation and ~~(\$50,623,000)~~ \$38,613,000 of the transportation 2003 account (nickel account)—state appropriation are provided solely for the I-405/Kirkland Vicinity Stage 2 - Widening project (8B11002). This project must be completed as soon as practicable as a design-build project and must be constructed with a footprint that would accommodate potential future express toll lanes.

(b) As part of the project, the department shall conduct a traffic and revenue analysis and complete a financial plan to provide additional information on the revenues, expenditures, and financing options available for active traffic management and congestion relief in the Interstate 405 and state route number 167 corridors. A report must be provided to the transportation committees of the legislature and the office of financial management by January 2012. However, this subsection ~~((33))~~ (32)(b) is null and void if chapter . . . (Engrossed House Bill No. 1382), Laws of 2011 (I-405 express toll lanes) is enacted by June 30, 2011.

~~((Of the amount appropriated in (a) of this subsection, \$15,000,000 of the transportation partnership account—state appropriation is provided solely for the preliminary design and purchase of rights-of-way on the state route number 167 direct connector. It is the intent of the legislature to fund an additional \$25,000,000 of the transportation partnership account—state appropriation for the preliminary design and purchase of rights-of-way on the state route number 167 direct connector during the 2013-2015 biennium.~~

~~(d))~~ Within the amounts provided for this project, funding is provided solely for tolling equipment, such as gantries, barriers, or cameras, on Interstate 405, consistent with chapter 369, Laws of 2011. The department shall place amounts for tolling equipment into unallotted status until the traffic and revenue analysis required in RCW 47.56.886 is submitted to the governor and the legislature. Once the report has been submitted, the office of financial management may approve the allotment of funds for tolling equipment only after consultation with the joint transportation committee.

~~((34))~~ (33) Funding for a signal at state route number 507 and Yew Street is included in the appropriation for intersection and spot improvements (0B12002).

(34) \$3,392,000 of the transportation partnership account—state appropriation is provided solely for the preliminary design and purchase of rights-of-way on the state route number 167 direct connector (140504C).

(35) ~~((224,592,000))~~ \$52,078,000 of the transportation partnership account—state appropriation ~~((and \$898,286,000)),~~ \$902,101,000 of the state route number 520 corridor account—state appropriation, \$17,155,000 of the motor vehicle account—federal appropriation, and \$1,303,000 of the motor vehicle account—private/local appropriation are provided solely for the state route number 520 bridge replacement and HOV program (8B11003). When developing the financial plan for the program, the department shall assume that all maintenance and operation costs for the new facility are to be covered by tolls collected on the toll facility, and not by the motor vehicle account.

(36) \$500,000 of the motor vehicle account—state appropriation is provided solely for a multimodal corridor plan on state route number 520 between Interstate 405 and Avondale Road in Redmond (L1000054).

(37) \$300,000 of the motor vehicle account—federal appropriation ~~((is))~~ and \$13,000 of the motor vehicle account—state appropriation are provided solely for the SR 523 Corridor study (L1000059).

(38) The department shall consider using the city of Mukilteo's off-site mitigation program in the event any projects on state route number 525 or 526 require environmental mitigation.

(39) Any savings on projects on the state route number 532 corridor must be used within the corridor to begin work on flood prevention and raising portions of the highway above flood and storm influences.

(40) The total appropriation provided in this section assumes enactment of chapter . . . (Second Substitute Senate Bill No. 5250), Laws of 2012 (design-build procedures) and reflects efficiencies and cost savings generated by this innovative design and contracting tool.

(41) Construction of a new traffic management center may not commence until the budget evaluation study in section 102(1) ~~((of this act)),~~ chapter 86, Laws of 2012 is complete and the office of financial management has determined that a new traffic management center is the preferred option and has approved this project.

(42) The department shall itemize all future requests for the construction of new buildings on a project list. Each building construction project must be listed in the project list along with all other highway construction projects and submitted by the department as part of its budget submittal. It is the intent of the legislature that new facility construction must be transparent and not appropriated within larger highway construction projects.

(43) ~~((250,000))~~ \$240,000 of the motor vehicle account—federal appropriation ~~((is))~~ and \$10,000 of the motor vehicle account—state appropriation are provided solely for planning a proposed off-ramp eastbound from state route number 518 to Des Moines Memorial Drive in Burien (L1100045).

(44) ~~((1,100,000))~~ \$425,000 of the motor vehicle account—federal appropriation ~~((is))~~ and \$18,000 of the motor vehicle account—state

appropriation are provided solely for preliminary engineering on the I-5/Marvin Road Interchange study (L2200087).

(45) ~~(((\$400,000))~~ \$389,000 of the motor vehicle account—federal appropriation ((i\*)) and \$22,000 of the motor vehicle account—state appropriation are provided solely for the SR 150/No-See-Um Road Intersection - Realignment project (L2200092).

(46) \$750,000 of the motor vehicle account—federal appropriation ((i\*)) and \$31,000 of the motor vehicle account—state appropriation are provided solely for ((preliminary engineering on)) the SR 305/Suquamish Way Intersection Improvements project (L2200093).

(47) ~~(((\$700,000))~~ \$658,000 of the motor vehicle account—federal appropriation ((i\*)) and \$16,000 of the motor vehicle account—state appropriation are provided solely for the US 395/Lind Road Intersection project (L2200086).

(48) \$7,398,000 of the motor vehicle account—state appropriation is provided solely to advance the design, preliminary engineering, and rights-of-way acquisition for the priority projects identified in LEAP Transportation Document 2013-3 as developed April 23, 2013. Funds must be used to advance the emergent, initial development of these projects for the purpose of expediting delivery of the associated major investments when funding for such investments becomes available. Funding may be reallocated between projects to maximize the accomplishment of design and preliminary engineering work and rights-of-way acquisition, provided that all projects are addressed. It is the intent of the legislature that, while seeking to maximize the outcomes in this section, the department shall provide for continuity of both the state and consulting engineer workforce, while strategically utilizing private sector involvement to ensure consistency with the department's business plan for staffing in the highway construction program in the current and next fiscal biennium.

\*Sec. 903 was partially vetoed. See message at end of chapter.

\*Sec. 904. 2012 c 86 s 306 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—  
PRESERVATION—PROGRAM P**

*Transportation Partnership Account—State*

<i>Appropriation</i> .....	<del>(((\$44,463,000))</del> <u>\$23,488,000</u>
Motor Vehicle Account—State Appropriation .....	<del>(((\$81,741,000))</del> <u>\$78,112,000</u>
Motor Vehicle Account—Federal Appropriation .....	<del>(((\$540,306,000))</del> <u>\$469,626,000</u>
Motor Vehicle Account—Private/Local Appropriation .....	<del>(((\$21,585,000))</del> <u>\$18,892,000</u>
Tacoma Narrows Toll Bridge Account—State Appropriation .....	\$259,000
<del>((Transportation 2003 Account (Nickel Account)—State Appropriation .....</del>	<del>.....</del> <u>\$23,000)</u>
Highway Safety Account—State Appropriation .....	\$3,500,000
TOTAL APPROPRIATION .....	<del>(((\$691,877,000))</del> <u>\$593,877,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) *Except as provided otherwise in this section, the entire transportation 2003 account (nickel account) appropriation and the entire transportation partnership account appropriation are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation Document ((~~2012-2~~) 2013-1 as developed ((~~March 8, 2012~~) April 23, 2013, Program - Highway Preservation Program (P). However, limited transfers of specific line-item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 603, chapter ... Laws of 2013 (section 603 of this act).*

(2) The department of transportation shall continue to implement the lowest life-cycle cost planning approach to pavement management throughout the state to encourage the most effective and efficient use of pavement preservation funds. Emphasis should be placed on increasing the number of roads addressed on time and reducing the number of roads past due.

(3) Within the motor vehicle account—state appropriation and motor vehicle account—federal appropriation, the department may transfer funds between programs I and P, except for funds that are otherwise restricted in this act.

(4) The department shall apply for surface transportation program enhancement funds to be expended in lieu of or in addition to state funds for eligible costs of projects in programs I and P.

(5) ~~((The motor vehicle account—state appropriation includes up to \$17,652,000 in proceeds from the sale of bonds authorized in RCW 47.10.843.~~

(6)) The department must work with cities and counties to develop a comparison of direct and indirect labor costs, overhead rates, and other costs for high-cost bridge inspections charged by the state, counties, and other entities. The comparison is due to the transportation committees of the legislature on September 1, 2011.

~~((~~7~~) ~~\$789,000~~)) (6) \$739,000 of the motor vehicle account—federal appropriation and ~~((~~6~~) ~~\$6,000~~)) \$56,000 of the motor vehicle account—state appropriation are provided solely for the environmental impact statement and preliminary planning for the replacement of the state route number 9 Snohomish river bridge (project L2000018).~~~~

~~((~~8~~) ~~\$10,843,000~~)) (7) \$9,096,000 of the motor vehicle account—federal appropriation, ~~((~~1~~) ~~\$1,992,000~~)) \$1,794,000 of the motor vehicle account—private/local appropriation, and ~~((~~3~~) ~~\$390,000~~)) \$340,000 of the motor vehicle account—state appropriation are provided solely for the SR 21/Keller Ferry - Replace Boat project (602110J).~~~~~~

~~((~~9~~) ~~\$165,000~~)) (8) \$227,000 of the motor vehicle account—federal appropriation ~~((~~1~~) ~~\$13,000~~)) and \$13,000 of the motor vehicle account—state appropriation are provided solely for the I-90/Ritzville to Tokio -Paving of Outside Lanes project (609041G).~~~~

~~((~~10~~) ~~\$5,565,000~~)) (9) \$1,566,000 of the motor vehicle account—federal appropriation and ~~((~~2~~) ~~\$232,000~~)) \$124,000 of the motor vehicle account—state appropriation are provided solely for the SR 167/Puyallup River Bridge Replacement project (316725A). This project must be completed as a design-build project. The department must work with local jurisdictions and the~~~~

community during the environmental review process to develop appropriate esthetic design elements, at no additional cost to the department, and traffic management plans pertaining to this project. The department must report to the transportation committees of the legislature on estimated cost and/or time savings realized as a result of using the design-build process.

~~((11) \$507,000))~~ (10) \$649,000 of the motor vehicle account—federal appropriation and ~~((13,000))~~ \$15,000 of the motor vehicle account—state appropriation are provided solely for the SR 906/Travelers Rest - Building Renovation project (090600A).

~~((12) The department shall submit a renewal and rehabilitation plan for the new state route number 16 Tacoma Narrows bridge as a decision package as part of its 2013-2015 biennial budget submittal.))~~

\*Sec. 904 was partially vetoed. See message at end of chapter.

Sec. 905. 2012 c 86 s 307 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—TRAFFIC OPERATIONS—PROGRAM Q—CAPITAL**

Motor Vehicle Account—State Appropriation . . . . .	<del>((8,779,000))</del>
	<u>\$8,801,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	<del>((7,283,000))</del>
	<u>\$7,184,000</u>
TOTAL APPROPRIATION . . . . .	<del>((16,062,000))</del>
	<u>\$15,985,000</u>

The appropriations in this section are subject to the following conditions and limitations: ~~((1,000,000))~~ \$371,000 of the motor vehicle account—state appropriation for project 000005Q is provided solely for state matching funds for federally selected competitive grants or congressional earmark projects. These moneys must be placed into reserve status until such time as federal funds are secured that require a state match.

\*Sec. 906. 2012 c 86 s 308 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—WASHINGTON STATE FERRIES CONSTRUCTION—PROGRAM W**

Puget Sound Capital Construction Account—State Appropriation. . . . .	<del>((61,965,000))</del>
	<u>\$62,332,000</u>
Puget Sound Capital Construction Account—Federal Appropriation. . . . .	<del>((61,736,000))</del>
	<u>\$56,634,000</u>
Puget Sound Capital Construction Account—Private/Local Appropriation. . . . .	<del>((200,000))</del>
	<u>\$356,000</u>

*Transportation 2003 Account (Nickel Account)—State Appropriation . . . . .*  
~~*((119,928,000))*~~  
*\$113,720,000*

Transportation Partnership Account—State Appropriation. . . . .  
~~((12,838,000))~~  
\$12,892,000



Multimodal Transportation Account—State

Appropriation.....	\$27,527,000
TOTAL APPROPRIATION .....	(\$284,194,000)
	<u>\$273,461,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) *Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed in LEAP Transportation Document ((2012-1)) 2013-2 ALL PROJECTS as developed ((March 8, 2012)) April 23, 2013, Program -Washington State Ferries Capital Program (W).*

(2) The department shall work with the department of archaeology and historic preservation to ensure that the cultural resources investigation is properly conducted on all large ferry terminal projects. These projects must be conducted with active archaeological management.

(3) The multimodal transportation account—state appropriation includes up to \$27,527,000 in proceeds from the sale of bonds authorized in RCW 47.10.867.

(4) The Puget Sound capital construction account—state appropriation includes up to \$45,000,000 in proceeds from the sale of bonds authorized in RCW 47.10.843.

(5) (~~(\$17,970,000)~~) \$17,370,000 of the transportation 2003 account (nickel account)—state appropriation is provided solely for the acquisition of new Kwaditabill class ferry vessels (project 944470A) subject to the conditions of RCW 47.56.780.

(6) \$25,404,000 of the multimodal transportation account—state appropriation, \$1,000,000 of the Puget Sound capital construction account—federal appropriation, \$11,500,000 of the transportation partnership account—state appropriation, and (~~(\$85,924,000)~~) \$54,616,000 of the transportation 2003 account (nickel account)—state appropriation are provided solely for the acquisition of one 144-car vessel (project L2200038). The department shall use as much already procured equipment as practicable on the 144-car vessel. The vendor must present to the joint transportation committee and the office of financial management, by August 15, 2011, a list of options that will result in significant cost savings changes in terms of construction or the long-term maintenance and operations of the vessel. The vendor must allow for exercising the options without a penalty. If neither chapter ... (Engrossed Substitute Senate Bill No. 5742), Laws of 2011 nor chapter ... (House Bill No. 2083), Laws of 2011 is enacted by June 30, 2011, \$75,000,000 of the transportation 2003 account (nickel account)—state appropriation in this subsection lapses.

(7) \$5,749,000 of the total appropriation is provided solely for continued permitting work on the Mukilteo ferry terminal (project 952515P). The department shall seek additional federal funding for this project. Prior to beginning terminal improvements, the department shall report to the legislature on the final environmental impact statement by December 31, 2012. The report must include an overview of the costs and benefits of each of the alternatives considered, as well as an identification of costs and a funding plan for the preferred alternative.

(8) The department shall review all terminal project cost estimates to identify projects where similar design requirements could result in reduced preliminary engineering or miscellaneous items costs. The department shall report to the legislature by September 1, 2011. The report must use programmatic design and include estimated cost savings by reducing repetitive design costs or miscellaneous costs, or both, applied to projects.

(9) (~~(\$3,000,000)~~) \$6,000,000 of the Puget Sound capital construction account—state appropriation is provided solely for emergency capital repair costs (project 999910K). Funds may be spent only after approval from the office of financial management.

(10) \$4,851,000 of the Puget Sound capital construction account—state appropriation is provided solely for the reservation and communications system projects (L200041 & L200042).

(11) \$1,000,000 of the Puget Sound capital construction account—state appropriation is provided solely for security and operational planning as a first step in introducing liquid natural gas (LNG) to the Washington ferry fleet, including the issuance of a request for proposals (RFP). \$750,000 is provided solely for the department to work with appropriate agencies of the state and federal government to amend the state's current alternative security plan to account for the use of LNG as a propulsion fuel in the ferry fleet, and to begin public outreach efforts. \$250,000 is provided solely to issue an RFP for a design-build contract to fully convert the existing diesel powered Issaquah class fleet to be solely powered by LNG. The successful bidder must be awarded the \$250,000 appropriation and must be able to offer detailed design services, attain coast guard approval regarding vessel safety and any other requirements pertaining to design, acquire engines with LNG as a sole fuel source, provide public outreach and education regarding the conversion of ferry vessels to LNG, perform all conversion work, and supply dependable and suitable quantities of LNG. The RFP must include incentives for proposals that include alternative financing arrangements, such as a delayed payment plan based on fuel savings. To the extent allowable under current law, the bidder awarded the design-build contract for converting the Issaquah fleet to LNG under this subsection must be given bidding preferences in any future LNG-related ferry proposals or projects. The RFP referenced in this subsection must be issued by the department by August 1, 2012. The department must provide a report to the joint transportation committee on the development of the RFP in July 2012 and an update report again in September 2012.

(12) (~~(\$500,000)~~) \$1,200,000 of the Puget Sound capital construction account—state appropriation is provided solely for the ADA visual paging project (L2200083). If any new federal grants are received by the department that may supplant the state funds in this appropriation, the state funds in this appropriation must be placed in unallotted status.

(13) Consistent with RCW 47.60.662, which requires the Washington state ferry system to collaborate with passenger-only ferry and transit providers to provide service at existing terminals, the department shall ensure that multimodal access, including for passenger-only ferries and transit service providers, is not precluded by any future modifications at the terminal.

(14) The appropriation in this section includes up to \$47,759,000 in proceeds from the sale of bonds authorized in RCW 47.10.861.

\*Sec. 906 was partially vetoed. See message at end of chapter.

**Sec. 907.** 2012 c 86 s 309 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—CAPITAL**

Essential Rail Assistance Account—State	
Appropriation . . . . .	\$1,565,000
Transportation Infrastructure Account—State	
Appropriation . . . . .	<del>(\$5,693,000)</del>
	<u>\$5,018,000</u>
Multimodal Transportation Account—State	
Appropriation . . . . .	<del>(\$58,220,000)</del>
	<u>\$31,124,000</u>
Multimodal Transportation Account—Federal	
Appropriation . . . . .	<del>(\$236,597,000)</del>
	<u>\$110,725,000</u>
Multimodal Transportation Account—Private/Local	
Appropriation . . . . .	<del>(\$1,010,000)</del>
	<u>\$1,096,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$303,085,000)</del>
	<u>\$149,528,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1)(a) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by project (~~and amount~~) in LEAP Transportation Document (~~(2012-1)~~) 2013-2 ALL PROJECTS as developed (~~(March 8, 2012)~~) April 23, 2013, Program-Rail Capital Program (Y).

(b) Within the amounts provided in this section, (~~(\$4,757,000)~~) \$4,507,000 of the transportation infrastructure account—state appropriation is for low-interest loans through the freight rail investment bank program for specific projects listed as recipients of these loans in the LEAP transportation document identified in (a) of this subsection. The department shall issue freight rail investment bank program loans with a repayment period of no more than ten years, and only so much interest as is necessary to recoup the department's costs to administer the loans.

(c) Within the amounts provided in this section, (~~(\$2,047,000)~~) \$1,754,000 of the multimodal transportation account—state appropriation (~~(, \$10,000 of the multimodal—transportation—account—private/local—appropriation,)~~) and \$1,000,000 of the essential rail assistance account—state appropriation are for statewide emergent freight rail assistance projects identified in the LEAP transportation document identified in (a) of this subsection.

(2)(a) The department shall issue a call for projects for the freight rail investment bank (FRIB) loan program and the emergent freight rail assistance program (FRAP) grants, and shall evaluate the applications according to the cost-benefit methodology developed during the 2008 interim using the legislative priorities specified in (c) of this subsection. Unsuccessful FRAP

grant applicants should be encouraged to apply to the FRIB loan program, if eligible. By November 1, 2012, the department shall submit a prioritized list of recommended projects to the office of financial management and the transportation committees of the legislature.

(b) When the department identifies a prospective rail project that may have strategic significance for the state, or at the request of a proponent of a prospective rail project or a member of the legislature, the department shall evaluate the prospective project according to the cost-benefit methodology developed during the 2008 interim using the legislative priorities specified in (c) of this subsection. The department shall report its cost-benefit evaluation of the prospective rail project, as well as the department's best estimate of an appropriate construction schedule and total project costs, to the office of financial management and the transportation committees of the legislature.

(c) The legislative priorities to be used in the cost-benefit methodology are, in order of relative importance:

(i) Economic, safety, or environmental advantages of freight movement by rail compared to alternative modes;

(ii) Self-sustaining economic development that creates family-wage jobs;

(iii) Preservation of transportation corridors that would otherwise be lost;

(iv) Increased access to efficient and cost-effective transport to market for Washington's agricultural and industrial products;

(v) Better integration and cooperation within the regional, national, and international systems of freight distribution; and

(vi) Mitigation of impacts of increased rail traffic on communities.

(3) The department is directed to expend unallocated federal rail crossing funds in lieu of or in addition to state funds for eligible costs of projects in program Y.

(4) The department shall provide quarterly reports to the office of financial management and the transportation committees of the legislature regarding applications that the department submits for federal funds and the status of such applications.

(5) The multimodal transportation account—state appropriation includes up to \$12,103,000 in proceeds from the sale of bonds authorized in RCW 47.10.867.

(6) The Burlington Northern Santa Fe Skagit river bridge is an integral part of the rail system. Constructed in 1916, the bridge does not meet current design standards and is at risk during flood events that occur on the Skagit river. The department shall work with Burlington Northern Santa Fe and local jurisdictions to secure federal funding for the Skagit river bridge and to develop an appropriate replacement plan and schedule.

(7) (~~(\$218,341,000)~~) \$103,992,000 of the multimodal transportation account—federal appropriation and (~~(\$3,639,000)~~) \$1,815,000 of the multimodal transportation account—state appropriation are provided solely for expenditures related to passenger high-speed rail grants. At one and one-half percent of the total project funds, the multimodal transportation account—state funds are provided solely for expenditures that are not federally reimbursable. Funding in this subsection is the initial portion of multiyear high-speed rail program grants awarded to Washington state for high-speed intercity passenger

rail investments. Funding will allow for two additional round trips between Seattle and Portland and other rail improvements.

(8) \$750,000 of the multimodal transportation account—state appropriation is provided solely for the Port of Royal Slope rehabilitation project (L1000053). Funding is contingent upon the project completing the rail cost-benefit methodology process developed during the 2008 interim using the legislative priorities outlined in subsection (2)(c) of this section.

(9) As allowable under federal rail authority rules and existing competitive bidding practices, when purchasing new train sets, the department shall give preference to bidders that propose train sets with characteristics and maintenance requirements most similar to those currently owned by the department.

(10) Funds generated by the grain train program are solely for operating, sustaining, and enhancing the grain train program including, but not limited to, operations, capital investments, inspection, developing business plans for future growth, and fleet management. Any funds deemed by the department, in consultation with relevant port districts, to be in excess of current operating needs or capital reserves of the grain train program may be transferred from the miscellaneous program account to the essential rail assistance account for the purpose of sustaining the grain train program through maintaining the Palouse river and Coulee City railroad line, on which the grain train program operates.

(11) \$500,000 of the essential rail assistance account—state appropriation is provided solely for the purpose of rehabilitation and maintenance of the Palouse river and Coulee City railroad line. Expenditures from this appropriation may not exceed the combined total of:

(a) The revenues deposited into the essential rail assistance account from leases and sale of property pursuant to RCW 47.76.290; and

(b) Revenues transferred from the miscellaneous program account for the purpose of sustaining the grain train program through maintaining the Palouse river and Coulee City railroad line.

(12) \$200,000 of the multimodal transportation account—state appropriation is provided solely for the Clark county chelatchie prairie rail road (project L2200085).

**Sec. 908.** 2012 c 86 s 310 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z—CAPITAL**

<del>Highway Infrastructure Account—State Appropriation</del> . . . . .	<del>\$207,000</del>
<del>Highway Infrastructure Account—Federal Appropriation</del> . . . . .	<del>(\$1,602,000)</del>
Motor Vehicle Account—State Appropriation . . . . .	(\$4,179,000)
	<u>\$2,511,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	(\$37,935,000)
	<u>\$19,759,000</u>
<u>Highway Safety Account—State Appropriation</u> . . . . .	<u>\$752,000</u>
Freight Mobility Investment Account—State Appropriation . . . . .	(\$11,278,000)
	<u>\$5,044,000</u>

Transportation Partnership Account—State	
Appropriation.....	<del>(\$7,181,000)</del>
	<u>\$3,967,000</u>
Freight Mobility Multimodal Account—State	
Appropriation.....	<del>(\$15,668,000)</del>
	<u>\$11,868,000</u>
Freight Mobility Multimodal Account—Local	
Appropriation.....	<del>(\$2,834,000)</del>
	<u>\$960,000</u>
Multimodal Transportation Account—State	
Appropriation.....	<del>(\$22,575,000)</del>
	<u>\$15,413,000</u>
Passenger Ferry Account—State Appropriation.....	\$1,115,000
TOTAL APPROPRIATION.....	<del>(\$104,574,000)</del>
	<u>\$61,389,000</u>

The appropriations in this section are subject to the following conditions and limitations:

(1) \$1,115,000 of the passenger ferry account—state appropriation is provided solely for near and long-term costs of capital improvements and operating expenses that are consistent with the business plan approved by the governor for passenger ferry service.

(2) The department shall apply for surface transportation program enhancement funds to be expended in lieu of or in addition to state funds for eligible costs of projects in local programs, program Z—capital.

(3) Federal funds may be transferred from program Z to programs I and P and state funds must be transferred from programs I and P to program Z to replace those federal funds in a dollar-for-dollar match. Fund transfers authorized under this subsection shall not affect project prioritization status. Appropriations must initially be allotted as appropriated in this act. The department may not transfer funds as authorized under this subsection without approval of the office of financial management. The department shall submit a report on those projects receiving fund transfers to the office of financial management and the transportation committees of the legislature by December 1, 2011, and December 1, 2012.

(4) The city of Winthrop may utilize a design-build process for the Winthrop bike path project.

(5) ~~(\$14,813,000)~~ \$10,654,000 of the multimodal transportation account—state appropriation, ~~(\$12,804,000)~~ \$9,554,000 of the motor vehicle account—federal appropriation, ~~(and \$6,241,000)~~ \$3,417,000 of the transportation partnership account—state appropriation, and \$202,000 of the highway safety account—state appropriation are provided solely for the pedestrian and bicycle safety program projects and safe routes to schools program projects identified in: LEAP Transportation Document 2011-A, pedestrian and bicycle safety program projects and safe routes to schools program projects, as developed April 19, 2011; LEAP Transportation Document 2009-A, pedestrian and bicycle safety program projects and safe routes to schools program projects, as developed March 30, 2009; LEAP Transportation Document 2007-A, pedestrian and bicycle safety program projects and safe

routes to schools program projects, as developed April 20, 2007; and LEAP Transportation Document 2006-B, pedestrian and bicycle safety program projects and safe routes to schools program projects, as developed March 8, 2006. Projects must be allocated funding based on order of priority. The department shall review all projects receiving grant awards under this program at least semiannually to determine whether the projects are making satisfactory progress. Any project that has been awarded funds, but does not report activity on the project within one year of the grant award must be reviewed by the department to determine whether the grant should be terminated. The department shall promptly close out grants when projects have been completed, and identify where unused grant funds remain because actual project costs were lower than estimated in the grant award.

(6) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by project and amount in LEAP Transportation Document (~~(2012-1)~~) 2013-2 ALL PROJECTS as developed (~~(March 8, 2012)~~) April 23, 2013, Program - Local Programs (Z).

(7) For the 2011-2013 project appropriations, unless otherwise provided in this act, the director of the office of financial management may authorize a transfer of appropriation authority between projects managed by the freight mobility strategic investment board and may also advance projects in future biennia, as identified in LEAP Transportation Document (~~(2012-1)~~) 2013-2 ALL PROJECTS as developed (~~(March 8, 2012)~~) April 23, 2013, into the current biennium in order for the board to manage project spending and efficiently deliver all projects in the respective program.

(8) With each department budget submittal, the department shall provide an update on the status of the repayment of the twenty million dollars of unobligated federal funds authority advanced by the department in September 2010 to the city of Tacoma for the Murray Morgan/11th Street bridge project.

(9) If funding is specifically designated in this act for main street projects, the department shall prepare a list of projects that is consistent with chapter 257, Laws of 2011, for approval in the 2013-2015 fiscal biennium.

(10) (~~(\$267,000)~~) \$50,000 of the motor vehicle account—state appropriation and (~~(\$2,859,000)~~) \$50,000 of the motor vehicle account—federal appropriation are provided solely for completion of the US 101 northeast peninsula safety rest area and associated roadway improvements east of Port Angeles at the Deer Park scenic view point (3LP187A). The department must surplus any right-of-way previously purchased for this project near Sequim. Approval to proceed with construction is contingent on surplus of previously purchased right-of-way.

(11) Up to (~~(\$3,702,000)~~) \$2,680,000 of the motor vehicle account—federal appropriation and (~~(\$75,000)~~) \$55,000 of the motor vehicle account—state appropriation are provided solely to reimburse the cities of Kirkland and Redmond for pavement and bridge deck rehabilitation on state route number 908 (1LP611A). These funds may not be expended unless the cities sign an agreement stating that the cities agree to take ownership of state route number 908 in its entirety and agree that the payment of these funds represents the entire state commitment to the cities for state route number 908 expenditures.

(12) \$225,000 of the multimodal transportation account—state appropriation is provided solely for the Shell Valley emergency road and bicycle/pedestrian path (L1000036).

(13) \$188,000 of the motor vehicle account—state appropriation is provided solely for flood reduction solutions on state route number 522 caused by the lower McAleer and Lyon creek basins (L1000041).

(14) (~~(\$896,000)~~) \$293,000 of the multimodal transportation account—state appropriation is provided solely for realignment of Parker Road and construction of secondary access off of state route number 20 (L2200040).

(15) (~~(An additional \$2,500,000 of the motor vehicle account—federal appropriation is provided solely for the Strander Blvd/SW 27th St Connection project (1LP902F), which amount is reflected in the LEAP transportation document identified in subsection (6) of this section. These funds may only be committed if needed, may not be used to supplant any other committed project partnership funding, and must be the last funds expended.~~)

(~~(16) \$500,000~~) \$30,000 of the motor vehicle account—federal appropriation is provided solely for safety improvements at the intersection of South Wapato and McDonald Road (L1000052).

(~~((17) \$2,000,000)~~) (16) \$850,000 of the multimodal transportation account—state appropriation is provided solely for the state route number 432 rail realignment and highway improvements project (L1000056).

(~~((18))~~) (17) \$100,000 of the motor vehicle account—federal appropriation is provided solely for state route number 164 and Auburn Way South pedestrian improvements (L1000057).

(~~((19))~~) (18) \$115,000 of the motor vehicle account—federal appropriation is provided solely for median street lighting on state route number 410 (L1000058).

(~~((20))~~) (19) \$60,000 of the multimodal transportation account—state appropriation is provided solely for a cross docking study for the port of Douglas county (L1000060).

(~~((21))~~) (20) \$100,000 of the motor vehicle account—federal appropriation is provided solely for city of Auburn - 8th and R Street NE intersection improvements (L2200043).

(~~((22))~~) (21) \$65,000 of the multimodal transportation account—state appropriation is provided solely for the Puget Sound regional council to further the implementation of multimodal concurrency practice through a transit service overlay zone implemented at the local level (L1000061). This approach will improve the linkage of land use and transportation investment decisions, improve the efficiency of transit service by encouraging transit-supportive development, provide incentives for developers, and support integrated regional growth, economic development, and transportation plans. In carrying out this work, the council shall involve representatives from cities and counties, developers, transit agencies, and other interested stakeholders, and shall consult with other regional transportation planning organizations across the state. The council shall report the results of their work and recommendations to the joint transportation committee by December 2011, with a final report to the transportation committees of the legislature by January 31, 2012.



~~((23) \$1,750,000))~~ (22) \$650,000 of the motor vehicle account—federal appropriation is provided solely for the SR 522 Improvements/61st Avenue NE and NE 181st Street project (L1000055).

~~((24))~~ (23) The department shall implement a call for projects eligible for the bicycle and pedestrian grant program similar to the call for projects conducted in 2010, although the department may adjust the criteria to include mobility and connectivity. The department shall include a list of prioritized bicycle and pedestrian grant projects for approval in the 2013-2015 biennial transportation budget.

~~((25))~~ (24) \$100,000 of the multimodal transportation account—state appropriation is provided solely for the design of a stand-alone ADA accessible bicycle/pedestrian bridge across the Sultan river in the city of Sultan (L1100044).

~~((26) \$445,000))~~ (25) \$30,000 of the motor vehicle account—federal appropriation is provided solely for pedestrian lighting on the main span of the Chehalis river bridge in Aberdeen (L1100046).

~~((27) \$500,000))~~ (26) \$80,000 of the motor vehicle account—federal appropriation is provided solely for resurfacing Alder Avenue in the city of Sultan (L1100047).

~~((28) \$800,000))~~ (27) \$550,000 of the motor vehicle account—federal appropriation is provided solely for rights-of-way acquisition on state route number 516 from Jenkins creek to 185th (L2000017).

~~((29) \$1,100,000 of the motor vehicle account—federal appropriation is provided solely for traffic analysis, right of way, and design work on the 31st Avenue Southwest overpass on Puyallup's South Hill (L1100048).~~

~~(30) \$2,000,000))~~ (28) \$250,000 of the motor vehicle account—federal appropriation is provided solely for environmental documentation and preliminary engineering for the Scott Avenue Reconnection Project in the city of Woodland (L1100049).

~~((31) \$350,000 of the motor vehicle account—federal appropriation is provided solely for preliminary engineering and rights-of-way on the Slater Road Bridge project (L2200089).~~

~~(32) \$380,000))~~ (29) \$40,000 of the motor vehicle account—federal appropriation is provided solely for rehabilitation work for 156th/160th Avenue in the city of Covington (L2200088).

~~((33))~~ (30) \$380,000 of the motor vehicle account—federal appropriation is provided solely for improvements to Penney Avenue in the town of Naches (L2200090).

~~((34))~~ (31) \$450,000 of the motor vehicle account—federal appropriation is provided solely for preliminary engineering on NW Friberg Street and Goodwin Road in the city of Camas (L2200091).

## IMPLEMENTING PROVISIONS

**Sec. 1001.** 2011 c 367 s 601 (uncodified) is amended to read as follows:

### ACQUISITION OF PROPERTIES AND FACILITIES THROUGH FINANCIAL CONTRACTS

(1) The ~~((following agencies))~~ agency listed in subsection (2) of this section may enter into financial contracts, paid from any funds of an agency,

appropriated or nonappropriated, for the purposes indicated and in not more than the principal amounts indicated, plus financing expenses and required reserves pursuant to chapter 39.94 RCW. When securing properties under this section, agencies shall use the most economical financial contract option available, including long-term leases, lease-purchase agreements, lease-development with option to purchase agreements, or financial contracts using certificates of participation. Expenditures made by an agency for one of the indicated purposes before the issue date of the authorized financial contract and any certificates of participation therein are intended to be reimbursed from proceeds of the financial contract and any certificates of participation therein to the extent provided in the agency's financing plan approved by the state finance committee.

(2) ~~((State agencies))~~ The Washington state patrol may enter into agreements with the department of ~~((general administration))~~ enterprise services and the state treasurer's office to develop requests to the legislature for the acquisition of properties and facilities through financial contracts. The agreements may include charges for services rendered. The Washington state patrol may:

~~(a) ((Department of transportation: Enter into a financing contract for up to \$10,824,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW for the acquisition and implementation of a time, leave, and labor distribution system that is integrated with the state's accounting and human resource management systems:~~

~~(b) Department of licensing: Enter into a financing contract for up to \$7,414,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW for the purchase of a prorate and fuel tax system.~~

~~(c) Washington state patrol: (i)) Enter into a financing contract for up to \$8,241,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to purchase and install mobile office platforms in state patrol and pursuit vehicles.~~

~~((#)) (b) Enter into a financing contract for up to ((\$40,100,000)) \$39,100,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to purchase equipment and engineering services to convert to a narrowband digital system.~~

**TRANSFERS AND DISTRIBUTIONS**

**Sec. 1101.** 2012 c 86 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 ACCOUNT AND TRANSPORTATION FUND REVENUE**

Highway Bond Retirement Account—State	
Appropriation . . . . .	<del>(((\$879,501,000))</del> <u>\$862,130,000</u>
Ferry Bond Retirement Account—State	
Appropriation . . . . .	<del>(((\$31,801,000))</del> <u>\$31,807,000</u>

State Route Number 520 Corridor Account—State	
Appropriation . . . . .	<del>(\$3,818,000)</del>
	<u>\$4,766,000</u>
Transportation Improvement Board Bond Retirement	
Account—State Appropriation . . . . .	<del>(\$16,482,000)</del>
	<u>\$17,174,000</u>
Nondebt-Limit Reimbursable Account Appropriation . . . . .	<del>(\$22,476,000)</del>
	<u>\$21,877,000</u>
Transportation Partnership Account—State	
Appropriation . . . . .	<del>(\$3,654,000)</del>
	<u>\$2,570,000</u>
Motor Vehicle Account—State Appropriation . . . . .	<del>(\$382,000)</del>
	<u>\$270,000</u>
Transportation 2003 Account (Nickel Account)—State	
Appropriation . . . . .	<del>(\$1,305,000)</del>
	<u>\$1,411,000</u>
<del>(Transportation Improvement Account—State</del>	
<del>    Appropriation . . . . .</del>	<del>(\$29,000)</del>
Multimodal Transportation Account—State	
Appropriation . . . . .	<del>(\$158,000)</del>
	<u>\$181,000</u>
Toll Facility Bond Retirement Account—State	
Appropriation . . . . .	<del>(\$48,807,000)</del>
	<u>\$41,279,000</u>
Toll Facility Bond Retirement Account—Federal	
Appropriation . . . . .	<del>(\$7,500,000)</del>
	<u>\$18,283,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$1,015,913,000)</del>
	<u>\$1,001,748,000</u>

Sec. 1102. 2012 c 86 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**

State Route Number 520 Corridor Account—State	
Appropriation . . . . .	<del>(\$960,000)</del>
	<u>\$1,826,000</u>
Transportation Partnership Account—State	
Appropriation . . . . .	<del>(\$587,000)</del>
	<u>\$352,000</u>
Motor Vehicle Account—State Appropriation . . . . .	<del>(\$58,000)</del>
	<u>\$28,000</u>
Transportation 2003 Account (Nickel Account)—State	
Appropriation . . . . .	<del>(\$255,000)</del>
	<u>\$152,000</u>
<del>(Transportation Improvement Account—State Appropriation . . . . .</del>	<del>\$5,000)</del>

Multimodal Transportation Account—State Appropriation.....	(( <del>\$23,000</del> ))
	<u>\$14,000</u>
TOTAL APPROPRIATION.....	(( <del>\$1,888,000</del> ))
	<u>\$2,372,000</u>

Sec. 1103. 2012 c 86 s 404 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER—STATE REVENUES FOR DISTRIBUTION**

Motor Vehicle Account—State Appropriation for motor vehicle fuel tax distributions to cities and counties .....	(( <del>\$470,701,000</del> ))
	<u>\$465,681,000</u>

Sec. 1104. 2012 c 86 s 405 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER—TRANSFERS**

Motor Vehicle Account—State Appropriation: For motor vehicle fuel tax refunds and statutory transfers .....	(( <del>\$1,227,005,000</del> ))
	<u>\$1,213,253,000</u>

Sec. 1105. 2012 c 86 s 406 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF LICENSING—TRANSFERS**

Motor Vehicle Account—State Appropriation: For motor vehicle fuel tax refunds and transfers .....	(( <del>\$151,870,000</del> ))
	<u>\$147,557,000</u>

Sec. 1106. 2012 c 86 s 407 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER—ADMINISTRATIVE TRANSFERS**

(1) Motor Vehicle Account—State Appropriation: For transfer to the Puget Sound Ferry Operations Account—State .....	\$45,500,000
(2) Recreational Vehicle Account—State Appropriation: For transfer to the Motor Vehicle Account—State .....	\$1,150,000
(3) License Plate Technology Account—State Appropriation: For transfer to the Highway Safety Account—State .....	\$3,000,000
(4) Multimodal Transportation Account—State Appropriation: For transfer to the Puget Sound Ferry Operations Account—State .....	\$42,000,000
(5) Highway Safety Account—State Appropriation: For transfer to the Motor Vehicle Account—State .....	\$23,000,000
(6) Advanced Right-of-Way Revolving Fund: For transfer to the Motor Vehicle Account—State .....	\$5,000,000
(7) Rural Mobility Grant Program Account—State Appropriation: For transfer to the Multimodal Transportation Account—State .....	\$3,000,000
(8) Motor Vehicle Account—State Appropriation: For transfer to the State Patrol Highway Account—State .....	\$16,000,000

(9) State Route Number 520 Corridor  
Account—State Appropriation: For transfer to the  
Motor Vehicle Account—State . . . . . \$58,000

(10) Motor Vehicle Account—State  
Appropriation: For transfer to the Special Category C  
Account—State . . . . . \$2,500,000

(11) Regional Mobility Grant Program  
Account—State Appropriation: For transfer to the  
Multimodal Transportation Account—State . . . . . \$1,000,000

(12) State Patrol Highway Account—State  
Appropriation: For transfer to the Vehicle  
Licensing Fraud Account—State . . . . . \$100,000

(13) Capital Vessel Replacement Account—State  
Appropriation: For transfer to the Transportation 2003  
Account (Nickel Account)—State . . . . . ~~(\$6,367,000)~~  
\$6,221,000

(14) The transfers identified in this section are subject to the following conditions and limitations:

- (a) The transfer in subsection (9) of this section represents the repayment of an amount equal to subprogram B5 expenditures that occurred in the motor vehicle account in the 2009-2011 fiscal biennium.
- (b) The amount transferred in subsection (2) of this section shall not exceed the expenditures incurred from the motor vehicle account—state for the recreational vehicle sanitary disposal systems program.

**CONDITIONALLY ADDITIVE APPROPRIATIONS**

**Sec. 1201.** 2012 c 86 s 701 (uncodified) is amended to read as follows:

It is the intent of the legislature that the appropriations in ~~((sections 702 through 713 of this act be))~~ chapter 86, Laws of 2012 that were supported by the legislative changes in chapter 80, Laws of 2012 and chapter 74, Laws of 2012 were an initial commitment to the programs and activities funded and that the commitment continue through the 2013-2015 fiscal biennium. To that end, it is the intent of the legislature that the spending plan for the 2013-2015 fiscal biennium reflect the programmatic areas and amounts described in LEAP Transportation Document 2012-4, as developed March 8, 2012, except for the amounts for "WSDOT Preliminary Design/Rights-of-Way," which are superseded for the 2013-2015 fiscal biennium by the amounts provided in section 306(15) of this act for the projects identified in LEAP Transportation Document 2013-3 as developed April 23, 2013.

**MISCELLANEOUS 2011-2013 FISCAL BIENNIUM**

**NEW SECTION. Sec. 1301.** The appropriations to the department of transportation in chapter 86, Laws of 2012 and this act must be expended for the programs and in the amounts specified in this act. However, after May 1, 2013, unless specifically prohibited, the department may transfer state appropriations for the 2011-2013 fiscal biennium among operating programs after approval by the director of the office of financial management. However, the department shall not transfer state moneys that are provided solely for a specific purpose.

The department shall not transfer funds, and the director of the office of financial management shall not approve the transfer, unless the transfer is consistent with the objective of conserving, to the maximum extent possible, the expenditure of state funds and not federal funds. The director of the office of financial management shall notify the appropriate transportation committees of the legislature prior to approving any allotment modifications or transfers under this section. The written notification must include a narrative explanation and justification of the changes, along with expenditures and allotments by program and appropriation, both before and after any allotment modifications or transfers.

**NEW SECTION. Sec. 1302.** The following acts or parts of acts are each repealed:

- (1) 2012 c 86 s 702 (uncodified);
- (2) 2012 c 86 s 703 (uncodified);
- (3) 2012 c 86 s 704 (uncodified);
- (4) 2012 c 86 s 705 (uncodified);
- (5) 2012 c 86 s 706 (uncodified);
- (6) 2012 c 86 s 707 (uncodified);
- (7) 2012 c 86 s 709 (uncodified);
- (8) 2012 c 86 s 710 (uncodified);
- (9) 2012 c 86 s 711 (uncodified);
- (10) 2012 c 86 s 712 (uncodified);
- (11) 2012 c 86 s 713 (uncodified);
- (12) 2012 c 86 s 714 (uncodified);
- (13) 2012 c 86 s 715 (uncodified); and
- (14) 2012 c 86 s 716 (uncodified).

### MISCELLANEOUS

**NEW SECTION. Sec. 1401.** 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. 1402.** Except for sections 702 and 709 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**NEW SECTION. Sec. 1403.** Section 702 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2013.

**NEW SECTION. Sec. 1404.** Section 709 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2013, unless chapter . . . (Substitute House Bill No. 1745), Laws of 2013 is enacted on or before June 30, 2013, in which case section 709 of this act does not take effect.

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Passed by the Senate April 28, 2013.

Passed by the House April 28, 2013.

Approved by the Governor May 20, 2013, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 20, 2013.

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

"I am returning herewith, without my approval as to Sections 201(3); 209(10); 216(5); 218(2); 306(7); 306(22); 313(4); 313(5); 602; 903, page 139, lines 23-25; 903(1); 904, page 151, lines 7-9; 904(1); 906, page 154, lines 8-10; and 906(1), Engrossed Substitute Senate Bill 5024 entitled:

"AN ACT Relating to transportation funding and appropriations."

**Section 201(3), page 7, Washington Traffic Safety Commission, Traffic Safety Resource Prosecutor Program**

This proviso requires the traffic safety prosecutor program to be moved from the Washington State Patrol to the Washington Association of Prosecuting Attorneys. Before making this change, a thorough analysis of the advantages and disadvantages should be done. For this reason, I have vetoed Section 201(3) and instructed the Washington Traffic Safety Commission to investigate this proposal.

**Section 209(10), page 20, Department of Transportation, Annual Independent Audits**

The Fiscal Year 2013 annual independent audit of State Route 520 is currently under way and will be completed in Fiscal Year 2014. This proviso would require the audit to be completed through an interagency agreement between the Department of Transportation and Office of Financial Management. This change would duplicate work and delay completion of the audit required in the State Route 520 master bond resolution. For these reasons, I have vetoed Section 209(10).

**Section 216(5), page 26, Department of Transportation, Guide Signs to the City of Kenmore and Other Destinations**

Traffic control signing, including guide signs to destinations, should be done in a cooperative manner between the Department of Transportation and the requestor to ensure that safety and motorist needs are met. State and federal regulations and policy are in place to guide this process. This proviso, therefore, is unnecessary. For this reason, I have vetoed Section 216(5) and directed the Department to work with the City of Kenmore to resolve their traffic control signing issues.

**Section 218(2), page 29-30, Department of Transportation, Study on Restricting Use of Steel on Guardrail Posts**

Section 218(2) directs the Department of Transportation to contract with an independent research organization to study wood guardrails; however, no funding is provided for the study. Moreover, the Department evaluated the use of wood guardrails as recently as 2009 and is currently conducting a study concerning guardrail materials. For these reasons, I have vetoed Section 218(2).

**Section 306(7), pages 41-42, Interstate 5/Columbia River Crossing**

Section 306(7) directs the expenditure of \$81 million, including federal funds, for the Columbia River Crossing project. I see no wisdom in expending these funds if the state of Washington does not contribute adequate funding necessary to complete the project. This section would result in the expenditure of \$81 million to no result. If there are no other funds appropriated, the bridge project cannot move forward because federal funding will disappear. In addition, this section would prohibit expenditure of federal funding that is necessary to build the bridge. If the Coast Guard permit is not issued, there is no need for the waste of \$81 million.

**Section 306(22), page 47, Department of Transportation, Report on Public or Private Entity Mitigation**

Section 306(22) requires the Department of Transportation to report to the chairs of the Senate and House transportation committees whenever it is in negotiations to provide a public or private entity

mitigation for \$10 million or more. While I support the interest in transparency and accountability when negotiating public funds, non-disclosure agreements may require the Department to maintain confidentiality during certain negotiations. Therefore, I have vetoed Section 306(22) and directed the Department to develop a process to report on mitigation agreements exceeding \$10 million.

**Section 313(4), page 57, Department of Transportation, Quarterly Reporting Requirements**

This proviso requires the Department of Transportation to report quarterly on change order details that include the name of the contractor, dollar value of the change order, and explanation of the change order. No funding was provided for either the system or human resource efforts this would require given that there is no dollar threshold for reporting change orders. For this reason, I have vetoed Section 313(4).

**Section 313(5), page 57, Department of Transportation, Quarterly Reporting Requirements**

This proviso requires the Department of Transportation to report quarterly on all mitigation payments, including the party with whom the mitigation was negotiated, as well as the parties with whom the Department is in ongoing negotiations. No funding was provided for either the system or human resource efforts this would require given that there is no dollar threshold for reporting mitigation payments. For this reason, I have vetoed Section 313(5).

**Section 602, page 74, Department of Transportation, Transitioning Passenger Vehicles to DES Motor Pool**

This section directs the Department of Transportation to begin transitioning its passenger vehicles to the Department of Enterprise Services motor pool and prohibits the purchase of new passenger vehicles with appropriations in this act by programs headquartered in Thurston County. However, it is not clear whether the Department of Transportation's specialty service trucks are passenger vehicles as defined in RCW 46.04.382. I believe these vehicles, such as light trucks used by maintenance workers, should remain with the Department of Transportation. For this reason, I have vetoed Section 602 and directed the Department of Transportation to work with the Department of Enterprise Services to transition its vehicles to the motor pool where practicable and where efficiencies can be created.

**Section 903, page 139, lines 23-25, and Section 903(1), page 140, Transportation Partnership Account—State Appropriation, Improvements Program**

Due to unforeseen changes in the timing of expenditures for highway improvement projects and the lack of flexibility in the capital program budgets, this appropriation change would result in an estimated shortfall of approximately \$30 million in expenditure authority in the highway improvement program. The Department of Transportation must keep projects within the total spending plan; however, retaining the supplemental budget's original Transportation Partnership Account-State appropriation will provide flexibility in the timing of expenditures as the state transitions from one biennium to the next during the peak construction period. For these reasons, I have vetoed Section 903, page 139, lines 23-25, and Section 903(1).

**Section 904, page 151, lines 7-9, and Section 904(1), page 151, Transportation Partnership Account—State Appropriation, Preservation Program**

Due to unforeseen changes in the timing of expenditures for highway preservation projects and the lack of flexibility in the capital program budgets, this appropriation change would result in an estimated shortfall of approximately \$23 million in expenditure authority in the highway preservation program. The Department of Transportation must keep projects within the total spending plan; however, retaining the supplemental budget's original Transportation Partnership Account-State appropriation will provide flexibility in the timing of expenditures as the state transitions from one biennium to the next during the peak construction period. For these reasons, I have vetoed Section 904, page 151, lines 7-9, and Section 904(1).

**Section 906, page 154, lines 8-10, and Section 906(1), page 154, Transportation 2003 Account (Nickel Account)—State Appropriation, Washington State Ferries Construction Program**

Due to unforeseen changes in the timing of expenditures for ferry capital construction projects and the lack of flexibility in the capital program budgets, this appropriation change would result in an estimated shortfall of approximately \$7 million in expenditure authority in the ferry capital program.

The Department of Transportation must keep projects within the total spending plan; however, retaining the supplemental budget's original Transportation 2003 Account (Nickel Account)-State appropriation will provide flexibility in the timing of expenditures as the state transitions from one

biennium to the next during the peak construction period. For these reasons, I have vetoed Section 906, page 154, lines 8-10, and Section 906(1).

For these reasons I have vetoed Sections 201(3); 209(10); 216(5); 218(2); 306(7); 306(22); 313(4); 313(5); 602; 903, page 139, lines 23-25; 903(1); 904, page 151, lines 7-9; 904(1); 906, page 154, lines 8-10; and 906(1) of Engrossed Substitute Senate Bill 5024.

With the exception of Sections 201(3); 209(10); 216(5); 218(2); 306(7); 306(22); 313(4); 313(5); 602; 903, page 139, lines 23-25; 903(1); 904, page 151, lines 7-9; 904(1); 906, page 154, lines 8-10; and 906(1), Engrossed Substitute Senate Bill 5024 is approved."

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## CHAPTER 307

[Substitute Senate Bill 5702]

### AQUATIC INVASIVE SPECIES

AN ACT Relating to aquatic invasive species; amending RCW 77.15.160; reenacting and amending RCW 77.12.879; repealing RCW 77.60.130; and prescribing penalties.

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

**Sec. 1.** RCW 77.12.879 and 2011 c 171 s 113 and 2011 c 169 s 4 are each reenacted and amended to read as follows:

(1) The aquatic invasive species prevention account is created in the state treasury. Moneys directed to the account from RCW 88.02.640(3)(a)(i) must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the aquatic invasive species prevention account may be appropriated to the department to develop an aquatic invasive species prevention program for recreational and commercial watercraft. Funds must be expended as follows:

- (a) To inspect recreational and commercial watercraft;
- (b) To educate general law enforcement officers on how to enforce state laws relating to preventing the spread of aquatic invasive species;
- (c) To evaluate and survey the risk posed by recreational and commercial watercraft in spreading aquatic invasive species into Washington state waters;
- (d) To evaluate the risk posed by float planes in spreading aquatic invasive species into Washington state waters; and
- (e) To implement an aquatic invasive species early detection and rapid response plan. The plan must address the treatment and immediate response to the introduction to Washington waters of aquatic invasive species. Agency and public review of the plan must be conducted under chapter 43.21C RCW, the state environmental policy act. If the implementation measures or actions would have a probable significant adverse environmental impact, a detailed statement under chapter 43.21C RCW must be prepared on the plan.

(3) Funds in the aquatic invasive species enforcement account created in RCW 43.43.400 may be appropriated to the department and Washington state patrol to develop an aquatic invasive species enforcement program for recreational and commercial watercraft.

(a) The department shall provide training to Washington state patrol employees working at port of entry weigh stations, and other local law enforcement employees, on how to inspect recreational and commercial watercraft for the presence of aquatic invasive species.

(b) A person who enters Washington by road transporting any commercial or recreational watercraft that has been used ~~((in any designated aquatic invasive species state or foreign country as defined by rule of the department))~~ outside of Washington must have in his or her possession ~~((valid))~~ documentation that the watercraft ~~((has been inspected and found))~~ is free of aquatic invasive species. The department must develop and maintain rules to implement this subsection (3)(b), including specifying allowable forms of documentation.

(c) The department is authorized to require persons transporting recreational and commercial watercraft to stop at check stations. Check stations must be plainly marked by signs, operated by at least one uniformed fish and wildlife officer, and operated in a safe manner. (d) Any person stopped at a check station who possesses a recreational or commercial watercraft that ~~((has been used in any designated aquatic invasive species state or foreign country as defined by rule of the department, or that))~~ is contaminated with aquatic invasive species, must bear the expense for any necessary impoundment, transportation, cleaning, and decontamination of the watercraft.

(e) Any person stopped at a check station who possesses a recreational or commercial watercraft that ~~((has been used in any designated aquatic invasive species state or foreign country as defined by rule of the department, or that))~~ is contaminated with aquatic invasive species, is exempt from the criminal penalties found in RCW 77.15.253 and 77.15.290, and forfeiture under RCW 77.15.070, if that person complies with all department directives for the proper decontamination of the watercraft ~~((and equipment)).~~

(4) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005.

**Sec. 2.** RCW 77.15.160 and 2012 c 176 s 15 are each amended to read as follows:

The following acts are infractions and must be cited and punished as provided under chapter 7.84 RCW:

(1) Fishing and shellfishing infractions:

(a) Barbed hooks: Fishing for personal use with barbed hooks in violation of any department rule.

(b) Catch recording: Failing to immediately record a catch of fish or shellfish on a catch record card as required by RCW 77.32.430 or department rule.

(c) Catch reporting: Failing to return a catch record card to the department for other than Puget Sound Dungeness crab, as required by department rule.

(d) Recreational fishing: Fishing for fish or shellfish and, without yet possessing fish or shellfish, the person:

(i) Owns, but fails to have in the person's possession the license or the catch record card required by chapter 77.32 RCW for such an activity; or

(ii) Violates any department rule regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of fishing for fish or shellfish. This subsection does not apply to use of a net to take fish under RCW 77.15.580 or the unlawful use of shellfish gear for personal use under RCW 77.15.382.

(e) Seaweed: Taking, possessing, or harvesting less than two times the daily possession limit of seaweed:

(i) While owning, but not having in the person's possession, the license required by chapter 77.32 RCW; or

(ii) In violation of any rule of the department or the department of natural resources regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting of seaweed.

(f) Unclassified fish or shellfish: Taking unclassified fish or shellfish in violation of any department rule by killing, fishing, taking, holding, possessing, or maliciously injuring or harming fish or shellfish that is not classified as game fish, food fish, shellfish, protected fish, or endangered fish.

(g) Wasting fish or shellfish: Killing, taking, or possessing fish or shellfish having a value of less than two hundred fifty dollars and allowing the fish or shellfish to be wasted.

(2) Hunting infractions:

(a) Eggs or nests: Maliciously, and without permit authorization, destroying, taking, or harming the eggs or active nests of a wild bird not classified as endangered or protected. For purposes of this subsection, "active nests" means nests that contain eggs or fledglings.

(b) Unclassified wildlife: Taking unclassified wildlife in violation of any department rule by killing, hunting, taking, holding, possessing, or maliciously injuring or harming wildlife that is not classified as big game, game animals, game birds, protected wildlife, or endangered wildlife.

(c) Wasting wildlife: Killing, taking, or possessing wildlife that is not classified as big game and has a value of less than two hundred fifty dollars, and allowing the wildlife to be wasted.

(d) Wild animals: Hunting for wild animals not classified as big game and, without yet possessing the wild animals, the person owns, but fails to have in the person's possession, all licenses, tags, or permits required by this title.

(e) Wild birds: Hunting for and, without yet possessing a wild bird or birds, the person:

(i) Owns, but fails to have in the person's possession, all licenses, tags, stamps, and permits required under this title; or

(ii) Violates any department rule regarding seasons, closed areas, closed times, or any other rule addressing the manner or method of hunting wild birds.

(3) Trapping, taxidermy, fur dealing, and wildlife meat cutting infractions:

(a) Recordkeeping and reporting: If a person is a taxidermist, fur dealer, or wildlife meat cutter who is processing, holding, or storing wildlife for commercial purposes, failing to:

(i) Maintain records as required by department rule; or

(ii) Report information from these records as required by department rule.

(b) Trapper's report: Failing to report trapping activity as required by department rule.

(4) Aquatic invasive species infraction: Entering Washington by road and transporting a recreational or commercial watercraft that has been used outside of Washington without meeting documentation requirements as provided under RCW 77.12.879.

(5) Other infractions:

(a) Contests: Conducting, holding, or sponsoring a hunting contest, a fishing contest involving game fish, or a competitive field trial using live wildlife.

(b) Other rules: Violating any other department rule that is designated by rule as an infraction.

(c) Posting signs: Posting signs preventing hunting or fishing on any land not owned or leased by the person doing the posting, or without the permission of the person who owns, leases, or controls the land posted.

(d) Scientific permits: Using a scientific permit issued by the director for fish, shellfish, or wildlife, but not including big game or big game parts, and the person:

(i) Violates any terms or conditions of the scientific permit; or

(ii) Violates any department rule applicable to the issuance or use of scientific permits.

(e) Transporting aquatic plants: Transporting aquatic plants on any state or public road, including forest roads. However:

(i) This subsection does not apply to plants that are:

(A) Being transported to the department or to another destination designated by the director, in a manner designated by the department, for purposes of identifying a species or reporting the presence of a species;

(B) Legally obtained for aquarium use, wetland or lakeshore restoration, or ornamental purposes;

(C) Located within or on a commercial aquatic plant harvester that is being transported to a suitable location to remove aquatic plants;

(D) Being transported in a manner that prevents their unintentional dispersal, to a suitable location for disposal, research, or educational purposes; or

(E) Being transported in such a way as the commission may otherwise prescribe; and

(ii) This subsection does not apply to a person who:

(A) Is stopped at an aquatic invasive species check station and possesses a recreational or commercial watercraft that is contaminated with an aquatic invasive plant species if that person complies with all department directives for the proper decontamination of the watercraft and equipment; or

(B) Has voluntarily submitted a recreational or commercial watercraft for inspection by the department or its designee and has received a receipt verifying that the watercraft has not been contaminated since its last use.

**NEW SECTION. Sec. 3.** RCW 77.60.130 (Aquatic nuisance species committee) and 2007 c 341 s 59 & 2000 c 149 s 1 are each repealed.

Passed by the Senate March 11, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

## CHAPTER 308

[Engrossed Substitute Senate Bill 5709]

## RENEWABLE ENERGY—DENSIFIED BIOMASS HEAT—PUBLIC SCHOOLS

AN ACT Relating to a pilot program to demonstrate the feasibility of using densified biomass to heat public schools; and creating new sections.

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

**NEW SECTION. Sec. 1.** Currently more than a million homes nationwide and approximately fifty thousand homes in Washington state are heated with wood pellets, or densified biomass, in modern high-efficiency appliances. This residential use establishes that many homeowners experience significant cost savings compared to other fossil fuel-based heating systems and that this technology can have a wide and varied acceptance. Bulk delivery that can be facilitated by large volume anchor users such as schools, institutions, and businesses could provide the next step in making this form of renewable energy utilization more efficient and convenient for the consumer. The legislature makes the following findings:

(1) That manufactured and direct thermal conversion of densified biomass is a renewable energy activity;

(2) That much of western Europe, China, Japan, and other Asian countries have chosen to use renewable densified biomass as a renewable energy fuel to heat homes, businesses, and other facilities;

(3) That clean burning, renewable densified biomass will: (a) Lead our country to energy independence; (b) create jobs; (c) stimulate our economy by keeping more of our money circulating in the United States; (d) reduce carbon emissions; (e) improve air quality in noncompliant air sheds; (f) promote healthy forests; and (g) reduce the volume of waste in landfills; that the densified biomass industry will be complimentary to other biofuel industries, providing an outlet and use for the resultant high lignin by-products and agriculture residuals; and

(4) That a December 2012 report by the Washington State University energy program identified opportunities to develop and expand the in-state manufacturing of densified biomass.

Therefore, it is the intent of the legislature to have the Washington State University energy program conduct a pilot program to demonstrate the feasibility of using densified biomass as a renewable energy source to heat schools and other buildings.

**NEW SECTION. Sec. 2.** (1) Subject to receiving federal and private funds for this purpose, by December 1, 2013, the Washington State University energy program must develop and initiate a pilot program to demonstrate the feasibility of using densified biomass to heat public schools. Two public schools must be chosen for the pilot program, using the following criteria: The school's proximity to a currently operating densified biomass manufacturing facility, the age and condition of the school's current heating system, and the school's design is of a nature that most resembles other schools of its class. The pilot program must consist of the following: The replacement of the school's current heating system with one that uses densified biomass as a fuel; the measurement and evaluation of the heating system, including a cost comparison with other conventional fuels; and the measurement of emissions from the heating system.

One of the public schools selected for the pilot must be located in a district east of the crest of the Cascade mountains and one must be located in a district west of the crest of the Cascade mountains. The school district east of the crest of the Cascade mountains must be located in a county that shares an international border or borders the state of Idaho.

(2) The office of the superintendent of public instruction must notify all school districts about the pilot project and their opportunity to participate.

(3) By December 31, 2015, the Washington State University energy program must summarize and report its findings to the legislature. The report must include an analysis extrapolating the results to other similarly situated schools in the state.

(4) In designing the pilot program, the Washington State University energy program must seek to leverage other existing private and federal funding programs and resources.

(5) The Washington State University energy program may contract with other entities for assistance in implementing the pilot program.

(6) The pilot program expires December 15, 2015.

Passed by the Senate April 22, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

## CHAPTER 309

[Senate Bill 5715]

### TAXES—EVASION BY ELECTRONIC MEANS

AN ACT Relating to addressing the evasion of taxes by the use of certain electronic means; amending RCW 82.32.215 and 82.32.290; adding new sections to chapter 82.32 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 82.32.215 and 1998 c 311 s 9 are each amended to read as follows:

~~((If any))~~ (1) The department may, by order, revoke the certificate of registration of a taxpayer for any of the following reasons:

(a) A warrant issued under this chapter is not paid within thirty days after it has been filed with the clerk of the superior court~~((, or if any))~~;

(b) The taxpayer is delinquent, for three consecutive reporting periods, in the transmission to the department~~((of revenue of retail sales tax collected by the taxpayer, the department of revenue may, by order, revoke the certificate of registration of the taxpayer against whom the warrant was issued, and, if the order is entered, a copy thereof shall be posted in a conspicuous place at the main entrance to the taxpayer's place of business and shall remain posted until such time as the warrant has been paid. Any certificate so revoked shall not be reinstated, nor shall))~~ of retail sales tax collected by the taxpayer; or

(c)(i)(A) The taxpayer was convicted of violating RCW 82.32.290(4) and continues to engage in business without fully complying with RCW 82.32.290(4)(b) (i) through (iii); or

(B) A person convicted of violating RCW 82.32.290(4) is an owner, officer, director, partner, trustee, member, or manager of the taxpayer, and the person



and taxpayer have not fully complied with RCW 82.32.290(4)(b) (i) through (iii).

(ii) For the purposes of this subsection (1)(c), the terms "manager," "member," and "officer" mean the same as defined in RCW 82.32.145.

(2) If the department enters a final order revoking a taxpayer's certificate of registration, a copy of the order must, if practicable, be posted in a conspicuous place at the main entrance to the taxpayer's place of business. The department may also post a final order revoking a taxpayer's certificate of registration in any public facility, such as a courthouse or post office, as may be allowed by the public entity that owns or occupies the facility. A final order posted at the taxpayer's place of business must remain posted until such time as the taxpayer is eligible to have its certificate of registration reinstated as provided in subsection (3) of this section or has abandoned the premises. A taxpayer will not be deemed to have abandoned the premises if the taxpayer or any person with an ownership interest in the taxpayer continues to operate a substantially similar type of business under a different legal entity at the same location.

(3) Any certificate revoked under subsection (1) of this section may not be reinstated, nor may a new certificate of registration be issued to the taxpayer, until:

(a) The amount due on the warrant has been paid, or provisions for payment satisfactory to the department (~~(of revenue)~~) have been entered, and until the taxpayer has deposited with the department (~~(of revenue such)~~) security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the department of revenue may require, but the amount of the security (~~(shall)~~) may not be greater than one-half the estimated average annual liability of the taxpayer; or

(b) The taxpayer and, if applicable, the owner, officer, director, partner, trustee, member, or manager of the taxpayer who was convicted of violating RCW 82.32.290(4) are in full compliance with RCW 82.32.290(4)(b) (i) through (iii), if the certificate of registration was revoked under the provisions of subsection (1)(c) of this section.

**Sec. 2.** RCW 82.32.290 and 2010 c 112 s 11 are each amended to read as follows:

(1)(a) It (~~(shall be)~~) is unlawful:

(i) For any person to engage in business without having obtained a certificate of registration as provided in this chapter;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business without having obtained a certificate of registration as provided in this chapter;

(iii) For any person to tear down or remove any order or notice posted by the department in violation of this chapter;

(iv) For any person to aid or abet another in any attempt to evade the payment of any tax or any part thereof;

(v) For any purchaser to fraudulently sign or furnish to a seller documentation authorized under RCW 82.04.470 without intent to resell the property purchased or with intent to otherwise use the property in a manner inconsistent with the claimed wholesale purchase; or

(vi) For any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the department or its duly authorized

agent; or to fail or refuse to permit the inspection or appraisal of any property by the department or its duly authorized agent; or to refuse to offer testimony or produce any record as required.

(b) Any person violating any of the provisions of this subsection (1) (~~shall be~~) is guilty of a gross misdemeanor in accordance with chapter 9A.20 RCW.

(2)(a) It (~~shall be~~) is unlawful:

(i) For any person to engage in business after revocation of a certificate of registration unless the person's certification of registration has been reinstated;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business after revocation of a certificate of registration unless the company's certificate of registration has been reinstated; or

(iii) For any person to make any false or fraudulent return or false statement in any return, with intent to defraud the state or evade the payment of any tax or part thereof.

(b) Any person violating any of the provisions of this subsection (2) (~~shall be~~) is guilty of a class C felony in accordance with chapter 9A.20 RCW.

(3) In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, (~~shall be~~) is guilty of the offense of perjury in the second degree; and any company for which a false return, or a return containing a false statement, as aforesaid, is made, (~~shall~~) must be punished, upon conviction thereof, by a fine of not more than one thousand dollars.

(4)(a) It is unlawful for any person to knowingly sell, purchase, install, transfer, manufacture, create, design, update, repair, use, possess, or otherwise make available, in this state, any automated sales suppression device or phantom-ware. However, it is not unlawful for persons to possess or use automated sales suppression devices or phantom-ware as authorized in section 3(6) of this act.

(b) It is unlawful for any person who has been convicted of violating this section to engage in business, or participate in any business as an owner, officer, director, partner, trustee, member, or manager of the business, unless:

(i) All taxes, penalties, and interest lawfully due are paid;

(ii) The person pays in full all penalties and fines imposed on the person for violating this section; and

(iii) The person, if the person is engaging in business subject to tax under this title, or the business in which the person participates, enters into a written agreement with the department for the electronic monitoring of the business's sales, by a method acceptable to the department, for five years at the business's expense.

(c)(i) Any person violating the provisions of this subsection, including material breach of the monitoring agreement under (b)(iii) of this subsection, is guilty of a class C felony in accordance with chapter 9A.20 RCW and, as applicable, (c)(ii) of this subsection.

(ii) Any person violating the provisions of this subsection by furnishing an automated sales suppression device or phantom-ware to another person or by updating or repairing another person's automated sales suppression device or phantom-ware is, in addition to the punishments prescribed in chapter 9A.20

RCW, subject to a mandatory fine fixed by the court in an amount equal to the greater of ten thousand dollars, the defendant's gain from the commission of the crime, or the state's loss from the commission of the crime. For purposes of this subsection (4)(c)(ii), "loss" means the total of all taxes, penalties, and interest certified by the department to be due, as of the date of sentencing, as a result of any violation of the provisions of this subsection by a person using the automated sales suppression device or phantom-ware obtained from, or updated or repaired by, the defendant, which results in the defendant's conviction for violating the provisions of this subsection.

(d) For the purposes of this subsection (4), the terms "manager," "member," and "officer" have the same meaning as in RCW 82.32.145.

(e) The definitions in section 3 of this act apply to this subsection (4).

(5) All penalties or punishments provided in this section (~~shall be~~) are in addition to all other penalties provided by law.

NEW SECTION. Sec. 3. A new section is added to chapter 82.32 RCW to read as follows:

(1)(a) Automated sales suppression devices, phantom-ware, electronic cash registers or point of sale systems used with automated sales suppression devices or phantom-ware, and any property constituting proceeds traceable to any violation of RCW 82.32.290(4) are considered contraband and are subject to seizure and forfeiture.

(b) Property subject to forfeiture under (a) of this subsection (1) may be seized by any agent of the department authorized to assess or collect taxes, or law enforcement officer of this state, upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(i) The seizure is incident to an arrest or a search under a search warrant; or

(ii) The department or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of RCW 82.32.290(4) and exigent circumstances exist making procurement of a search warrant impracticable.

(2) Forfeiture authorized by this section is deemed to have commenced by the seizure. Notice of seizure must be given to the department if the seizure is made by a law enforcement officer without the presence of any agent of the department. The department must cause notice of the seizure and intended forfeiture to be served on the owner of the property seized, if known, and on any other person known by the department to have a right or interest in the seized property. Such service must be made within fifteen days following the seizure or the department's receipt of notification of the seizure. The notice may be served by any method authorized by law or court rule, by certified mail with return receipt requested, or electronically in accordance with RCW 82.32.135. Service by certified mail or electronic means is deemed complete upon mailing the notice, electronically sending the notice, or electronically notifying the person or persons entitled to the notice that the notice is available to be accessed by the person or persons, within the fifteen-day period following the seizure or the department's receipt of notification of the seizure.

(3) If no person notifies the department in writing of the person's claim of lawful ownership or right to lawful possession of the item or items seized within

thirty days of the date of service of the notice of seizure and intended forfeiture, the item or items seized are deemed forfeited.

(4)(a) If any person notifies the department, in writing, of the person's claim of lawful ownership or lawful right to possession of the item or items seized within thirty days of the date of service of the notice of seizure and intended forfeiture, the person or persons must be afforded a reasonable opportunity to be heard as to the claim. The hearing must be before the director or the director's designee. A hearing and any administrative or judicial review is governed by chapter 34.05 RCW. The burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the item or items seized.

(b) The department must return the item or items to the claimant as soon as possible upon a determination that the claimant is the present lawful owner or is lawfully entitled to possession of the item or items seized.

(5) When property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of RCW 82.32.290(4), the department must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of RCW 82.32.290(4).

(6)(a) When property forfeited under this section, other than proceeds traceable to a violation of RCW 82.32.290(4), is no longer required for evidentiary purposes, the department may:

(i) Destroy or have the property destroyed;

(ii) Retain the property for training or other official purposes; or

(iii) Loan or give the property to any law enforcement or tax administration agency of any state, political subdivision or municipal corporation of a state, or the United States for training or other official purposes. For purposes of this subsection (6)(a)(iii), "state" has the same meaning as in RCW 82.04.462.

(b) When proceeds traceable to a violation of RCW 82.32.290(4) forfeited under this section are no longer required for evidentiary purposes, they must be deposited into the general fund.

(7) The definitions in this subsection apply to this section:

(a) "Automated sales suppression device" means a software program that falsifies the electronic records of electronic cash registers or other point of sale systems, including transaction data and transaction reports. The term includes the software program, any device that carries the software program, or an internet link to the software program.

(b) "Electronic cash register" means a device that keeps a register or supporting documents through the means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing sales transaction data in whatever manner.

(c) "Phantom-ware" means a programming option that is hidden, preinstalled, or installed-at-a-later-time in the operating system of an electronic cash register or other point of sale device, or hardwired into the electronic cash register or other point of sale device, and that can be used to create a virtual second till or may eliminate or manipulate transaction reports that may or may not be preserved in digital formats to represent the true or manipulated record of transactions in the electronic cash register or other point of sale device.

(d) "Transaction data" means information about sales transactions, including items purchased by a customer, the price for each item, a taxability

determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(e) "Transaction reports" means a report that includes information associated with sales transactions, taxes collected, media totals, and discount voids at an electronic cash register that can be printed on cash register tape at the end of a day or shift, or a report documenting every action at an electronic cash register or other point of sale device and that is stored electronically.

**NEW SECTION. Sec. 4.** A new section is added to chapter 82.32 RCW to read as follows:

When the department has good reason to believe that any property subject to seizure and forfeiture under section 3 of this act is being used or maintained in this state in violation of RCW 82.32.290(4)(a), the department may make affidavit of facts describing the place or thing to be searched before any judge of any superior or district court in this state. The judge may issue a search warrant directed to a law enforcement officer or agent of the department authorized under section 3 of this act to seize contraband, commanding him or her to diligently search any place or thing as designated in the affidavit and search warrant, and to seize such suspected contraband and hold it until disposed of as provided by section 3 of this act.

**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.

Passed by the Senate March 8, 2013.

Passed by the House April 17, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

## CHAPTER 310

[Engrossed Substitute Senate Bill 5723]

### RAFFLES—ENHANCED RAFFLES—CHARITABLE ORGANIZATIONS

AN ACT Relating to enhanced raffles; adding a new section to chapter 9.46 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 9.46 RCW to read as follows:

(1) A bona fide charitable or nonprofit organization, as defined in RCW 9.46.0209, whose primary purpose is serving individuals with intellectual disabilities may conduct enhanced raffles if licensed by the commission.

(2) The commission has the authority to approve two enhanced raffles per calendar year for western Washington and two enhanced raffles per calendar year for eastern Washington. Whether the enhanced raffle occurs in western Washington or eastern Washington will be determined by the location where the grand prize winning ticket is to be drawn as stated on the organization's application to the commission. An enhanced raffle is considered approved when voted on by the commission.

(3) The commission has the authority to approve enhanced raffles under the following conditions:

(a) The value of the grand prize must not exceed five million dollars.

(b) Sales may be made in person, by mail, by fax, or by telephone only. Raffle ticket order forms may be printed from the bona fide charitable or nonprofit organization's web site. Obtaining the form in this manner does not constitute a sale.

(c) Tickets purchased as part of a multiple ticket package may be purchased at a discount.

(d) Multiple smaller prizes are authorized during the course of an enhanced raffle for a grand prize including, but not limited to, early bird, refer a friend, and multiple ticket drawings.

(e) A purchase contract is not necessary for smaller noncash prizes, but the bona fide charitable or nonprofit organization must be able to demonstrate that such a prize is available and sufficient funds are held in reserve in the event that the winner chooses a noncash prize.

(f) All enhanced raffles and associated smaller raffles must be independently audited, as defined by the commission during rule making. The audit results must be reported to the commission.

(g) Call centers, when licensed by the commission, are authorized. The bona fide charitable or nonprofit organization may contract with a call center vendor to receive enhanced raffle ticket sales. The vendor may not solicit sales. The vendor may be located outside the state, but the bona fide charitable or nonprofit organization must have a contractual relationship with the vendor stating that the vendor must comply with all applicable Washington state laws and rules.

(h) The bona fide charitable or nonprofit organization must be the primary recipient of the funds raised.

(i) Sales data may be transmitted electronically from the vendor to the bona fide charitable or nonprofit organization. Credit cards, issued by a state regulated or federally regulated financial institution, may be used for payment to participate in enhanced raffles.

(j) Receipts including ticket confirmation numbers may be sent to ticket purchasers either by mail or by e-mail.

(k) In the event the bona fide charitable or nonprofit organization determines ticket sales are insufficient to qualify for a complete enhanced raffle to move forward, the enhanced raffle winner must receive fifty percent of the net proceeds in excess of expenses as the grand prize. The enhanced raffle winner will receive a choice between an annuity value equal to fifty percent of the net proceeds in excess of expenses paid by annuity over twenty years, or a one-time cash payment of seventy percent of the annuity value.

(l) A bona fide charitable or nonprofit organization is authorized to hire a consultant licensed by the commission to run an enhanced raffle; in addition, the bona fide charitable or nonprofit organization must have a dedicated employee who is responsible for oversight of enhanced raffle operations. The bona fide charitable or nonprofit organization is ultimately responsible for ensuring that an enhanced raffle is conducted in accordance with all applicable state laws and rules.

(4) The commission has the authority to set fees for bona fide charitable or nonprofit organizations, call center vendors, and consultants conducting enhanced raffles authorized under this section.

(5) The commission has the authority to adopt rules governing the licensing and operation of enhanced raffles.

(6) Except as specifically authorized in this section, enhanced raffles must be held in accordance with all other requirements of this chapter, other applicable laws, and rules of the commission.

(7) For the purposes of this section:

(a) "Enhanced raffle" means a game in which tickets bearing an individual number are sold for not more than two hundred fifty dollars each and in which a grand prize and smaller prizes are awarded on the basis of drawings from the tickets by the person or persons conducting the game. An enhanced raffle may include additional related entries and drawings, such as early bird, refer a friend, and multiple ticket drawings when the bona fide charitable or nonprofit organization establishes the eligibility standards for such entries and drawings before any enhanced raffle tickets are sold. No drawing may occur by using a random number generator or similar means.

(b) "Early bird drawing" means a separate drawing for a separate prize held prior to the grand prize drawing. All tickets entered into the early bird drawing, including all early bird winning tickets, are entered into subsequent early bird drawings, and also entered into the drawing for the grand prize.

(c) "Refer a friend drawing" means a completely separate drawing, using tickets distinct from those for the enhanced raffle, for a separate prize held at the conclusion of the enhanced raffle for all enhanced raffle ticket purchasers, known as the referring friend, who refer other persons to the enhanced raffle when the other person ultimately purchases an enhanced raffle ticket. The referring friend will receive one ticket for each friend referred specifically for the refer a friend drawing. In addition, each friend referred could also become a referring friend and receive his or her own additional ticket for the refer a friend drawing.

(d) "Multiple ticket drawing" means a completely separate drawing, using tickets distinct from those for the enhanced raffle, for a separate prize held at the conclusion of the enhanced raffle for all enhanced raffle ticket purchasers who purchase a specified number of enhanced raffle tickets. For example, a multiple ticket drawing could include persons who purchase three or more enhanced raffle tickets in the same order, using the same payment information, with tickets in the same person's name. For each eligible enhanced raffle ticket purchased, the purchaser also receives a ticket for the multiple ticket drawing prize.

(e) "Western Washington" includes those counties west of the Cascade mountains, including Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, and Whatcom.

(f) "Eastern Washington" includes those counties east of the Cascade mountains that are not listed in (e) of this subsection.

(8) By December 2016, the commission must report back to the appropriate committees of the legislature on enhanced raffles. The report must include results of the raffles, revenue generated by the raffles, and identify any state or federal regulatory actions taken in relation to enhanced raffles in Washington.

The report must also make recommendations, if any, for policy changes to the enhanced raffle authority.

(9) This section expires June 30, 2017.

Passed by the Senate April 23, 2013.

Passed by the House April 12, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

## CHAPTER 311

[Senate Bill 5748]

### PUBLIC HOSPITAL DISTRICTS—BOARDS OF COMMISSIONERS— CONTRIBUTION LIMITS

AN ACT Relating to extending contribution limits to candidates for public hospital district boards of commissioners; and amending RCW 42.17A.405.

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

**Sec. 1.** RCW 42.17A.405 and 2012 c 202 s 1 are each amended to read as follows:

(1) The contribution limits in this section apply to:

(a) Candidates for legislative office;

(b) Candidates for state office other than legislative office;

(c) Candidates for county office;

(d) Candidates for special purpose district office if that district is authorized to provide freight and passenger transfer and terminal facilities and that district has over two hundred thousand registered voters;

(e) Candidates for city council office;

(f) Candidates for mayoral office;

(g) Candidates for school board office;

(h) Candidates for public hospital district board of commissioners in districts with a population over one hundred fifty thousand;

(i) Persons holding an office in (a) through ~~((g))~~ (h) of this subsection against whom recall charges have been filed or to a political committee having the expectation of making expenditures in support of the recall of a person holding the office;

~~((j))~~ (j) Caucus political committees;

~~((k))~~ (k) Bona fide political parties.

(2) No person, other than a bona fide political party or a caucus political committee, may make contributions to a candidate for a legislative office, county office, city council office, mayoral office, ~~((e))~~ school board office, or public hospital district board of commissioners that in the aggregate exceed eight hundred dollars or to a candidate for a public office in a special purpose district or a state office other than a legislative office that in the aggregate exceed one thousand six hundred dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions to candidates subject to the limits in this section made with respect to a primary may not be made after the date of the primary. However, contributions to a candidate or a candidate's authorized committee may be made with respect to a primary until thirty days after the primary, subject to the following limitations: (a) The candidate lost the



primary; (b) the candidate's authorized committee has insufficient funds to pay debts outstanding as of the date of the primary; and (c) the contributions may only be raised and spent to satisfy the outstanding debt. Contributions to candidates subject to the limits in this section made with respect to a general election may not be made after the final day of the applicable election cycle.

(3) No person, other than a bona fide political party or a caucus political committee, may make contributions to a state official, a county official, a city official, a school board member, a public hospital district commissioner, or a public official in a special purpose district against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the state official, county official, city official, school board member, public hospital district commissioner, or public official in a special purpose district during a recall campaign that in the aggregate exceed eight hundred dollars if for a legislative office, county office, school board office, public hospital district office, or city office, or one thousand six hundred dollars if for a special purpose district office or a state office other than a legislative office.

(4)(a) Notwithstanding subsection (2) of this section, no bona fide political party or caucus political committee may make contributions to a candidate during an election cycle that in the aggregate exceed (i) eighty cents multiplied by the number of eligible registered voters in the jurisdiction from which the candidate is elected if the contributor is a caucus political committee or the governing body of a state organization, or (ii) forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No candidate may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed forty cents times the number of registered voters in the jurisdiction from which the candidate is elected.

(5)(a) Notwithstanding subsection (3) of this section, no bona fide political party or caucus political committee may make contributions to a state official, county official, city official, school board member, public hospital district commissioner, or a public official in a special purpose district against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the state official, county official, city official, school board member, public hospital district commissioner, or a public official in a special purpose district during a recall campaign that in the aggregate exceed (i) eighty cents multiplied by the number of eligible registered voters in the jurisdiction entitled to recall the state official if the contributor is a caucus political committee or the governing body of a state organization, or (ii) forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No official holding an office specified in subsection (1) of this section against whom recall charges have been filed, no authorized committee of the official, and no political committee having the expectation of making expenditures in support of the recall of the official may accept contributions

from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed forty cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected.

(6) For purposes of determining contribution limits under subsections (4) and (5) of this section, the number of eligible registered voters in a jurisdiction is the number at the time of the most recent general election in the jurisdiction.

(7) Notwithstanding subsections (2) through (5) of this section, no person other than an individual, bona fide political party, or caucus political committee may make contributions reportable under this chapter to a caucus political committee that in the aggregate exceed eight hundred dollars in a calendar year or to a bona fide political party that in the aggregate exceed four thousand dollars in a calendar year. This subsection does not apply to loans made in the ordinary course of business.

(8) For the purposes of RCW 42.17A.125, 42.17A.405 through 42.17A.415, 42.17A.450 through 42.17A.495, 42.17A.500, 42.17A.560, and 42.17A.565, a contribution to the authorized political committee of a candidate or of an official specified in subsection (1) of this section against whom recall charges have been filed is considered to be a contribution to the candidate or official.

(9) A contribution received within the twelve-month period after a recall election concerning an office specified in subsection (1) of this section is considered to be a contribution during that recall campaign if the contribution is used to pay a debt or obligation incurred to influence the outcome of that recall campaign.

(10) The contributions allowed by subsection (3) of this section are in addition to those allowed by subsection (2) of this section, and the contributions allowed by subsection (5) of this section are in addition to those allowed by subsection (4) of this section.

(11) RCW 42.17A.125, 42.17A.405 through 42.17A.415, 42.17A.450 through 42.17A.495, 42.17A.500, 42.17A.560, and 42.17A.565 apply to a special election conducted to fill a vacancy in an office specified in subsection (1) of this section. However, the contributions made to a candidate or received by a candidate for a primary or special election conducted to fill such a vacancy shall not be counted toward any of the limitations that apply to the candidate or to contributions made to the candidate for any other primary or election.

(12) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a state office candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. This subsection does not apply to loans made in the ordinary course of business.

(13) Notwithstanding the other subsections of this section, no county central committee or legislative district committee may make contributions reportable under this chapter to a candidate specified in subsection (1) of this section, or an

official specified in subsection (1) of this section against whom recall charges have been filed, or political committee having the expectation of making expenditures in support of the recall of an official specified in subsection (1) of this section if the county central committee or legislative district committee is outside of the jurisdiction entitled to elect the candidate or recall the official.

(14) No person may accept contributions that exceed the contribution limitations provided in this section.

(15) The following contributions are exempt from the contribution limits of this section:

(a) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates;

(b) An expenditure by a political committee for its own internal organization or fund-raising without direct association with individual candidates; or

(c) An expenditure or contribution for independent expenditures as defined in RCW 42.17A.005 or electioneering communications as defined in RCW 42.17A.005.

Passed by the Senate April 23, 2013.

Passed by the House April 17, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

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## CHAPTER 312

[Substitute Senate Bill 5761]

### OUTDOOR ADVERTISING

AN ACT Relating to outdoor advertising sign fees, labels, and prohibitions; amending RCW 47.42.120, 47.42.080, and 47.42.130; repealing RCW 47.42.048; and prescribing penalties.

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

**Sec. 1.** RCW 47.42.120 and 2010 c 138 s 2 are each amended to read as follows:

Notwithstanding any other provisions of this chapter, no sign except a sign of type 1 or 2 or those type 3 signs that advertise activities conducted upon the properties where the signs are located, may be erected or maintained without a permit issued by the department. Application for a permit shall be made to the department on forms furnished by it. The forms shall contain a statement that the owner or lessee of the land in question has consented thereto. For type 8 signs (temporary agricultural directional signs), when the land in question is owned by the department, the consent statement must be reviewed and, if the sign does not create a safety concern, be approved within ten days of application by the department. The application shall be accompanied by a fee established by department rule to be deposited with the state treasurer to the credit of the motor vehicle fund. Permits shall be for the remainder of the calendar year in which they are issued, and accompanying fees shall not be prorated for fractions of the year. Permits must be renewed annually through a certification process

established by department rule. Advertising copy may be changed at any time without the payment of an additional fee. Assignment of permits in good standing is effective only upon receipt of written notice of assignment by the department. A permit may be revoked after hearing if the department finds that any statement made in the application or annual certification process was false or misleading, or that the sign covered is not in good general condition and in a reasonable state of repair, or is otherwise in violation of this chapter, if the false or misleading information has not been corrected and the sign has not been brought into compliance with this chapter or rules adopted under it within thirty days after written notification. Beginning July 1, 2014, the department shall establish and charge by rule an annual fee for type 4 and 5 sign permits. The fee must reasonably recover costs for outdoor advertising control program administration and enforcement and may not exceed one hundred fifty dollars. The department shall establish by rule exemptions from payment of the annual fee for type 4 and 5 signs that do not generate rental income.

**Sec. 2.** RCW 47.42.080 and 2010 c 8 s 10016 are each amended to read as follows:

(1) Any sign erected or maintained contrary to the provisions of this chapter or rules adopted hereunder that is designed to be viewed from the interstate system, the primary system, or the scenic system is a public nuisance, and the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall notify the permittee or, if there is no permittee, the owner of the property on which the sign is located, by certified mail at his or her last known address, that it constitutes a public nuisance and must comply with the chapter or be removed.

(2) If the permittee or owner, as the case may be, fails to comply with the chapter or remove any such sign within fifteen days after being notified to remove the sign he or she is guilty of a misdemeanor. In addition to the penalties imposed by law upon conviction, an order may be entered compelling removal of the sign. Each day the sign is maintained constitutes a separate offense.

(3) If the permittee or owner, as the case may be, fails to comply with this chapter or rules adopted under this chapter or fails to remove any sign erected or maintained contrary to the provisions of this chapter or rules adopted under this chapter within fifteen days after being notified to remove the sign, the department shall assess a fine of one hundred dollars per calendar day until the sign is brought into compliance or is removed. The one hundred dollar per calendar day fine is not contingent on a misdemeanor conviction. Fines collected under this subsection must be deposited with the state treasurer to the credit of the motor vehicle fund.

(4) If the permittee or the owner of the property upon which it is located, as the case may be, is not found or refuses receipt of the notice, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall post the sign and property upon which it is located with a notice that the sign constitutes a public nuisance and must be removed. If the sign is not removed within fifteen days after such posting, the department, the chief of the Washington state patrol, the county sheriff, or the chief of police of any city or town shall abate the nuisance and destroy the sign, and for that purpose may enter upon private property without incurring liability for doing so.

~~((4))~~ (5) Nothing in this section may be construed to affect the provisions contained in RCW 47.42.102 requiring the payment of compensation upon the removal of any signs compensable under state law.

~~((5))~~ (6) Any sign erected or maintained on state highway right-of-way contrary to this chapter or rules adopted under it is a public nuisance, and the department is authorized to remove any such sign without notice.

**Sec. 3.** RCW 47.42.130 and 1999 c 276 s 2 are each amended to read as follows:

Every permit issued by the department shall be assigned a separate identification number, and each permittee shall fasten to each sign a weatherproof label, not larger than ~~((sixteen))~~ twenty-eight square inches, that shall be furnished by the department and on which shall be plainly visible the permit number. The permittee shall also place his or her name in a conspicuous position on the front or back of each sign. The failure of a sign to have such a label affixed to it is prima facie evidence that it is not in compliance with the provisions of this chapter.

NEW SECTION. **Sec. 4.** RCW 47.42.048 (State and local prohibitions) and 1974 ex.s. c 80 s 3 are each repealed.

Passed by the Senate April 22, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

## CHAPTER 313

[Substitute Senate Bill 5767]

### DAIRY CATTLE—INSPECTION

AN ACT Relating to inspection of dairy cattle; amending RCW 16.57.160, 16.57.370, and 16.57.300; and repealing RCW 16.57.303.

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

**Sec. 1.** RCW 16.57.160 and 2011 c 204 s 13 are each amended to read as follows:

(1) The director may adopt rules:

(a) Designating any point for mandatory inspection of cattle or horses or the furnishing of proof that cattle or horses passing or being transported through the point have been inspected or identified and are lawfully being transported;

(b) Providing for issuance of individual horse and cattle identification certificates or other means of horse and cattle identification;

(c) Designating the documents that constitute other satisfactory proof of ownership for cattle and horses. A bill of sale may not be designated as documenting satisfactory proof of ownership for cattle; and

(d) Designating when inspection certificates, certificates of permit, or other transportation documents required by law or rule must designate a physical address of a destination. Cattle and horses must be delivered or transported directly to the physical address of that destination.

(2) A self-inspection certificate may be accepted as satisfactory proof of ownership for cattle if the director determines that the self-inspection certificate, together with other available documentation, sufficiently establishes ownership.

Self-inspection certificates completed after June 10, 2010, are not satisfactory proof of ownership for cattle.

(3)(a) Upon request by a milk producer licensed under chapter 15.36 RCW, the department must issue an official individual identification tag to be placed by the producer before the first point of sale on bull calves and free-martins (infertile female calves) under thirty days of age. The fee for each tag is the cost to the department for manufacture, purchase, and distribution of the tag plus the applicable beef commission assessment. As used in this subsection (3), "green tag" means the official individual identification issued by the department.

(b) Transactions involving unbranded dairy breed bull calves or free-martins (infertile female calves) not being moved or transported out of Washington are exempt from inspection requirements under this chapter only if:

(i) The animal is under thirty days old and has not been previously bought or sold;

(ii) The seller holds a valid milk producer's license under chapter 15.36 RCW;

(iii) The sale does not take place at or through a public livestock market or special sale authorized by chapter 16.65 RCW;

(iv) Each animal is officially identified as provided in (a) of this subsection; and

(v) A certificate of permit and a bill of sale listing each animal's green tag accompanies the animal to the buyer's location. These documents do not constitute proof of ownership under this chapter.

(c) All fees received under (a) of this subsection, except for the beef commission assessment, must be deposited in the animal disease traceability account in the agricultural local fund created in RCW 43.23.230.

**Sec. 2.** RCW 16.57.370 and 2003 c 326 s 43 are each amended to read as follows:

All fees collected under the provisions of this chapter shall be deposited in an account in the agricultural local fund and used to carry out the purposes of this chapter, except as otherwise provided.

**NEW SECTION. Sec. 3.** RCW 16.57.303 (Proceeds from sale of impounded dairy breed cattle—Paid to seller) and 2003 c 326 s 37 are each repealed.

**Sec. 4.** RCW 16.57.300 and 2003 c 326 s 36 are each amended to read as follows:

((Except under RCW 16.57.303,)) The proceeds from the sale of cattle and horses when impounded under RCW 16.57.290, after paying the cost thereof, shall be paid to the director, who shall make a record showing the brand or marks or other method of identification of the animals and the amount realized from the sale thereof. However, the proceeds from a sale of the cattle or horses at a licensed public livestock market shall be held by the licensee for a reasonable period not to exceed thirty days to permit the consignor to establish ownership or the right to sell the cattle or horses. If the consignor fails to establish legal ownership or the right to sell the cattle or horses, the proceeds shall be paid to the director to be disposed of as any other estray proceeds.

Passed by the Senate April 22, 2013.

Passed by the House April 12, 2013.

Approved by the Governor May 20, 2013.  
Filed in Office of Secretary of State May 20, 2013.

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## CHAPTER 314

[Substitute Senate Bill 5786]

### FISHING—COMMERCIAL FISHING GUIDE LICENSE APPLICATIONS

AN ACT Relating to requiring certain information in commercial fishing guide license applications; amending RCW 77.65.480 and 77.65.370; and adding a new section to chapter 77.65 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 77.65 RCW to read as follows:

(1) Any application for a food fish guide license under RCW 77.65.370 or game fish guide license under RCW 77.65.480 must include:

(a) The applicant's driver's license or other government-issued identification card number and the jurisdiction of issuance;

(b) The applicant's unified business identifier number under a master license issued under RCW 19.02.070;

(c) Proof of current certification in first aid and cardiopulmonary resuscitation;

(d) A certificate of insurance demonstrating that the applicant has commercial liability coverage of at least three hundred thousand dollars; and

(e) If applicable, an original or notarized copy of a valid license issued by the United States coast guard to the applicant that authorizes the holder to carry passengers for hire.

(2) The requirements of this section related to licensure by the United States coast guard apply only to applicants intending to carry passengers for hire with a motorized vessel on federally recognized navigable waters. The license issued by the United States coast guard must be valid in the waters where the game fish guide or food fish guide license applicant will be carrying passengers for hire in a motorized vessel.

(3) The requirements in this section are in addition to the requirements of RCW 77.65.050.

**Sec. 2.** RCW 77.65.480 and 2011 c 339 s 30 are each amended to read as follows:

(1) A taxidermy license allows the holder to practice taxidermy for commercial purposes, as that term is defined in RCW 77.15.110. The fee for this license is one hundred eighty dollars. The application fee is seventy dollars.

(2) A fur dealer's license allows the holder to purchase, receive, or resell raw furs for commercial purposes, as that term is defined in RCW 77.15.110. The fee for this license is one hundred eighty dollars. The application fee is seventy dollars.

(3) A game fish guide license allows the holder to offer or perform the services of a game fish guide in the taking of game fish. The fee for this license is one hundred eighty dollars for a resident and six hundred dollars for a nonresident. The application fee is seventy dollars. An application for a game fish guide license must include the information required in section 1 of this act.

(4) A game farm license allows the holder to operate a game farm to acquire, breed, grow, keep, and sell wildlife under conditions prescribed by the rules adopted pursuant to this title. The fee for this license is seventy-two dollars for the first year and forty-eight dollars for each following year. The application fee is seventy dollars.

(5) A game fish stocking permit allows the holder to release game fish into the waters of the state as prescribed by rule of the commission. The fee for this permit is twenty-four dollars. The application fee is seventy dollars.

(6) A fishing or field trial permit allows the holder to promote, conduct, hold, or sponsor a fishing or field trial contest in accordance with rules of the commission. The fee for a fishing contest permit is twenty-four dollars. The fee for a field trial contest permit is twenty-four dollars. The application fee is seventy dollars.

(7)(a) An anadromous game fish buyer's license allows the holder to purchase or sell steelhead trout and other anadromous game fish harvested by Indian fishers lawfully exercising fishing rights reserved by federal statute, treaty, or executive order, under conditions prescribed by rule of the director. The fee for this license is one hundred eighty dollars. The application fee is one hundred five dollars.

(b) An anadromous game fish buyer's license is not required for those businesses that buy steelhead trout and other anadromous game fish from Washington licensed game fish dealers and sell solely at retail.

**Sec. 3.** RCW 77.65.370 and 2009 c 333 s 8 are each amended to read as follows:

(1) A person shall not offer or perform the services of a food fish guide without a food fish guide license in the taking of food fish for personal use in freshwater rivers and streams, except that a charter boat license is required to operate a vessel from which a person may for a fee fish for food fish in state waters listed in RCW 77.65.150(4)(b).

(2) Only an individual at least sixteen years of age may hold a food fish guide license. No individual may hold more than one food fish guide license.

(3) An application for a food fish guide license must include the information required in section 1 of this act.

Passed by the Senate April 22, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

## CHAPTER 315

[Senate Bill 5810]

### DEPARTMENT OF CORRECTIONS—SECURITY THREAT GROUP DATABASE

AN ACT Relating to exemption of information contained in the department of corrections' security threat group database; amending RCW 42.56.240; and adding a new section to chapter 72.09 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 72.09 RCW to read as follows:



(1) The department may collect, evaluate, and analyze data and specific investigative and intelligence information concerning the existence, structure, activities, and operations of security threat groups and the participants involved therein under the jurisdiction of the department. The data compiled may aid in addressing violence reduction, illegal activities, and identification of offender separation or protection needs, and may be used to assist law enforcement agencies and prosecutors in developing evidence for purposes of criminal prosecution upon request.

(2) The following security threat group information collected and maintained by the department shall be exempt from public disclosure under chapter 42.56 RCW: (a) Information that could lead to the identification of a person's security threat group status, affiliation, or activities; (b) information that reveals specific security threats associated with the operation and activities of security threat groups; and (c) information that identifies the number of security threat group members, affiliates, or associates.

**Sec. 2.** RCW 42.56.240 and 2012 c 88 s 1 are each amended to read as follows:

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070; copies of license applications or information on the applications may be released to law enforcement or corrections agencies;

(5) Information revealing the identity of child victims of sexual assault who are under age eighteen. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator;

(6) The statewide gang database referenced in RCW 43.43.762;

(7) Data from the electronic sales tracking system established in RCW 69.43.165;

(8) Information submitted to the statewide unified sex offender notification and registration program under RCW 36.28A.040(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and e-mail address; ~~((and))~~

(9) Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs. Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business; and

(10) The following security threat group information collected and maintained by the department of corrections pursuant to section 1 of this act: (a) Information that could lead to the identification of a person's security threat group status, affiliation, or activities; (b) information that reveals specific security threats associated with the operation and activities of security threat groups; and (c) information that identifies the number of security threat group members, affiliates, or associates.

Passed by the Senate April 24, 2013.

Passed by the House April 11, 2013.

Approved by the Governor May 20, 2013.

Filed in Office of Secretary of State May 20, 2013.

## CHAPTER 316

[Engrossed Second Substitute Senate Bill 5389]

### FOSTER CARE—SIBLING CONTACT AND VISITATION

AN ACT Relating to sibling visitation or contact for children in foster care; amending RCW 13.34.136; and creating a new section.

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

**NEW SECTION. Sec. 1.** The Washington state legislature recognizes the importance of frequent and meaningful contact for siblings separated due to involvement in the foster care system. The legislature also recognizes that children and youth in foster care have not always been provided adequate opportunities for visitation with their siblings. It is the intent of the legislature to encourage appropriate facilitation of sibling visits.

**Sec. 2.** RCW 13.34.136 and 2011 c 309 s 29 are each amended to read as follows:

(1) Whenever a child is ordered removed from the home, a permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the department's or supervising agency's proposed permanency plan must be

provided to the department or supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption, including a tribal customary adoption as defined in RCW 13.38.040; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to RCW 13.34.130(~~(6)~~) (8), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the supervising agency or the department will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the department or supervising agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The department's or supervising agency's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The supervising agency or department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. The court and the department or supervising agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii)(A) The department, court, or caregiver in the out-of-home placement may not limit visitation or contact between a child and sibling as a sanction for a child's behavior or as an incentive to the child to change his or her behavior.

(B) Any exceptions, limitation, or denial of contacts or visitation must be approved by the supervisor of the department caseworker and documented. The child, parent, department, guardian ad litem, or court-appointed special advocate may challenge the denial of visits in court.

(iv) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

~~((iv))~~ (v) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department or supervising agency.

~~((iv))~~ (vi) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

~~((iv))~~ (vii) The supervising agency or department shall provide all reasonable services that are available within the department or supervising agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(~~((6))~~) (8), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The department or supervising agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for fifteen of the most recent twenty-two months, the court shall require the department or supervising agency to file a petition seeking termination of parental rights in accordance with RCW 13.34.145(3)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(~~((4))~~) (6). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and when it is in the best interests of the child adoptee and his or her siblings, contact

between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department of social and health services or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe.

Passed by the Senate April 23, 2013.

Passed by the House April 11, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

## CHAPTER 317

[Substitute House Bill 1183]

### WIRELESS COMMUNICATION STRUCTURES

AN ACT Relating to wireless communications structures; amending RCW 43.21C.0384; and creating a new section.

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

**Sec. 1.** RCW 43.21C.0384 and 1996 c 323 s 2 are each amended to read as follows:

(1) Decisions pertaining to applications to site (~~personal~~) wireless service facilities are not subject to the requirements of RCW 43.21C.030(2)(c), if those facilities meet the following requirements:

(a)(~~(i)~~) ~~The (facility to be sited is a microcell and is to be attached to an existing structure that is not a residence or school and does not contain a residence or a school))~~ collocation of new equipment, removal of equipment, or replacement of existing equipment on existing or replacement structures does not substantially change the physical dimensions of such structures; or ~~((ii) the facility includes personal wireless service antennas, other than a microcell, and is to be attached to an existing structure (that may be an existing tower) that is not a residence or school and does not contain a residence or a school, and the existing structure to which it is to be attached is located in a commercial, industrial, manufacturing, forest, or agricultural zone; or (iii))~~

(b) ~~The siting project involves constructing a ((personal)) wireless service tower less than sixty feet in height that is located in a commercial, industrial, manufacturing, forest, or agricultural zone(;~~ and

~~(b) The project is not in)). This exemption does not apply to projects within a designated ((environmentally sensitive)) critical area(;~~ and

~~(c) The project does not consist of a series of actions: (i) Some of which are not categorically exempt; or (ii) that together may have a probable significant adverse environmental impact)).~~

(2) The exemption authorized under subsection (1) of this section may only be applied to a project consisting of a series of actions when all actions in the series are categorically exempt and the actions together do not have a probable significant adverse environmental impact.

(3) The department of ecology shall adopt rules to create a categorical exemption for ((microcells and other personal)) wireless service facilities that meet the conditions set forth in subsections (1) and (2) of this section.

~~((3) For the purposes of this section:)~~

(4) By January 1, 2020, all wireless service providers granted an exemption to RCW 43.21C.030(2)(c) must provide the legislature with the number of permits issued pertaining to wireless service facilities, the number of exemptions granted under this section, and the total dollar investment in wireless service facilities between July 1, 2013, and June 30, 2019.

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

(a) "((Personal)) Wireless services" means wireless data and telecommunications services, including commercial mobile services, commercial mobile data services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(b) "((Personal)) Wireless service facilities" means facilities for the provision of ((personal)) wireless services.

(c) ("Microcell" means a wireless communication facility consisting of an antenna that is either: (i) Four feet in height and with an area of not more than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length)) "Collocation" means the mounting or installation of equipment on an existing tower, building, or structure for the purpose of either transmitting or receiving, or both, radio frequency signals for communications purposes.

(d) "Existing structure" means any existing tower, pole, building, or other structure capable of supporting wireless service facilities.

(e) "Substantially change the physical dimensions" means:

(i) The mounting of equipment on a structure that would increase the height of the structure by more than ten percent, or twenty feet, whichever is greater; or

(ii) The mounting of equipment that would involve adding an appurtenance to the body of the structure that would protrude from the edge of the structure more than twenty feet, or more than the width of the structure at the level of the appurtenance, whichever is greater.

NEW SECTION. Sec. 2. The code reviser is directed to put the defined terms in RCW 43.21C.0384(5) into alphabetical order.

Passed by the House April 26, 2013.

Passed by the Senate April 25, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

## CHAPTER 318

[Engrossed Senate Bill 5603]

### MARINE RESOURCES AND COASTAL MARINE ADVISORY COUNCILS

AN ACT Relating to establishing the Washington coastal marine advisory council and the Washington marine resources advisory council; amending RCW 43.372.070; adding new sections to chapter 43.143 RCW; creating a new section; 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 43.143 RCW to read as follows:

(1) The Washington coastal marine advisory council is established in the executive office of the governor to fulfill the duties outlined in section 2 of this act.

(2)(a) Voting members of the Washington coastal marine advisory council shall be appointed by the governor or the governor's designee. The council consists of the following voting members:

(i) The governor or the governor's designee;

(ii) The director or commissioner, or the director's or commissioner's designee, of the following agencies:

(A) The department of ecology;

(B) The department of natural resources;

(C) The department of fish and wildlife;

(D) The state parks and recreation commission;

(E) The department of commerce; and

(F) Washington sea grant;

(iii) The following members of the Washington coastal marine advisory council established by the department of ecology and as existing on January 15, 2013:

(A) One citizen from a coastal community;

(B) Two persons representing coastal commercial fishing;

(C) One representative from a coastal conservation group;

(D) One representative from a coastal economic development group;

(E) One representative from an educational institution;

(F) Two representatives from energy industries or organizations, one of which must be from the coast;

(G) One person representing coastal recreation;

(H) One person representing coastal recreational fishing;

(I) One person representing coastal shellfish aquaculture;

(J) One representative from the coastal shipping industry;

(K) One representative from a science organization;

(L) One representative from the coastal Washington sustainable salmon partnership;

(M) One representative from a coastal port; and

(N) One representative from each outer coast marine resources committee, to be selected by the marine resources committee.

(b) The Washington coastal marine advisory council shall adopt bylaws and operating procedures that may be modified from time to time by the council.

(3) The Washington coastal marine advisory council may invite state, tribal, local governments, federal agencies, scientific experts, and others with responsibility for the study and management of coastal and ocean resources or regulation of coastal and ocean activities to designate a liaison to the council to attend council meetings, respond to council requests for technical and policy information, perform collaborative research, and review any draft materials prepared by the council. The council may also invite representatives from other coastal states or Canadian provinces to participate, when appropriate, as nonvoting members.

(4) The chair of the Washington coastal marine advisory council must be nominated and elected by a majority of councilmembers. The term of the chair is one year, and the position is eligible for reelection. The agenda for each meeting must be developed as a collaborative process by councilmembers.

(5) The term of office of each member appointed by the governor is four years. Members are eligible for reappointment.

(6) The Washington coastal marine advisory council shall utilize a consensus approach to decision making. The council may put a decision to a vote among councilmembers, in the event that consensus cannot be reached. The council must include in its bylaws guidelines describing how consensus works and when a lack of consensus among councilmembers will trigger a vote.

(7) Consistent with available resources, the Washington coastal marine advisory council may hire a neutral convener to assist in the performance of the council's duties, including but not limited to the dissemination of information to all parties, facilitating selected tasks as requested by the councilmembers, and facilitation of setting meeting agendas.

(8) The department of ecology shall provide administrative and primary staff support for the Washington coastal marine advisory council.

(9) The Washington coastal marine advisory council must meet at least twice each year or as needed.

(10) A majority of the members of the Washington coastal marine advisory council constitutes a quorum for the transaction of business.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.143 RCW to read as follows:

(1) The duties of the Washington coastal marine advisory council established in section 1 of this act are to:

(a) Serve as a forum for communication concerning coastal waters issues, including issues related to: Resource management; shellfish aquaculture; marine and coastal hazards; ocean energy; open ocean aquaculture; coastal waters research; education; and other coastal marine-related issues.

(b) Serve as a point of contact for, and collaborate with, the federal government, regional entities, and other state governments regarding coastal waters issues.

(c) Provide a forum to discuss coastal waters resource policy, planning, and management issues; provide either recommendations or modifications, or both, of principles, and, when appropriate, mediate disagreements.



(d) Serve as an interagency resource to respond to issues facing coastal communities and coastal waters resources in a collaborative manner.

(e) Identify and pursue public and private funding opportunities for the programs and activities of the council and for relevant programs and activities of member entities.

(f) Provide recommendations to the governor, the legislature, and state and local agencies on specific coastal waters resource management issues, including:

(i) Annual recommendations regarding coastal marine spatial planning expenditures and projects, including uses of the marine resources stewardship trust account created in RCW 43.372.070;

(ii) Principles and standards required for emerging new coastal uses;

(iii) Data gaps and opportunities for scientific research addressing coastal waters resource management issues;

(iv) Implementation of Washington's ocean action plan 2006;

(v) Development and implementation of coast-wide goals and strategies, including marine spatial planning; and

(vi) A coastal perspective regarding cross-boundary coastal issues.

(2) In making recommendations under this section, the Washington coastal marine advisory council shall consider:

(a) The principles and policies articulated in Washington's ocean action plan; and

(b) The protection and preservation of existing sustainable uses for current and future generations, including economic stakeholders reliant on marine waters to stabilize the vitality of the coastal economy.

**Sec. 3.** RCW 43.372.070 and 2012 c 252 s 4 are each amended to read as follows:

(1) The marine resources stewardship trust account is created in the state treasury. All receipts from income derived from the investment of amounts credited to the account, any grants, gifts, or donations to the state for the purposes of marine management planning, marine spatial planning, data compilation, research, or monitoring, and any appropriations made to the account must be deposited in the account. Moneys in the account may be spent only after appropriation.

(2) Expenditures from the account may only be used for the purposes of marine management planning, marine spatial planning, research, monitoring, and implementation of the marine management plan.

(3) Until July 1, 2016, expenditures from the account may only be used for the purposes of:

(a) Conducting ecosystem assessment and mapping activities in marine waters consistent with RCW 43.372.040(6) (a) and (c), with a focus on assessment and mapping activities related to marine resource uses and developing potential economic opportunities;

(b) Developing a marine management plan for the state's coastal waters as that term is defined in RCW 43.143.020; and

(c) Coordination under the west coast governors' agreement on ocean health, entered into on September 18, 2006, and other regional planning efforts consistent with RCW 43.372.030.

(4) Expenditures from the account on projects and activities relating to the state's coastal waters, as defined in RCW 43.143.020, must be made, to the

maximum extent possible, consistent with the recommendations of the Washington coastal marine advisory council as provided in section 2 of this act. If expenditures relating to coastal waters are made in a manner that differs substantially from the Washington coastal marine advisory council's recommendations, the responsible agency receiving the appropriation shall provide the council and appropriate committees of the legislature with a written explanation.

**NEW SECTION. Sec. 4.** (1) The Washington marine resources advisory council is created within the office of the governor.

(2) The Washington marine resources advisory council is composed of:

(a) The governor, or the governor's designee, who shall serve as the chair of the council;

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

(c) Two members of the senate, appointed by the president of the senate, one from each of the two largest caucuses in the senate;

(d) Two members of the house of representatives, appointed by the speaker of the house of representatives, one from each of the two largest caucuses in the house of representatives;

(e) One representative of federally recognized Indian tribes with reservations lying within or partially within counties bordering the outer coast, if selected by action of all of the governing bodies of all federally recognized Indian tribes in such an area;

(f) One representative of federally recognized Indian tribes with reservations lying within or partially within counties bordering Puget Sound, if selected by action of all of the governing bodies of all federally recognized Indian tribes in such an area;

(g) One representative of each of the following sectors, appointed by the governor:

(i) Commercial fishing;

(ii) Recreational fishing;

(iii) Marine recreation and tourism, other than fishing;

(iv) Coastal shellfish growers;

(v) Puget Sound shellfish growers;

(vi) Marine businesses; and

(vii) Conservation organizations;

(h) The chair of the Washington state conservation commission, or the chair's designee;

(i) One representative appointed by the largest statewide general agricultural association;

(j) One representative appointed by the largest statewide business association;

(k) The chair of the Washington coastal marine advisory council;

(l) The chair of the leadership council of the Puget Sound partnership;

(m) The director of the department of ecology;

(n) The director of the department of fish and wildlife; and

(o) The chair of the Northwest Straits commission.

(3) The governor shall invite the participation of the following entities as nonvoting members:

(a) The national oceanic and atmospheric administration; and

(b) Academic institutions conducting scientific research on ocean acidification.

(4) The governor shall make the appointments of the members under subsection (2)(g) of this section by September 1, 2013.

(5) Any member appointed by the governor may be removed by the governor for cause.

(6) A majority of the voting members of the Washington marine resources advisory council constitute a quorum for the transaction of business.

(7) The chair of the Washington marine resources advisory council shall schedule meetings and establish the agenda. The first meeting of the council must be scheduled by November 1, 2013. The council shall meet at least twice per calendar year. At each meeting the council shall afford an opportunity to the public to comment upon agenda items and other matters relating to the protection and conservation of the state's ocean resources.

(8) The Washington marine resources advisory council shall have the following powers and duties:

(a) To maintain a sustainable coordinated focus, including the involvement of and the collaboration among all levels of government and nongovernmental entities, the private sector, and citizens by increasing the state's ability to work to address impacts of ocean acidification;

(b) To advise and work with the University of Washington and others to conduct ongoing technical analysis on the effects and sources of ocean acidification. The recommendations must identify a range of actions necessary to implement the recommendations and take into consideration the differences between in-state impacts and sources and out-of-state impacts and sources;

(c) To deliver recommendations to the governor and appropriate committees in the Washington state senate and house of representatives that must include, as necessary, any minority reports requested by a councilmember;

(d) To seek public and private funding resources necessary, and the commitment of other resources, for ongoing technical analysis to support the council's recommendations; and

(e) To assist in conducting public education activities regarding the impacts of and contributions to ocean acidification and regarding implementation strategies to support the actions adopted by the legislature.

(9) This section expires June 30, 2017.

Passed by the Senate March 13, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

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**CHAPTER 319**

[House Bill 1471]

**HOSPITALS—INFECTIONS REPORTING—FEDERAL REQUIREMENTS**

AN ACT Relating to updating and aligning with federal requirements hospital health care-associated infection rate reporting; amending RCW 43.70.056 and 43.70.056; providing an effective date; and providing an expiration date.

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

**Sec. 1.** RCW 43.70.056 and 2010 c 113 s 1 are each amended to read as follows:

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

(a) "Health care-associated infection" means a localized or systemic condition that results from adverse reaction to the presence of an infectious agent or its toxins and that was not present or incubating at the time of admission to the hospital.

(b) "Hospital" means a health care facility licensed under chapter 70.41 RCW.

(2)(a) A hospital shall collect data related to health care-associated infections as required under this subsection (2) on the following:

(i) ~~((Beginning July 1, 2008,))~~ Central line-associated bloodstream infection in ~~(the intensive care unit)~~ all hospital inpatient areas where patients normally reside at least twenty-four hours;

(ii) ~~((Beginning January 1, 2009, ventilator-associated pneumonia; and (iii) Beginning January 1, 2010,))~~ Surgical site infection for the following procedures:

(A) Deep sternal wound for cardiac surgery, including coronary artery bypass graft;

(B) Total hip and knee replacement surgery; and

(C) ~~((Hysterectomy, abdominal and vaginal.~~

~~(b)(i) Except as required under (b)(ii) and (c) of this subsection,))~~ Colon and abdominal hysterectomy procedures.

(b) The department shall, by rule, delete, add, or modify categories of reporting when the department determines that doing so is necessary to align state reporting with the reporting categories of the centers for medicare and medicaid services. The department shall begin rule making forty-five calendar days, or as soon as practicable, after the centers for medicare and medicaid services adopts changes to reporting requirements.

(c) ~~A~~ hospital must routinely collect and submit the data required to be collected under (a) and (b) of this subsection to the national healthcare safety network of the United States centers for disease control and prevention in accordance with national healthcare safety network definitions, methods, requirements, and procedures.

~~((ii) Until the national health care safety network releases a revised module that successfully interfaces with a majority of computer systems of Washington hospitals required to report data under (a)(iii) of this subsection or three years, whichever occurs sooner, a hospital shall monthly submit the data required to be collected under (a)(iii) of this subsection to the Washington state hospital association's quality benchmarking system instead of the national health care safety network. The department shall not include data reported to the quality benchmarking system in reports published under subsection (3)(d) of this section. The data the hospital submits to the quality benchmarking system under (b)(ii) of this subsection:~~

~~(A) Must include the number of infections and the total number of surgeries performed for each type of surgery; and~~

~~(B) Must be the basis for a report developed by the Washington state hospital association and published on its web site that compares the health care-~~

associated infection rates for surgical site infections at individual hospitals in the state using the data reported in the previous calendar year pursuant to this subsection. The report must be published on December 1, 2010, and every year thereafter until data is again reported to the national health care safety network.

~~(c)(i) With respect to any of the health care associated infection measures for which reporting is required under (a) of this subsection, the department must, by rule, require hospitals to collect and submit the data to the centers for medicare and medicaid services according to the definitions, methods, requirements, and procedures of the hospital compare program, or its successor, instead of to the national healthcare safety network, if the department determines that:~~

~~(A) The measure is available for reporting under the hospital compare program, or its successor, under substantially the same definition; and~~

~~(B) Reporting under this subsection (2)(c) will provide substantially the same information to the public.~~

~~(ii) If the department determines that reporting of a measure must be conducted under this subsection (2)(c), the department must adopt rules to implement such reporting. The department's rules must require reporting to the centers for medicare and medicaid services as soon as practicable, but not more than one hundred twenty days, after the centers for medicare and medicaid services allow hospitals to report the respective measure to the hospital compare program, or its successor. However, if the centers for medicare and medicaid services allow infection rates to be reported using the centers for disease control and prevention's national healthcare safety network, the department's rules must require reporting that reduces the burden of data reporting and minimizes changes that hospitals must make to accommodate requirements for reporting.)~~

~~If the centers for medicare and medicaid services changes reporting from the national healthcare safety network to another database or through another process, the department shall review the new reporting database or process and consider whether it aligns with the purposes of this section.~~

~~(d) Data collection and submission required under this subsection (2) must be overseen by a qualified individual with the appropriate level of skill and knowledge to oversee data collection and submission.~~

~~(e)(i) A hospital must release to the department, or grant the department access to, its hospital-specific information contained in the reports submitted under this subsection (2), as requested by the department consistent with RCW 70.02.050.~~

~~(ii) The hospital reports obtained by the department under this subsection (2), and any of the information contained in them, are not subject to discovery by subpoena or admissible as evidence in a civil proceeding, and are not subject to public disclosure as provided in RCW 42.56.360.~~

~~(3) The department shall:~~

~~(a) Provide oversight of the health care-associated infection reporting program established in this section;~~

~~(b) By ~~((January 1, 2011))~~ November 1, 2013, and biennially thereafter, submit a report to the appropriate committees of the legislature ~~((based on the recommendations of the advisory committee established in subsection (5) of this section for additional reporting requirements related to health care-associated infections, considering the methodologies and practices of the United States~~~~

~~centers for disease control and prevention, the centers for medicare and medicaid services, the joint commission, the national quality forum, the institute for healthcare improvement, and other relevant organizations)) that contains: (i) Categories of reporting currently required of hospitals under subsection (2)(a) of this section; (ii) categories of reporting the department plans to add, delete, or modify by rule; and (iii) a description of the evaluation process used under (d) of this subsection;~~

(c) ~~((Delete, by rule, the reporting of categories that the department determines are no longer necessary to protect public health and safety;~~

~~(d))~~ By December 1, 2009, and by each December 1st thereafter, prepare and publish a report on the department's web site that compares the health care-associated infection rates at individual hospitals in the state using the data reported in the previous calendar year pursuant to subsection (2) of this section. The department may update the reports quarterly. In developing a methodology for the report and determining its contents, the department shall consider the recommendations of the advisory committee established in subsection (5) of this section. The report is subject to the following:

(i) The report must disclose data in a format that does not release health information about any individual patient; and

(ii) The report must not include data if the department determines that a data set is too small or possesses other characteristics that make it otherwise unrepresentative of a hospital's particular ability to achieve a specific outcome; ~~(and~~

~~(e))~~ ~~(d)~~ Evaluate, on a regular basis, the quality and accuracy of health care-associated infection reporting required under subsection (2) of this section and the data collection, analysis, and reporting methodologies; and

(e) Provide assistance to hospitals with the reporting requirements of this chapter including definitions of required reporting elements.

(4) The department may respond to requests for data and other information from the data required to be reported under subsection (2) of this section, at the requestor's expense, for special studies and analysis consistent with requirements for confidentiality of patient records.

(5)(a) The department shall establish an advisory committee which may include members representing infection control professionals and epidemiologists, licensed health care providers, nursing staff, organizations that represent health care providers and facilities, health maintenance organizations, health care payers and consumers, and the department. The advisory committee shall make recommendations to assist the department in carrying out its responsibilities under this section, including making recommendations on allowing a hospital to review and verify data to be released in the report and on excluding from the report selected data from certified critical access hospitals. ~~((Annually, beginning January 1, 2011, the advisory committee shall also make a recommendation to the department as to whether current science supports expanding presurgical screening for methicillin resistant staphylococcus aureus prior to open chest cardiac, total hip, and total knee elective surgeries.))~~

(b) In developing its recommendations, the advisory committee shall consider methodologies and practices related to health care-associated infections of the United States centers for disease control and prevention, the centers for medicare and medicaid services, the joint commission, the national quality

forum, the institute for healthcare improvement, and other relevant organizations.

(6) The department shall adopt rules as necessary to carry out its responsibilities under this section.

**Sec. 2.** RCW 43.70.056 and 2013 c ... s 1 (section 1 of this act) are each amended to read as follows:

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

(a) "Health care-associated infection" means a localized or systemic condition that results from adverse reaction to the presence of an infectious agent or its toxins and that was not present or incubating at the time of admission to the hospital.

(b) "Hospital" means a health care facility licensed under chapter 70.41 RCW.

(2)(a) A hospital shall collect data related to health care-associated infections as required under this subsection (2) on the following:

(i) Central line-associated bloodstream infection in all hospital inpatient areas where patients normally reside at least twenty-four hours;

(ii) Surgical site infection for ~~((the following procedures:~~

~~(A) Deep sternal wound for cardiac surgery, including coronary artery bypass graft;~~

~~(B) Total hip and knee replacement surgery; and~~

~~(C)) colon and abdominal hysterectomy procedures.~~

(b) The department shall, by rule, delete, add, or modify categories of reporting when the department determines that doing so is necessary to align state reporting with the reporting categories of the centers for medicare and medicaid services. The department shall begin rule making forty-five calendar days, or as soon as practicable, after the centers for medicare and medicaid services adopts changes to reporting requirements.

(c) A hospital must routinely collect and submit the data required to be collected under (a) and (b) of this subsection to the national healthcare safety network of the United States centers for disease control and prevention in accordance with national healthcare safety network definitions, methods, requirements, and procedures.

If the centers for medicare and medicaid services changes reporting from the national healthcare safety network to another database or through another process, the department shall review the new reporting database or process and consider whether it aligns with the purposes of this section.

(d) Data collection and submission required under this subsection (2) must be overseen by a qualified individual with the appropriate level of skill and knowledge to oversee data collection and submission.

(e)(i) A hospital must release to the department, or grant the department access to, its hospital-specific information contained in the reports submitted under this subsection (2), as requested by the department consistent with RCW 70.02.050.

(ii) The hospital reports obtained by the department under this subsection (2), and any of the information contained in them, are not subject to discovery by subpoena or admissible as evidence in a civil proceeding, and are not subject to public disclosure as provided in RCW 42.56.360.

(3) The department shall:

(a) Provide oversight of the health care-associated infection reporting program established in this section;

(b) By November 1, 2013, and biennially thereafter, submit a report to the appropriate committees of the legislature that contains: (i) Categories of reporting currently required of hospitals under subsection (2)(a) of this section; (ii) categories of reporting the department plans to add, delete, or modify by rule; and (iii) a description of the evaluation process used under (d) of this subsection;

(c) By December 1, 2009, and by each December 1st thereafter, prepare and publish a report on the department's web site that compares the health care-associated infection rates at individual hospitals in the state using the data reported in the previous calendar year pursuant to subsection (2) of this section. The department may update the reports quarterly. In developing a methodology for the report and determining its contents, the department shall consider the recommendations of the advisory committee established in subsection (5) of this section. The report is subject to the following:

(i) The report must disclose data in a format that does not release health information about any individual patient; and

(ii) The report must not include data if the department determines that a data set is too small or possesses other characteristics that make it otherwise unrepresentative of a hospital's particular ability to achieve a specific outcome;

(d) Evaluate, on a regular basis, the quality and accuracy of health care-associated infection reporting required under subsection (2) of this section and the data collection, analysis, and reporting methodologies; and

(e) Provide assistance to hospitals with the reporting requirements of this chapter including definitions of required reporting elements.

(4) The department may respond to requests for data and other information from the data required to be reported under subsection (2) of this section, at the requestor's expense, for special studies and analysis consistent with requirements for confidentiality of patient records.

(5)(a) The department shall establish an advisory committee which may include members representing infection control professionals and epidemiologists, licensed health care providers, nursing staff, organizations that represent health care providers and facilities, health maintenance organizations, health care payers and consumers, and the department. The advisory committee shall make recommendations to assist the department in carrying out its responsibilities under this section, including making recommendations on allowing a hospital to review and verify data to be released in the report and on excluding from the report selected data from certified critical access hospitals.

(b) In developing its recommendations, the advisory committee shall consider methodologies and practices related to health care-associated infections of the United States centers for disease control and prevention, the centers for medicare and medicaid services, the joint commission, the national quality forum, the institute for healthcare improvement, and other relevant organizations.

(6) The department shall adopt rules as necessary to carry out its responsibilities under this section.

***\*NEW SECTION. Sec. 3. Section 1 of this act expires July 1, 2017.***



\*Sec. 3 was vetoed. See message at end of chapter.

NEW SECTION. **Sec. 4.** Section 2 of this act takes effect July 1, 2017.

Passed by the House April 26, 2013.

Passed by the Senate April 24, 2013.

Approved by the Governor May 21, 2013, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 21, 2013.

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

"I am returning herewith, without my approval as to Section 3, House Bill 1471 entitled:

"AN ACT Relating to updating and aligning with federal requirements hospital health care-associated infection rate reporting."

This bill requires the Department of Health to update hospital reporting requirements for health care-associated infections to align with nationally recommended measures. These measures add value to the public and advance patient safety. The bill also gives the Department important rule-making authority to stay consistent with federal requirements.

However, I am vetoing Section 3 of the bill because Section 3 would make Section 1 expire in 2017. Section 1 makes needed substantive changes that I do not believe should expire, nor was that the intent of the legislature.

For these reasons I have vetoed Section 3 of House Bill 1471. With the exception of Section 3, House Bill 1471 is approved."

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**CHAPTER 320**

[Engrossed Substitute House Bill 1519]

SERVICE COORDINATION ORGANIZATIONS—ACCOUNTABILITY MEASURES

AN ACT Relating to establishing accountability measures for service coordination organizations; amending RCW 70.96A.320, 71.24.330, and 74.39A.090; adding a new section to chapter 74.09 RCW; and adding a new chapter to Title 70 RCW.

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

NEW SECTION. **Sec. 1.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authority" means the health care authority.

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

(3) "Emerging best practice" or "promising practice" means a program or practice that, based on statistical analyses or a well-established theory of change, shows potential for meeting the evidence-based or research-based criteria, which may include the use of a program that is evidence-based for outcomes other than those listed in this section.

(4) "Evidence-based" means a program or practice that has been tested in heterogeneous or intended populations with multiple randomized, or statistically controlled evaluations, or both; or one large multiple site randomized, or statistically controlled evaluation, or both, where the weight of the evidence from a systemic review demonstrates sustained improvements in at least one outcome. "Evidence-based" also means a program or practice that can be implemented with a set of procedures to allow successful replication in Washington and, when possible, is determined to be cost-beneficial.

(5) "Research-based" means a program or practice that has been tested with a single randomized, or statistically controlled evaluation, or both, demonstrating sustained desirable outcomes; or where the weight of the evidence from a systemic review supports sustained outcomes as described in this subsection but does not meet the full criteria for evidence-based.

(6) "Service coordination organization" or "service contracting entity" means the authority and department, or an entity that may contract with the state to provide, directly or through subcontracts, a comprehensive delivery system of medical, behavioral, long-term care, or social support services, including entities such as regional support networks as defined in RCW 71.24.025, managed care organizations that provide medical services to clients under chapter 74.09 RCW, counties providing chemical dependency services under chapters 74.50 and 70.96A RCW, and area agencies on aging providing case management services under chapter 74.39A RCW.

**NEW SECTION. Sec. 2.** (1) The authority and the department shall base contract performance measures developed under section 3 of this act on the following outcomes when contracting with service contracting entities: Improvements in client health status and wellness; increases in client participation in meaningful activities; reductions in client involvement with criminal justice systems; reductions in avoidable costs in hospitals, emergency rooms, crisis services, and jails and prisons; increases in stable housing in the community; improvements in client satisfaction with quality of life; and reductions in population-level health disparities.

(2) The performance measures must demonstrate the manner in which the following principles are achieved within each of the outcomes under subsection (1) of this section:

(a) Maximization of the use of evidence-based practices will be given priority over the use of research-based and promising practices, and research-based practices will be given priority over the use of promising practices. The agencies will develop strategies to identify programs that are effective with ethnically diverse clients and to consult with tribal governments, experts within ethnically diverse communities and community organizations that serve diverse communities;

(b) The maximization of the client's independence, recovery, and employment;

(c) The maximization of the client's participation in treatment decisions; and

(d) The collaboration between consumer-based support programs in providing services to the client.

(3) In developing performance measures under section 3 of this act, the authority and the department shall consider expected outcomes relevant to the general populations that each agency serves. The authority and the department may adapt the outcomes to account for the unique needs and characteristics of discrete subcategories of populations receiving services, including ethnically diverse communities.

(4) The authority and the department shall coordinate the establishment of the expected outcomes and the performance measures between each agency as well as each program to identify expected outcomes and performance measures that are common to the clients enrolled in multiple programs and to eliminate conflicting standards among the agencies and programs.

(5) The authority and the department shall establish timelines and mechanisms for service contracting entities to report data related to performance measures and outcomes, including phased implementation of public reporting of outcome and performance measures in a form that allows for comparison of performance measures and levels of improvement between geographic regions of Washington.

**NEW SECTION. Sec. 3.** By September 1, 2014:

(1) The authority shall adopt performance measures to determine whether service contracting entities are achieving the outcomes described in section 2 of this act for clients enrolled in medical managed care programs operated according to Title XIX or XXI of the federal social security act.

(2) The department shall adopt performance measures to determine whether service contracting entities are achieving the outcomes described in section 2 of this act for clients receiving mental health, long-term care, or chemical dependency services.

**NEW SECTION. Sec. 4.** By July 1, 2015, the authority and the department shall require that contracts with service coordination organizations include provisions requiring the adoption of the outcomes and performance measures developed under this chapter and mechanisms for reporting data to support each of the outcomes and performance measures.

**NEW SECTION. Sec. 5.** (1) By December 1, 2014, the department and the authority shall report jointly to the legislature on the expected outcomes and the performance measures. The report must identify the performance measures and the expected outcomes established for each program, the relationship between the performance measures and expected improvements in client outcomes, mechanisms for reporting outcomes and measuring performance, and options for applying the performance measures and expected outcomes development process to other health and social service programs.

(2) By December 1, 2016, the department and the authority shall report to the legislature on the incorporation of the performance measures into contracts with service coordination organizations and progress toward achieving the identified outcomes.

**NEW SECTION. Sec. 6.** The outcomes and performance measures established pursuant to this chapter do not establish a standard of care in any civil action brought by a recipient of services. The failure of a service coordination organization to meet the outcomes and performance measures established pursuant to this chapter does not create civil liability on the part of the service coordination organization in a claim brought by a recipient of services.

**NEW SECTION. Sec. 7.** A new section is added to chapter 74.09 RCW to read as follows:

The authority shall incorporate the expected outcomes and criteria to measure the performance of service coordination organizations as provided in chapter 70.— RCW (the new chapter created in section 11 of this act) into contracts with managed care organizations that provide services to clients under this chapter.

**Sec. 8.** RCW 70.96A.320 and 1990 c 151 s 9 are each amended to read as follows:

(1) A county legislative authority, or two or more counties acting jointly, may establish an alcoholism and other drug addiction program. If two or more counties jointly establish the program, they shall designate one county to provide administrative and financial services.

(2) To be eligible for funds from the department for the support of the county alcoholism and other drug addiction program, the county legislative authority shall establish a county alcoholism and other drug addiction board under RCW 70.96A.300 and appoint a county alcoholism and other drug addiction program coordinator under RCW 70.96A.310.

(3) The county legislative authority may apply to the department for financial support for the county program of alcoholism and other drug addiction. To receive financial support, the county legislative authority shall submit a plan that meets the following conditions:

(a) It shall describe the services and activities to be provided;

(b) It shall include anticipated expenditures and revenues;

(c) It shall be prepared by the county alcoholism and other drug addiction program board and be adopted by the county legislative authority;

(d) It shall reflect maximum effective use of existing services and programs; and

(e) It shall meet other conditions that the secretary may require.

(4) The county may accept and spend gifts, grants, and fees, from public and private sources, to implement its program of alcoholism and other drug addiction.

(5) The department shall require that any agreement to provide financial support to a county that performs the activities of a service coordination organization for alcoholism and other drug addiction services must incorporate the expected outcomes and criteria to measure the performance of service coordination organizations as provided in chapter 70.— RCW (the new chapter created in section 11 of this act).

~~(6)~~ (6) The county may subcontract for detoxification, residential treatment, or outpatient treatment with treatment programs that are approved treatment programs. The county may subcontract for other services with individuals or organizations approved by the department.

~~((6))~~ (7) To continue to be eligible for financial support from the department for the county alcoholism and other drug addiction program, an increase in state financial support shall not be used to supplant local funds from a source that was used to support the county alcoholism and other drug addiction program before the effective date of the increase.

**Sec. 9.** RCW 71.24.330 and 2008 c 261 s 6 are each amended to read as follows:

(1)(a) Contracts between a regional support network and the department shall include mechanisms for monitoring performance under the contract and remedies for failure to substantially comply with the requirements of the contract including, but not limited to, financial penalties, termination of the contract, and reprocurement of the contract.

(b) The department shall incorporate the criteria to measure the performance of service coordination organizations into contracts with regional support

networks as provided in chapter 70.— RCW (the new chapter created in section 11 of this act).

(2) The regional support network procurement processes shall encourage the preservation of infrastructure previously purchased by the community mental health service delivery system, the maintenance of linkages between other services and delivery systems, and maximization of the use of available funds for services versus profits. However, a regional support network selected through the procurement process is not required to contract for services with any county-owned or operated facility. The regional support network procurement process shall provide that public funds appropriated by the legislature shall not be used to promote or deter, encourage, or discourage employees from exercising their rights under Title 29, chapter 7, subchapter II, United States Code or chapter 41.56 RCW.

(3) In addition to the requirements of RCW 71.24.035, contracts shall:

(a) Define administrative costs and ensure that the regional support network does not exceed an administrative cost of ten percent of available funds;

(b) Require effective collaboration with law enforcement, criminal justice agencies, and the chemical dependency treatment system;

(c) Require substantial implementation of department adopted integrated screening and assessment process and matrix of best practices;

(d) Maintain the decision-making independence of designated mental health professionals;

(e) Except at the discretion of the secretary or as specified in the biennial budget, require regional support networks to pay the state for the costs associated with individuals who are being served on the grounds of the state hospitals and who are not receiving long-term inpatient care as defined in RCW 71.24.025;

(f) Include a negotiated alternative dispute resolution clause; and

(g) Include a provision requiring either party to provide one hundred eighty days' notice of any issue that may cause either party to voluntarily terminate, refuse to renew, or refuse to sign a mandatory amendment to the contract to act as a regional support network. If either party decides to voluntarily terminate, refuse to renew, or refuse to sign a mandatory amendment to the contract to serve as a regional support network they shall provide ninety days' advance notice in writing to the other party.

**Sec. 10.** RCW 74.39A.090 and 2004 c 141 s 3 are each amended to read as follows:

(1) The legislature intends that any staff reassigned by the department as a result of shifting of the reauthorization responsibilities by contract outlined in this section shall be dedicated for discharge planning and assisting with discharge planning and information on existing discharge planning cases. Discharge planning, as directed in this section, is intended for residents and patients identified for discharge to long-term care pursuant to RCW 70.41.320, 74.39A.040, and 74.42.058. The purpose of discharge planning is to protect residents and patients from the financial incentives inherent in keeping residents or patients in a more expensive higher level of care and shall focus on care options that are in the best interest of the patient or resident.

(2) The department shall contract with area agencies on aging:

(a) To provide case management services to consumers receiving home and community services in their own home; and

(b) To reassess and reauthorize home and community services in home or in other settings for consumers consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive home and community services; and

(ii) Who, at the time of reassessment and reauthorization, are receiving home and community services in their own home.

(3) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

(4)(a) The department shall include, in its oversight and monitoring of area agency on aging performance, assessment of case management roles undertaken by area agencies on aging in this section. The scope of oversight and monitoring includes, but is not limited to, assessing the degree and quality of the case management performed by area agency on aging staff for elderly and ~~((disabled))~~ persons with disabilities in the community.

(b) The department shall incorporate the expected outcomes and criteria to measure the performance of service coordination organizations into contracts with area agencies on aging as provided in chapter 70.— RCW (the new chapter created in section 11 of this act).

(5) Area agencies on aging shall assess the quality of the in-home care services provided to consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider or home care agency. Quality indicators may include, but are not limited to, home care consumers satisfaction surveys, how quickly home care consumers are linked with home care workers, and whether the plan of care under RCW 74.39A.095 has been honored by the agency or the individual provider.

(6) The department shall develop model language for the plan of care established in RCW 74.39A.095. The plan of care shall be in clear language, and written at a reading level that will ensure the ability of consumers to understand the rights and responsibilities expressed in the plan of care.

**NEW SECTION. Sec. 11.** Sections 1 through 6 of this act constitute a new chapter in Title 70 RCW.

Passed by the House April 22, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

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## CHAPTER 321

[Substitute House Bill 1525]

### BIRTH CERTIFICATES—BIRTH INFORMATION

AN ACT Relating to birth certificates and other birth-related information; and amending RCW 26.33.345.

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

**Sec. 1.** RCW 26.33.345 and 1993 c 81 s 3 are each amended to read as follows:

(1) The department of social and health services, adoption agencies, and independent adoption facilitators shall release the name and location of the court where a relinquishment of parental rights or finalization of an adoption took place to an adult adoptee, a birth parent of an adult adoptee, an adoptive parent, a birth or adoptive grandparent of an adult adoptee, or an adult sibling of an adult adoptee, or the legal guardian of any of these.

(2) The department of health shall make available a noncertified copy of the original birth certificate of a child to the child's birth parents upon request.

(3)(a) For adoptions finalized after October 1, 1993, the department of health shall ~~((make available))~~ provide a noncertified copy of the original birth certificate to ~~((the adoptee after the adoptee's eighteenth birthday unless the birth parent has filed an affidavit of nondisclosure))~~ an adoptee eighteen years of age or older upon request, unless the birth parent has filed an affidavit of nondisclosure before the effective date of this section or a contact preference form that indicates he or she does not want the original birth certificate released: PROVIDED, That the affidavit of nondisclosure, the contact preference form, or both have not expired.

(b) For adoptions finalized on or before October 1, 1993, the department of health may not provide a noncertified copy of the original birth certificate to the adoptee until after June 30, 2014. After June 30, 2014, the department of health shall provide a noncertified copy of the original birth certificate to an adoptee eighteen years of age or older upon request, unless the birth parent has filed a contact preference form that indicates he or she does not want the original birth certificate released: PROVIDED, That the contact preference form has not expired.

(c) An affidavit of nondisclosure expires upon the death of the birth parent.

(4)(a) Regardless of whether a birth parent has filed an affidavit of nondisclosure or when the adoption was finalized, a birth parent may at any time complete a contact preference form stating his or her preference about personal contact with the adoptee, which, if available, must accompany an original birth certificate provided to an adoptee under subsection (3) of this section.

(b) The contact preference form must include the following options:

(i) I would like to be contacted. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate;

(ii) I would like to be contacted only through a confidential intermediary as described in RCW 26.33.343. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate;

(iii) I prefer not to be contacted and have completed the birth parent updated medical history form. I give the department of health consent to provide the adoptee with a noncertified copy of his or her original birth certificate; and

(iv) I prefer not to be contacted and have completed the birth parent updated medical history form. I do not want a noncertified copy of the original birth certificate released to the adoptee.

(c) If the birth parent indicates he or she prefers not to be contacted, personally identifying information on the contact preference form must be kept confidential and may not be released.

(d) Nothing in this section precludes a birth parent from subsequently filing another contact preference form to rescind the previous contact preference form and state a different preference.

(e) A contact preference form expires upon the death of the birth parent.

(5) If a birth parent files a contact preference form, the birth parent must also file an updated medical history form with the department of health. Upon request of the adoptee, the department of health must provide the adoptee with the updated medical history form filed by the adoptee's birth parent.

(6) Both a completed contact preference form and birth parent updated medical history form are confidential and must be placed in the adoptee's sealed file.

(7) If a birth parent files a contact preference form within six months after the first time an adoptee requests a copy of his or her original birth certificate as provided in subsection (3) of this section, the department of health must forward the contact preference form and the birth parent updated medical history form to the address of the adoptee.

(8) The department of health may charge a fee not to exceed twenty dollars for providing a noncertified copy of a birth certificate to an adoptee.

(9) The department of health must create the contact preference form and an updated medical history form. The contact preference form must provide a method to ensure personally identifying information can be kept confidential. The updated medical history form may not require the birth parent to disclose any identifying information about the birth parent.

(10) If the department of health does not provide an adoptee with a noncertified copy of the original birth certificate because a valid affidavit of nondisclosure or contact preference form has been filed, the adoptee may request, no more than once per year, that the department of health attempt to determine if the birth parent is deceased. Upon request of the adoptee, the department of health must make a reasonable effort to search public records that are accessible and already available to the department of health to determine if the birth parent is deceased. The department of health may charge the adoptee a reasonable fee to cover the cost of conducting a search.

Passed by the House April 22, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

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## CHAPTER 322

[Engrossed Substitute House Bill 1552]

### CRIMES—METAL THEFT—SCRAP METAL LICENSES

AN ACT Relating to the reduction of metal theft; amending RCW 9A.48.100, 9A.56.030, 9A.56.040, 19.290.010, 19.290.020, 19.290.030, 19.290.040, 19.290.050, 19.290.060, 19.290.070, 19.290.090, 18.235.020, and 43.24.150; reenacting and amending RCW 9.94A.515; adding new sections to chapter 19.290 RCW; adding a new section to chapter 36.28A RCW; adding new sections to chapter 43.43 RCW; creating new sections; prescribing penalties; and providing an effective date.



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

**Sec. 1.** RCW 9A.48.100 and 1984 c 273 s 4 are each amended to read as follows:

For the purposes of RCW 9A.48.070 through 9A.48.090 inclusive:

(1) "Physical damage", in addition to its ordinary meaning, shall include the total or partial alteration, damage, obliteration, or erasure of records, information, data, computer programs, or their computer representations, which are recorded for use in computers or the impairment, interruption, or interference with the use of such records, information, data, or computer programs, or the impairment, interruption, or interference with the use of any computer or services provided by computers. "Physical damage" also includes any diminution in the value of any property as the consequence of an act and the cost to repair any physical damage;

(2) If more than one item of property is physically damaged as a result of a common scheme or plan by a person and the physical damage to the property would, when considered separately, constitute mischief in the third degree because of value, then the value of the damages may be aggregated in one count. If the sum of the value of all the physical damages exceeds two hundred fifty dollars, the defendant may be charged with and convicted of malicious mischief in the second degree.

**Sec. 2.** RCW 9A.56.030 and 2012 c 233 s 2 are each amended to read as follows:

(1) A person is guilty of theft in the first degree if he or she commits theft of:

(a) Property or services which exceed(s) five thousand dollars in value other than a firearm as defined in RCW 9.41.010;

(b) Property of any value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, taken from the person of another;

(c) A search and rescue dog, as defined in RCW 9.91.175, while the search and rescue dog is on duty; or

(d) Commercial metal ((wire, taken from a public service company, as defined in RCW 80.04.010, or a consumer-owned utility, as defined in RCW 19.280.020,)) property, nonferrous metal property, or private metal property, as those terms are defined in RCW 19.290.010, and the costs of the damage to the ((public service company's or consumer-owned utility's)) owner's property exceed five thousand dollars in value.

(2) Theft in the first degree is a class B felony.

**Sec. 3.** RCW 9A.56.040 and 2012 c 233 s 3 are each amended to read as follows:

(1) A person is guilty of theft in the second degree if he or she commits theft of:

(a) Property or services which exceed(s) seven hundred fifty dollars in value but does not exceed five thousand dollars in value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle;

(b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant;

(c) Commercial metal ((wire, taken from a public service company, as defined in RCW 80.04.010, or a consumer-owned utility, as defined in RCW

~~19.280.020;~~) property, nonferrous metal property, or private metal property, as those terms are defined in RCW 19.290.010, and the costs of the damage to the ((public service company's or consumer-owned utility's)) owner's property exceed seven hundred fifty dollars but does not exceed five thousand dollars in value; or

(d) An access device.

(2) Theft in the second degree is a class C felony.

**Sec. 4.** RCW 19.290.010 and 2008 c 233 s 1 are each amended to read as follows:

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

(1) "Commercial account" means a relationship between a scrap metal business and a commercial enterprise that is ongoing and properly documented under RCW 19.290.030.

(2) "Commercial enterprise" means a corporation, partnership, limited liability company, association, state agency, political subdivision of the state, public corporation, or any other legal or commercial entity.

(3) "Commercial metal property" means: Utility access covers; street light poles and fixtures; road and bridge guardrails; highway or street signs; water meter covers; traffic directional and control signs; traffic light signals; any metal property marked with the name of a commercial enterprise, including but not limited to a telephone, commercial mobile radio services, cable, electric, water, natural gas, or other utility, or railroad; unused or undamaged building construction materials consisting of copper pipe, tubing, or wiring, or aluminum wire, siding, downspouts, or gutters; aluminum or stainless steel fence panels made from one inch tubing, forty-two inches high with four-inch gaps; aluminum decking, bleachers, or risers; historical markers; statue plaques; grave markers and funeral vases; or agricultural irrigation wheels, sprinkler heads, and pipes.

(4) "Nonferrous metal property" means metal property for which the value of the metal property is derived from the property's content of copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys. "Nonferrous metal property" does not include precious metals.

(5) "Precious metals" means gold, silver, and platinum.

(6) "Private metal property" means catalytic converters, either singly or in bundles, bales, or bulk, that have been removed from vehicles for sale as a specific commodity.

(7) "Record" means a paper, electronic, or other method of storing information.

(8) "Scrap metal business" means a scrap metal supplier, scrap metal ~~((recycling center))~~ recycler, and scrap metal processor.

(9) "Scrap metal processor" means a person with a current business license that conducts business from a permanent location, that is engaged in the business of purchasing or receiving private metal property, nonferrous metal property, and commercial metal property for the purpose of altering the metal in preparation for its use as feedstock in the manufacture of new products, and that maintains a hydraulic bailer, shearing device, or shredding device for recycling.

(10) "Scrap metal ~~((recycling center))~~ recycler" means a person with a current business license that is engaged in the business of purchasing or

receiving private metal property, nonferrous metal property, and commercial metal property for the purpose of aggregation and sale to another scrap metal business and that maintains a fixed place of business within the state.

(11) "Scrap metal supplier" means a person with a current business license that is engaged in the business of purchasing or receiving private metal property or nonferrous metal property for the purpose of aggregation and sale to a scrap metal (~~(recycling center)~~) recycler or scrap metal processor and that does not maintain a fixed business location in the state.

(12) "Transaction" means a pledge, or the purchase of, or the trade of any item of private metal property or nonferrous metal property by a scrap metal business from a member of the general public. "Transaction" does not include donations or the purchase or receipt of private metal property or nonferrous metal property by a scrap metal business from a commercial enterprise, from another scrap metal business, or from a duly authorized employee or agent of the commercial enterprise or scrap metal business.

(13) "Engage in business" means conducting more than twelve transactions in a twelve-month period.

(14) "Person" means an individual, domestic or foreign corporation, limited liability 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.

**Sec. 5.** RCW 19.290.020 and 2008 c 233 s 2 are each amended to read as follows:

(1) At the time of a transaction, every scrap metal business doing business in this state shall produce wherever that business is conducted an accurate and legible record of each transaction involving private metal property or nonferrous metal property. This record must be written in the English language, documented on a standardized form or in electronic form, and contain the following information:

- (a) The signature of the person with whom the transaction is made;
- (b) The time, date, location, and value of the transaction;
- (c) The name of the employee representing the scrap metal business in the transaction;
- (d) The name, street address, and telephone number of the person with whom the transaction is made;
- (e) The license plate number and state of issuance of the license plate on the motor vehicle used to deliver the private metal property or nonferrous metal property subject to the transaction;
- (f) A description of the motor vehicle used to deliver the private metal property or nonferrous metal property subject to the transaction;
- (g) The current driver's license number or other government-issued picture identification card number of the seller or a copy of the seller's government-issued picture identification card; and
- (h) A description of the predominant types of private metal property or nonferrous metal property subject to the transaction, (~~(including the property's classification code as provided in)~~) utilizing the institute of scrap recycling industries' (~~(scrap specifications circular, 2006)~~) generally accepted terminology, and including weight, quantity, or volume.

(2) For every transaction that involves private metal property or nonferrous metal property, every scrap metal business doing business in the state shall require the person with whom a transaction is being made to sign a declaration. The declaration may be included as part of the transactional record required under subsection (1) of this section, or on a receipt for the transaction. The declaration must state substantially the following:

"I, the undersigned, affirm under penalty of law that the property that is subject to this transaction is not to the best of my knowledge stolen property."

The declaration must be signed and dated by the person with whom the transaction is being made. An employee of the scrap metal business must witness the signing and dating of the declaration and sign the declaration accordingly before any transaction may be consummated.

(3) The record and declaration required under this section must be open to the inspection of any commissioned law enforcement officer of the state or any of its political subdivisions at all times during the ordinary hours of business, or at reasonable times if ordinary hours of business are not kept, and must be maintained wherever that business is conducted for ~~((one))~~ five years following the date of the transaction.

**Sec. 6.** RCW 19.290.030 and 2008 c 233 s 3 are each amended to read as follows:

(1) No scrap metal business may enter into a transaction to purchase or receive private metal property or nonferrous metal property from any person who cannot produce at least one piece of current government-issued picture identification, including a valid driver's license or identification card issued by any state.

(2) No scrap metal business may purchase or receive private metal property or commercial metal property unless the seller: (a) Has a commercial account with the scrap metal business; (b) can prove ownership of the property by producing written documentation that the seller is the owner of the property; or (c) can produce written documentation that the seller is an employee or agent authorized to sell the property on behalf of a commercial enterprise.

(3) No scrap metal business may enter into a transaction to purchase or receive metallic wire that was burned in whole or in part to remove insulation unless the seller can produce written proof to the scrap metal business that the wire was lawfully burned.

(4)~~(a)~~ No transaction involving private metal property or nonferrous metal property (valued at greater than thirty dollars) may be made in cash or with any person who does not provide a street address under the requirements of RCW 19.290.020 except as described in (b) of this subsection. ~~((For transactions valued at greater than thirty dollars,))~~ The person with whom the transaction is being made may only be paid by a nontransferable check, mailed by the scrap metal business to a street address provided under RCW 19.290.020, no earlier than ~~((ten))~~ three days after the transaction was made. A transaction occurs on the date provided in the record required under RCW 19.290.020.

(b) A scrap metal business that is in compliance with this chapter that digitally captures: (i) A copy of one piece of current government-issued picture identification, including a current driver's license or identification card issued by any state and (ii) either a picture or video of either the material subject to the transaction in the form received or the material subject to the transaction within

the vehicle which the material was transported to the scrap metal business, may pay up to a maximum of thirty dollars in cash, stored value device, or electronic funds transfer. The balance of the value of the transaction may be made by nontransferable check, stored value device, or electronic funds transfer at the time the transaction is made. A scrap metal business's usage of video surveillance shall be sufficient to comply with this subsection (4)(b)(ii) as long as the video captures the material subject to the transaction. A digital image or picture taken under this subsection must be available for two years from the date of transaction, while a video recording must be available for thirty days.

(5) No scrap metal business may purchase or receive beer kegs from anyone except a manufacturer of beer kegs or licensed brewery.

**Sec. 7.** RCW 19.290.040 and 2008 c 233 s 4 are each amended to read as follows:

(1) Every scrap metal business must create and maintain a permanent record with a commercial enterprise, including another scrap metal business, in order to establish a commercial account. That record, at a minimum, must include the following information:

(a) The full name of the commercial enterprise or commercial account;

(b) The business address and telephone number of the commercial enterprise or commercial account; and

(c) The full name of the person employed by the commercial enterprise who is authorized to deliver private metal property, nonferrous metal property, and commercial metal property to the scrap metal business.

(2) The record maintained by a scrap metal business for a commercial account must document every purchase or receipt of private metal property, nonferrous metal property, and commercial metal property from the commercial enterprise. The record must be maintained for three years following the date of the transfer or receipt. The documentation must include, at a minimum, the following information:

(a) The time, date, and value of the property being purchased or received;

(b) A description of the predominant types of property being purchased or received; and

(c) The signature of the person delivering the property to the scrap metal business.

**Sec. 8.** RCW 19.290.050 and 2008 c 233 s 5 are each amended to read as follows:

(1) Upon request by any commissioned law enforcement officer of the state or any of its political subdivisions, every scrap metal business shall furnish a full, true, and correct transcript of the records from the purchase or receipt of private metal property, nonferrous metal property, and commercial metal property involving only a ((specific)) specified individual, vehicle, or item of private metal property, nonferrous metal property, or commercial metal property. This information may be transmitted within a specified time of not less than two business days to the applicable law enforcement agency electronically, by facsimile transmission, or by modem or similar device, or by delivery of computer disk subject to the requirements of, and approval by, the chief of police or the county's chief law enforcement officer.

(2) Any records created or produced under this section are exempt from disclosure under chapter 42.56 RCW.

(3) If the scrap metal business has good cause to believe that any private metal property, nonferrous metal property, or commercial metal property in his or her possession has been previously lost or stolen, the scrap metal business shall promptly report that fact to the applicable commissioned law enforcement officer of the state, the chief of police, or the county's chief law enforcement officer, together with the name of the owner, if known, and the date when and the name of the person from whom it was received.

(4) Compliance with this section shall not give rise to or form the basis of private civil liability on the part of a scrap metal business or scrap metal recycler.

**Sec. 9.** RCW 19.290.060 and 2008 c 233 s 6 are each amended to read as follows:

(1) Following notification(~~(, either verbally or)~~) in writing(~~(;)~~) from a commissioned law enforcement officer of the state or any of its political subdivisions that an item of private metal property, nonferrous metal property, or commercial metal property has been reported as stolen, a scrap metal business shall hold that property intact and safe from alteration, damage, or commingling, and shall place an identifying tag or other suitable identification upon the property. The scrap metal business shall hold the property for a period of time as directed by the applicable law enforcement agency up to a maximum of ten business days.

(2) A commissioned law enforcement officer of the state or any of its political subdivisions shall not place on hold any item of private metal property, nonferrous metal property, or commercial metal property unless that law enforcement agency reasonably suspects that the property is a lost or stolen item. Any hold that is placed on the property must be removed within ten business days after the property on hold is determined not to be stolen or lost and the property must be returned to the owner or released.

**Sec. 10.** RCW 19.290.070 and 2008 c 233 s 7 are each amended to read as follows:

It is a gross misdemeanor under chapter 9A.20 RCW for:

(1) Any person to deliberately remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of private metal property, nonferrous metal property, or commercial metal property in order to deceive a scrap metal business;

(2) Any scrap metal business to enter into a transaction to purchase or receive any private metal property, nonferrous metal property, or commercial metal property where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the property have been deliberately and conspicuously removed, altered, or obliterated;

(3) Any person to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under this chapter;

(4) Any scrap metal business to enter into a transaction to purchase or receive private metal property, nonferrous metal property, or commercial metal

property from any person under the age of eighteen years or any person who is discernibly under the influence of intoxicating liquor or drugs;

(5) Any scrap metal business to enter into a transaction to purchase or receive private metal property, nonferrous metal property, or commercial metal property with anyone whom the scrap metal business has been informed by a law enforcement agency to have been convicted of a crime involving drugs, burglary, robbery, theft, or possession of or receiving stolen property, manufacturing, delivering, or possessing with intent to deliver methamphetamine, or possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, or anhydrous ammonia with intent to manufacture methamphetamine within the past ~~((ten))~~ four years whether the person is acting in his or her own behalf or as the agent of another;

(6) Any person to sign the declaration required under RCW 19.290.020 knowing that the private metal property or nonferrous metal property subject to the transaction is stolen. The signature of a person on the declaration required under RCW 19.290.020 constitutes evidence of intent to defraud a scrap metal business if that person is found to have known that the private metal property or nonferrous metal property subject to the transaction was stolen;

(7) Any scrap metal business to possess private metal property or commercial metal property that was not lawfully purchased or received under the requirements of this chapter; ~~((or))~~

(8) Any scrap metal business to engage in a series of transactions valued at less than thirty dollars with the same seller for the purposes of avoiding the requirements of RCW 19.290.030(4); or

(9) Any person to knowingly make a false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, with the intent to deceive a scrap metal business as to the actual seller of the scrap metal.

**Sec. 11.** RCW 19.290.090 and 2008 c 233 s 8 are each amended to read as follows:

The provisions of this chapter do not apply to transactions involving metal from the components of vehicles acquired by vehicle wreckers, hulk haulers, or scrap processors licensed under chapter 46.79 or 46.80 RCW, and acquired in accordance with those laws or transactions conducted by the following:

(1) Motor vehicle dealers licensed under chapter 46.70 RCW;

~~((Metal from the components of vehicles acquired by vehicle wreckers or hulk haulers licensed under chapter 46.79 or 46.80 RCW, and acquired in accordance with those laws;~~

~~((3)))~~ Persons in the business of operating an automotive repair facility as defined under RCW 46.71.011; and

~~((4)))~~ (3) Persons in the business of buying or selling empty food and beverage containers, including metal food and beverage containers.

**NEW SECTION. Sec. 12.** A new section is added to chapter 19.290 RCW to read as follows:

(1) It is unlawful for a person to engage in the business of a scrap metal processor, scrap metal recycler, or scrap metal supplier without having first applied for and received a scrap metal license.

(2)(a) Except as provided in (b) of this subsection, a person or firm engaged in the unlawful activity described in this section is guilty of a gross misdemeanor.

(b) A second or subsequent offense is a class C felony.

**NEW SECTION. Sec. 13.** A new section is added to chapter 19.290 RCW to read as follows:

Application for a scrap metal license or renewal of a scrap metal license shall be made on a form for this purpose, furnished by the department of licensing, and shall be signed by the license holder or his or her authorized agent and shall include the following information:

(1) Name and address of the person, firm, partnership, association, limited liability company, or corporation under which name the business is to be conducted;

(2) Names and residence address of all persons having an interest in the business or, if the owner is a corporation, the names and addresses of the officers thereof;

(3) Certificate of approval of the chief executive officer or chief of police, or a designee, if the application is for a license within an incorporated city or town or, in any unincorporated area, the county legislative authority, the sheriff, or a designee, certifying that:

(a) The applicant has an established place of business at the address shown on the application;

(b) There are no known environmental, building code, zoning, or other land use regulation violations associated with the business being located at the address; and

(c) In the case of a renewal of a scrap metal license, the applicant is in compliance with this chapter: PROVIDED, That an authorized representative of the department of licensing may make the certification described in this section in any instance;

(4) Any other information that the department of licensing may require.

**NEW SECTION. Sec. 14.** A new section is added to chapter 19.290 RCW to read as follows:

The application, together with the required fee, shall be forwarded to the department of licensing. Upon receipt of the application the department shall, if the application is in order, issue a scrap metal license authorizing the processor, recycler, or supplier to do business as such and forward the fee to the state treasurer. Upon receiving the certificate, the owner shall cause it to be prominently displayed in the place of business, where it may be inspected by an investigating officer at any time. Every license must be issued in the name of the applicant and the holder thereof may not allow any other person to use the license.

**NEW SECTION. Sec. 15.** A new section is added to chapter 19.290 RCW to read as follows:

Before issuing a scrap metal license to a scrap metal processor or scrap metal recycler, the department of licensing shall require the applicant to file with the department a surety bond in the amount of ten thousand dollars, running to the state of Washington, and executed by a surety company authorized to do business in the state of Washington. The bond shall be approved as to form by



the attorney general and conditioned upon the licensee conducting the business in conformity with the provisions of this chapter. Except as prohibited elsewhere in this chapter, any person who has suffered loss or damage by reason of fraud or gross negligence, or an intentional or reckless violation of the terms of this chapter, or misrepresentation on the part of the scrap metal processor or recycler, may institute an action for recovery against the licensee and surety upon the bond. However, the aggregate liability of the surety to all persons shall in no event exceed the amount of the bond.

**NEW SECTION. Sec. 16.** A new section is added to chapter 19.290 RCW to read as follows:

A license issued on the scrap metal license application remains in force until suspended or revoked and may be renewed annually upon reapplication and upon payment of the required fee. A licensee who fails or neglects to renew the license before the assigned expiration date shall pay the fee for an original scrap metal license as provided in this chapter.

Whenever a scrap metal processor, recycler, or supplier ceases to do business as such or the license has been suspended or revoked, the licensee shall immediately surrender the license to the department of licensing.

**NEW SECTION. Sec. 17.** A new section is added to chapter 19.290 RCW to read as follows:

The licensee shall obtain a special set of license plates in addition to the regular licenses and plates required for the operation of such vehicles. The special plates must be displayed on vehicles owned and/or operated by the licensee and used in the conduct of the business. The fee for these plates shall be five dollars for the original plates and two dollars for each additional set of plates bearing the same license number. A licensee with more than one licensed location in the state may use special plates bearing the same license number for vehicles operated out of any of the licensed locations.

**NEW SECTION. Sec. 18.** A new section is added to chapter 19.290 RCW to read as follows:

The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

**NEW SECTION. Sec. 19.** A new section is added to chapter 19.290 RCW to read as follows:

If a person whose scrap metal license has previously been canceled for cause by the department of licensing files an application for a license to conduct business as a scrap metal processor, recycler, or supplier, or if the department is of the opinion that the application is not filed in good faith or that the application is filed by some person as a subterfuge for the real person in interest whose license has previously been canceled for cause, the department may refuse to issue the person a license to conduct business as a scrap metal processor, recycler, or supplier.

**NEW SECTION. Sec. 20.** A new section is added to chapter 19.290 RCW to read as follows:

(1) The director of licensing is hereby authorized to adopt reasonable rules and regulations not in conflict with provisions hereof for the proper operation and enforcement of this chapter.

(2) The director shall set all license and renewal fees in accordance with RCW 43.24.086.

**NEW SECTION. Sec. 21.** A new section is added to chapter 19.290 RCW to read as follows:

The chiefs of police, the county sheriffs, and the Washington state patrol may make periodic inspection of the licensee's licensed premises and records provided for in this chapter during normal business hours, and furnish a certificate of inspection to the department of licensing in such manner as may be determined by the department. In any instance, an authorized representative of the department may make the inspection. Licensees are subject to unannounced periodic inspections, as described in this section.

**NEW SECTION. Sec. 22.** A new section is added to chapter 19.290 RCW to read as follows:

The state of Washington hereby fully occupies and preempts the entire field of regulation of scrap metal processors, recyclers, or suppliers within the boundaries of the state. Any political subdivision in this state may enact or enforce only those laws and ordinances relating to the regulation of scrap metal processors, recyclers, or suppliers that are specifically authorized by state law and are consistent with this chapter. Nothing in this chapter is intended to limit the authority of any political subdivision to impose generally applicable zoning, land use, permitting, general business licensing, environmental, and health and safety requirements or authorized business taxes upon scrap metal processors, recyclers, or suppliers within their jurisdictions. Local ordinances pertaining specifically to scrap metal processors, recyclers, or suppliers shall have the same or lesser penalty as provided for by state law. Local scrap metal laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are hereby preempted and repealed, regardless of the code, charter, or home rule status of such political subdivision.

**NEW SECTION. Sec. 23.** A new section is added to chapter 19.290 RCW to read as follows:

(1) In addition to the powers granted in chapter 18.235 RCW, the department of licensing or its authorized agent may examine or subpoena any persons, books, papers, records, data, vehicles, or metal property bearing upon the investigation or proceeding under this chapter.

(2) The persons subpoenaed may be required to testify and produce any books, papers, records, data, vehicles, or metal property that the director of licensing deems relevant or material to the inquiry.

(3) The director of the department of licensing or an authorized agent may administer an oath to the person required to testify, and a person giving false testimony after the administration of the oath is guilty of perjury in the first degree under RCW 9A.72.020.

(4)(a) Any authorized representative of the director of the department of licensing may apply for and obtain a superior court order approving and authorizing a subpoena in advance of its issuance. The application may be made in the county where the subpoenaed person resides or is found, or the county where the subpoenaed records or documents are located, or in Thurston county. The application must:

(i) State that an order is sought pursuant to this subsection;

(ii) Adequately specify the records, documents, or testimony; and

(iii) Declare under oath that an investigation is being conducted for a lawfully authorized purpose related to an investigation within the department's authority and that the subpoenaed documents or testimony are reasonably related to an investigation within the department's authority.

(b) Where the application under this subsection is made to the satisfaction of the court, the court must issue an order approving the subpoena. An order under this subsection constitutes authority of law for the agency to subpoena the records or testimony.

(c) Any authorized representative of the director of the department of licensing may seek approval and a court may issue an order under this subsection without prior notice to any person, including the person to whom the subpoena is directed and the person who is the subject of an investigation.

(5) Any records created or produced under this section are exempt from disclosure under chapter 42.56 RCW.

**NEW SECTION. Sec. 24.** A new section is added to chapter 36.28A RCW to read as follows:

(1) When funded, the Washington association of sheriffs and police chiefs shall establish a grant program to assist local law enforcement agencies in the support of special enforcement emphasis targeting metal theft. Grant applications shall be reviewed and awarded through peer review panels. Grant applicants are encouraged to utilize multijurisdictional efforts.

(2) Each grant applicant shall:

(a) Show a significant metal theft problem in the jurisdiction or jurisdictions receiving the grant;

(b) Verify that grant awards are sufficient to cover increased investigation, prosecution, and jail costs;

(c) Design an enforcement program that best suits the specific metal theft problem in the jurisdiction or jurisdictions receiving the grant;

(d) Demonstrate community coordination focusing on prevention, intervention, and suppression; and

(e) Collect data on performance.

(3) The cost of administering the grants shall not exceed sixty thousand dollars, or three percent of appropriated funding, whichever is greater.

(4) Grant awards may not be used to supplant preexisting funding sources for special enforcement targeting metal theft.

**NEW SECTION. Sec. 25.** A new section is added to chapter 19.290 RCW to read as follows:

(1) Law enforcement agencies may register with the scrap theft alert system that is maintained and provided at no charge to users by the institute of scrap recycling industries, incorporated, or its successor organization, to receive alerts regarding thefts of private, nonferrous, or commercial metal property in the relevant geographic area.

(2) Any business licensed under this chapter shall:

(a) Sign up with the scrap theft alert system that is maintained and provided at no charge to users by the institute of scrap recycling industries, incorporated,

or its successor organization, to receive alerts regarding thefts of private, nonferrous, or commercial metal property in the relevant geographic area;

(b) Download the scrap metal theft alerts generated by the scrap theft alert system on a daily basis;

(c) Use the alerts to identify potentially stolen commercial metal property, nonferrous metal property, and private metal property; and

(d) Maintain for ninety days copies of any theft alerts received and downloaded pursuant to this section.

**Sec. 26.** RCW 9.94A.515 and 2012 c 176 s 3 and 2012 c 162 s 1 are each reenacted and amended to read as follows:

TABLE 2  
CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))
XIII	Malicious explosion 2 (RCW 70.74.280(2))
	Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011)
	Assault of a Child 1 (RCW 9A.36.120)
	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
	Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
	Rape 1 (RCW 9A.44.040)
	Rape of a Child 1 (RCW 9A.44.073)
	Trafficking 2 (RCW 9A.40.100(2))
XI	Manslaughter 1 (RCW 9A.32.060)
	Rape 2 (RCW 9A.44.050)
	Rape of a Child 2 (RCW 9A.44.076)
	Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
X	Child Molestation 1 (RCW 9A.44.083)

- Criminal Mistreatment 1 (RCW 9A.42.020)
- Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
- Kidnapping 1 (RCW 9A.40.020)
- Leading Organized Crime (RCW 9A.82.060(1)(a))
- Malicious explosion 3 (RCW 70.74.280(3))
- Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Abandonment of Dependent Person 1 (RCW 9A.42.060)
- Assault of a Child 2 (RCW 9A.36.130)
- Explosive devices prohibited (RCW 70.74.180)
- Hit and Run—Death (RCW 46.52.020(4)(a))
- Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
- Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- Malicious placement of an explosive 2 (RCW 70.74.270(2))
- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- VIII Arson 1 (RCW 9A.48.020)
- Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
- Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Promoting Prostitution 1 (RCW 9A.88.070)
- Theft of Ammonia (RCW 69.55.010)

- Vehicular Homicide, by the operation of  
any vehicle in a reckless manner  
(RCW 46.61.520)
- VII Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW  
9A.48.120)
- Dealing in depictions of minor engaged  
in sexually explicit conduct 1  
(RCW 9.68A.050(1))
- Drive-by Shooting (RCW 9A.36.045)
- Homicide by Watercraft, by disregard  
for the safety of others (RCW  
79A.60.050)
- Indecent Liberties (without forcible  
compulsion) (RCW 9A.44.100(1)  
(b) and (c))
- Introducing Contraband 1 (RCW  
9A.76.140)
- Malicious placement of an explosive 3  
(RCW 70.74.270(3))
- Negligently Causing Death By Use of a  
Signal Preemption Device (RCW  
46.37.675)
- Sending, bringing into state depictions  
of minor engaged in sexually  
explicit conduct 1 (RCW  
9.68A.060(1))
- Unlawful Possession of a Firearm in the  
first degree (RCW 9.41.040(1))
- Use of a Machine Gun in Commission  
of a Felony (RCW 9.41.225)
- Vehicular Homicide, by disregard for  
the safety of others (RCW  
46.61.520)
- VI Bail Jumping with Murder 1 (RCW  
9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)

- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.070(1))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of Dependent Person 2 (RCW 9A.42.070)
  - Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
  - Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
  - Child Molestation 3 (RCW 9A.44.089)
  - Criminal Mistreatment 2 (RCW 9A.42.030)
  - Custodial Sexual Misconduct 1 (RCW 9A.44.160)
  - Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))
  - Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)
  - Driving While Under the Influence (RCW 46.61.502(6))
  - Extortion 1 (RCW 9A.56.120)
  - Extortionate Extension of Credit (RCW 9A.82.020)
  - Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
  - Incest 2 (RCW 9A.64.020(2))

- Kidnapping 2 (RCW 9A.40.030)
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)



- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))
- Indecent Exposure to Person Under Age Fourteen (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Malicious Harassment (RCW 9A.36.080)
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))
- Unlicensed practice as an insurance professional (RCW 48.17.063(2))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))

Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)

Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))

Willful Failure to Return from Furlough (RCW 72.66.060)

III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))

Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))

Assault of a Child 3 (RCW 9A.36.140)

Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))

Burglary 2 (RCW 9A.52.030)

Communication with a Minor for Immoral Purposes (RCW 9.68A.090)

Criminal Gang Intimidation (RCW 9A.46.120)

Custodial Assault (RCW 9A.36.100)

Cyberstalking (subsequent conviction or threat of death) (RCW 9.61.260(3))

Escape 2 (RCW 9A.76.120)

Extortion 2 (RCW 9A.56.130)

Harassment (RCW 9A.46.020)

Intimidating a Public Servant (RCW 9A.76.180)

Introducing Contraband 2 (RCW 9A.76.150)

Malicious Injury to Railroad Property (RCW 81.60.070)

Mortgage Fraud (RCW 19.144.080)

- Negligently Causing Substantial Bodily Harm By Use of a Signal Preemption Device (RCW 46.37.674)
- Organized Retail Theft 1 (RCW 9A.56.350(2))
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW 9.40.120)
- Possession of Machine Gun or Short-Barreled Shotgun or Rifle (RCW 9.41.190)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Retail Theft with Extenuating Circumstances 1 (RCW 9A.56.360(2))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW 9A.72.120)
- Telephone Harassment (subsequent conviction or threat of death) (RCW 9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Theft with the Intent to Resell 1 (RCW 9A.56.340(2))
- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b))
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b))

- Unlawful Use of a Nondesignated Vessel (RCW 77.15.530(4))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Commercial Fishing Without a License 1 (RCW 77.15.500(3)(b))
- Computer Trespass 1 (RCW 9A.52.110)
- Counterfeiting (RCW 9.16.035(3))
- Engaging in Fish Dealing Activity Unlicensed 1 (RCW 77.15.620(3))
- Escape from Community Custody (RCW 72.09.310)
- Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.132)
- Health Care False Claims (RCW 48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Organized Retail Theft 2 (RCW 9A.56.350(3))
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Possession of a Stolen Vehicle (RCW 9A.56.068)
- Retail Theft with Extenuating Circumstances 2 (RCW 9A.56.360(3))
- Scrap Processing, Recycling, or Supplying Without a License (second or subsequent offense) (section 12 of this act)
- Theft 1 (RCW 9A.56.030)

- Theft of a Motor Vehicle (RCW 9A.56.065)
- Theft of Rental, Leased, or Lease-purchased Property (valued at one thousand five hundred dollars or more) (RCW 9A.56.096(5)(a))
- Theft with the Intent to Resell 2 (RCW 9A.56.340(3))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(a))
- Unlawful Participation of Non-Indians in Indian Fishery (RCW 77.15.570(2))
- Unlawful Practice of Law (RCW 2.48.180)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Unlawful Purchase or Use of a License (RCW 77.15.650(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or Wildlife 2 (RCW 77.15.260(3)(a))
- Voyeurism (RCW 9A.44.115)
- I Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW 74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a Mental Health Advance Directive (RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)

- Spotlighting Big Game 1 (RCW 77.15.450(3)(b))
- Suspension of Department Privileges 1 (RCW 77.15.670(3)(b))
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)
- Theft of Rental, Leased, or Lease-purchased Property (valued at two hundred fifty dollars or more but less than one thousand five hundred dollars) (RCW 9A.56.096(5)(b))
- Transaction of insurance business beyond the scope of licensure (RCW 48.17.063)
- Unlawful Fish and Shellfish Catch Accounting (RCW 77.15.630(3)(b))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment Instruments (RCW 9A.56.320)
- Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
- Unlawful Production of Payment Instruments (RCW 9A.56.320)
- Unlawful Release of Deleterious Exotic Wildlife (RCW 77.15.250(2)(b))
- Unlawful Trafficking in Food Stamps (RCW 9.91.142)
- Unlawful Use of Food Stamps (RCW 9.91.144)
- Unlawful Use of Net to Take Fish 1 (RCW 77.15.580(3)(b))

Unlawful Use of Prohibited Aquatic  
Animal Species (RCW  
77.15.253(3))  
Vehicle Prowl 1 (RCW 9A.52.095)  
Violating Commercial Fishing Area or  
Time 1 (RCW 77.15.550(3)(b))

**NEW SECTION. Sec. 27.** A new section is added to chapter 19.290 RCW to read as follows:

(1) The following personal property is subject to seizure and forfeiture and no property right exists in them: All personal property including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which the seizing agency proves by a preponderance of the evidence was used or intended to be used by its owner or the person in charge to knowingly or intentionally facilitate the commission of, or to knowingly or intentionally abet the commission of, a crime involving theft, trafficking, or unlawful possession of commercial metal property, or which the seizing agency proves by a preponderance of the evidence was knowingly or intentionally furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, a crime involving theft, trafficking, or the unlawful possession of commercial metal property, or which the property owner acquired in whole or in part with proceeds traceable to a knowing or intentional commission of a crime involving the theft, trafficking, or unlawful possession of commercial metal property provided that such activity is not less than a class C felony; except that:

(a) No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless the seizing agency proves by a preponderance of the evidence that the owner or other person in charge of the vehicle is a consenting party or is privy to any crime involving theft, trafficking, or the unlawful possession of commercial metal property;

(b) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had actual or constructive knowledge of nor consented to the commission of any crime involving the theft, trafficking, or unlawful possession of commercial metal property; and

(c) A property owner's property is not subject to seizure if an employee or agent of that property owner uses the property owner's property to knowingly or intentionally facilitate the commission of, or to knowingly or intentionally aid and abet the commission of, a crime involving theft, trafficking, or unlawful possession of commercial metal property, in violation of that property owner's instructions or policies against such activity, and without the property owner's knowledge or consent.

(2) The following real property is subject to seizure and forfeiture and no property right exists in them: All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements, that the seizing agency proves by a preponderance of the evidence are being used with the knowledge of the owner for the intentional

commission of any crime involving the theft, trafficking, or unlawful possession of commercial metal property, or which have been acquired in whole or in part with proceeds traceable to the commission of any crime involving the trafficking, theft, or unlawful possession of commercial metal, if such activity is not less than a class C felony and a substantial nexus exists between the commission of the violation or crime and the real property. However:

(a) No property may be forfeited pursuant to this subsection (2), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's actual or constructive knowledge; and further, a property owner's real property is not subject to seizure if an employee or agent of that property owner uses the property owner's real property to knowingly or intentionally facilitate the commission of, or to knowingly or intentionally aid and abet the commission of, a crime involving theft, trafficking, or unlawful possession of commercial metal property, in violation of that property owner's instructions or policies against such activity, and without the property owner's knowledge or consent; and

(b) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, neither had actual or constructive knowledge, nor consented to the act or omission.

(3) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant; or

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding.

(4) In the event of seizure pursuant to this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. The notice of seizure of personal property may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure. Notice of seizure in the case of property subject to a security interest that has



been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(5) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(6) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized property within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the property involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property.

(7) At the hearing, the seizing agency has the burden of proof to establish by a preponderance of the evidence that seized property is subject to forfeiture, and that the use or intended use of the seized property in connection with a crime pursuant to this section occurred with the owner's actual or constructive knowledge or consent. The person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property has the burden of proof to establish by a preponderance of the evidence that the person owns or has a right to possess the seized property. The possession of bare legal title is not sufficient to establish ownership of seized property if the seizing agency proves by a preponderance of the evidence that the person claiming ownership or right to possession is a nominal owner and did not actually own or exert a controlling interest in the property.

The seizing law enforcement agency shall promptly return the property to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession of the property.

(8) When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the seizing law enforcement agency may:

(a) Retain it for official use or, upon application by any law enforcement agency of this state, release such property to such agency; or

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public.

(9)(a) Within one hundred twenty days after the entry of an order of forfeiture, each seizing agency shall remit to, if known, the victim of the crime involving the seized property, an amount equal to fifty percent of the net proceeds of any property forfeited.

(b) Retained property and net proceeds not required to be paid to victims shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(c) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages.

(d) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

**NEW SECTION. Sec. 28.** A new section is added to chapter 19.290 RCW to read as follows:

The provisions of this chapter shall be liberally construed to the end that traffic in stolen private metal property or nonferrous metal property may be prevented, and irresponsible, unreliable, or dishonest persons may be prevented from engaging in the business of processing, recycling, or supplying scrap metal in this state and reliable persons may be encouraged to engage in businesses of processing, recycling, or supplying scrap metal in this state.

**Sec. 29.** RCW 18.235.020 and 2010 c 179 s 18 are each amended to read as follows:

(1) This chapter applies only to the director and the boards and commissions having jurisdiction in relation to the businesses and 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 director has authority under this chapter in relation to the following businesses and professions:

- (i) Auctioneers under chapter 18.11 RCW;
- (ii) Bail bond agents and bail bond recovery agents under chapter 18.185 RCW;
- (iii) Camping resorts' operators and salespersons under chapter 19.105 RCW;
- (iv) Commercial telephone solicitors under chapter 19.158 RCW;
- (v) Cosmetologists, barbers, manicurists, and estheticians under chapter 18.16 RCW;
- (vi) Court reporters under chapter 18.145 RCW;
- (vii) Driver training schools and instructors under chapter 46.82 RCW;
- (viii) Employment agencies under chapter 19.31 RCW;
- (ix) For hire vehicle operators under chapter 46.72 RCW;
- (x) Limousines under chapter 46.72A RCW;
- (xi) Notaries public under chapter 42.44 RCW;
- (xii) Private investigators under chapter 18.165 RCW;
- (xiii) Professional boxing, martial arts, and wrestling under chapter 67.08 RCW;
- (xiv) Real estate appraisers under chapter 18.140 RCW;
- (xv) Real estate brokers and salespersons under chapters 18.85 and 18.86 RCW;
- (xvi) Scrap metal processors, scrap metal recyclers, and scrap metal suppliers under chapter 19.290 RCW;
- (~~(xvii)~~) (xvii) Sellers of travel under chapter 19.138 RCW;
- (~~(xviii)~~) (xix) Timeshares and timeshare salespersons under chapter 64.36 RCW;
- (~~(xix)~~) (xx) Whitewater river outfitters under chapter 79A.60 RCW;
- (~~(xx)~~) (xxi) Home inspectors under chapter 18.280 RCW;
- (~~(xxi)~~) (xxii) Body artists, body piercers, and tattoo artists, and body art, body piercing, and tattooing shops and businesses, under chapter 18.300 RCW; and
- (~~(xxii)~~) (xxiii) Appraisal management companies under chapter 18.310 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

- (i) The state board (~~(of registration)~~) for architects established in chapter 18.08 RCW;
- (ii) The Washington state collection agency board established in chapter 19.16 RCW;
- (iii) The state board of registration for professional engineers and land surveyors established in chapter 18.43 RCW governing licenses issued under chapters 18.43 and 18.210 RCW;

(iv) The funeral and cemetery board established in chapter 18.39 RCW governing licenses issued under chapters 18.39 and 68.05 RCW;

(v) The state board of licensure for landscape architects established in chapter 18.96 RCW; and

(vi) The state geologist licensing board established in chapter 18.220 RCW.

(3) In addition to the authority to discipline license holders, the disciplinary authority may 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 under RCW 18.235.110 by the disciplinary authority.

**Sec. 30.** RCW 43.24.150 and 2011 c 298 s 25 are each amended to read as follows:

(1) The business and professions account is created in the state treasury. All receipts from business or professional licenses, registrations, certifications, renewals, examinations, or civil penalties assessed and collected by the department from the following chapters must be deposited into the account:

- (a) Chapter 18.11 RCW, auctioneers;
- (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
- (c) Chapter 18.145 RCW, court reporters;
- (d) Chapter 18.165 RCW, private investigators;
- (e) Chapter 18.170 RCW, security guards;
- (f) Chapter 18.185 RCW, bail bond agents;
- (g) Chapter 18.280 RCW, home inspectors;
- (h) Chapter 19.16 RCW, collection agencies;
- (i) Chapter 19.31 RCW, employment agencies;
- (j) Chapter 19.105 RCW, camping resorts;
- (k) Chapter 19.138 RCW, sellers of travel;
- (l) Chapter 42.44 RCW, notaries public;
- (m) Chapter 64.36 RCW, timeshares;
- (n) Chapter 67.08 RCW, boxing, martial arts, and wrestling;
- (o) Chapter 18.300 RCW, body art, body piercing, and tattooing;
- (p) Chapter 79A.60 RCW, whitewater river outfitters; ~~((and))~~
- (q) Chapter 19.158 RCW, commercial telephone solicitation; and
- (r) Chapter 19.290 RCW, scrap metal businesses.

Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for expenses incurred in carrying out these business and professions licensing activities of the department. Any residue in the account must be accumulated and may not revert to the general fund at the end of the biennium.

(2) The director must biennially prepare a budget request based on the anticipated costs of administering the business and professions licensing activities listed in subsection (1) of this section, which must include the estimated income from these business and professions fees.

**NEW SECTION. Sec. 31.** A new section is added to chapter 43.43 RCW to read as follows:

(1) Beginning on July 1, 2014, when funded, the Washington association of sheriffs and police chiefs shall implement and operate an ongoing electronic statewide no-buy list database program.

(2) The database must be made available on a web site.

(3) The no-buy list database program shall allow for any scrap metal business to enter a customer's name and date of birth into the database. The database must determine if the customer pursuing the transaction with the scrap metal business has been convicted in Washington of any crime involving burglary, robbery, theft, or possession of or receiving stolen property within the past four years.

(4) If the customer has been convicted of any crime involving burglary, robbery, theft, or possession of or receiving stolen property within the past four years despite whether the person was acting in his or her own behalf or as the agent of another then, at a minimum, the no-buy list database program must immediately send an alert to the scrap metal business stating: (a) That the customer is listed on a current no-buy list, (b) the four-year expiration period for the customer's most recent crime listed, and (c) a notification that entering into a transaction with the customer is prohibited under RCW 19.290.070.

**NEW SECTION. Sec. 32.** A new section is added to chapter 19.290 RCW to read as follows:

A scrap metal business shall, before completing any transaction under this chapter, determine whether such customer is listed in the Washington association of sheriffs and police chiefs no-buy list database program established and made available under section 31 of this act.

**NEW SECTION. Sec. 33.** A new section is added to chapter 43.43 RCW to read as follows:

The Washington association of sheriffs and police chiefs shall not be held liable for civil damages resulting from any act or omission in carrying out the requirements of section 31 of this act other than an act or omission constituting gross negligence or willful or wanton misconduct.

***\*NEW SECTION. Sec. 34. If one million five hundred thousand dollars for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2013, in the omnibus appropriations act, this act is null and void.***

\*Sec. 34 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 35.** Sections 12 through 23 of this act take effect January 1, 2014.

**NEW SECTION. Sec. 36.** The director of the department of licensing may take the necessary steps to ensure that sections 12 through 23 of this act are implemented on January 1, 2014.

Passed by the House April 25, 2013.

Passed by the Senate April 16, 2013.

Approved by the Governor May 21, 2013, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 21, 2013.

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

"I am returning herewith, without my approval as to Section 34, Engrossed Substitute House Bill 1552 entitled:

"AN ACT Relating to the reduction of metal theft."

Metal theft causes substantial and often expensive property damage harming, among others, businesses, utilities, state and local governments, and individual citizens. Under certain circumstances, metal theft can also lead to significant safety hazards. Our state has enacted laws over the past several years to curb metal theft by increasing penalties and regulation of businesses purchasing or receiving metal.

This bill is the result of recommendations from a wide array of stakeholders, including businesses, metal recyclers, utilities, local governments, and local law enforcement to enhance our laws to prevent metal theft. New licensing, purchasing, and records retention regulations are instituted. Further, changes are made to penalties associated with metal theft and illegal purchasing of scrap metal, and grants are established for enforcement.

Pursuant to Section 34 of this bill, if \$1.5 million for the purposes of this act is not provided by June 30, 2013, in the omnibus appropriations act, this act is null and void. Unfortunately, the Legislature has not passed a budget at this time. It is my expectation that by passing this bill, the Legislature intends to provide the funding. It is also my expectation that the stakeholders who worked on this act, and will benefit from its enactment, will continue their efforts to secure funding to support the law enforcement grant provisions. To ensure the important, new regulatory provisions of this act are put in place as a means of combating metal theft, I am vetoing Section 34 of this bill.

For these reasons, I have vetoed Section 34 of Engrossed Substitute House Bill 1552.

With the exception of Section 34, Engrossed Substitute House Bill 1552 is approved."

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**CHAPTER 323**

[Second Substitute House Bill 1723]

**EARLY LEARNING SERVICES AND PROGRAMS**

AN ACT Relating to expanding and streamlining early learning services and programs; amending RCW 28A.150.220, 43.215.100, and 43.215.430; reenacting and amending RCW 43.215.010, 43.215.020, and 43.215.135; adding a new section to chapter 43.215 RCW; creating a new section; 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 43.215 RCW to read as follows:

The legislature finds that the first five years of a child's life establish the foundation for educational success. The legislature also finds that children who have high quality early learning opportunities from birth through age five are more likely to succeed throughout their K-12 education and beyond. The legislature further finds that the benefits of high quality early learning experiences are particularly significant for low-income parents and children, and provide an opportunity to narrow the opportunity gap in Washington's K-12 educational system. The legislature understands that early supports for high-risk parents of young children through home visiting services show a high return on investment due to significantly improved chances of better education, health, and life outcomes for children. The legislature further recognizes that, when parents work or go to school, high quality and full-day early learning opportunities should be available and accessible for their children. In order to improve education outcomes, particularly for low-income children, the

legislature is committed to expanding high quality early learning opportunities and integrating currently disparate funding streams for all birth-to-five early learning services including, working connections child care and the early childhood education and assistance program, into a single high quality continuum of learning that provides essential services to low-income families and prepares all enrolled children for success in school. The legislature therefore intends to establish the early start program to provide a continuum of high quality and accountable early learning opportunities for Washington's parents and children.

**Sec. 2.** RCW 28A.150.220 and 2011 1st sp.s. c 27 s 1 are each amended to read as follows:

(1) In order for students to have the opportunity to develop the basic education knowledge and skills under RCW 28A.150.210, school districts must provide instruction of sufficient quantity and quality and give students the opportunity to complete graduation requirements that are intended to prepare them for postsecondary education, gainful employment, and citizenship. The program established under this section shall be the minimum instructional program of basic education offered by school districts.

(2) Each school district shall make available to students the following minimum instructional offering each school year:

(a) For students enrolled in grades one through twelve, at least a district-wide annual average of one thousand hours, which shall be increased to at least one thousand eighty instructional hours for students enrolled in each of grades seven through twelve and at least one thousand instructional hours for students in each of grades one through six according to an implementation schedule adopted by the legislature, but not before the 2014-15 school year; and

(b) For students enrolled in kindergarten, at least four hundred fifty instructional hours, which shall be increased to at least one thousand instructional hours according to the implementation schedule under RCW 28A.150.315.

(3) The instructional program of basic education provided by each school district shall include:

(a) Instruction in the essential academic learning requirements under RCW 28A.655.070;

(b) Instruction that provides students the opportunity to complete twenty-four credits for high school graduation, subject to a phased-in implementation of the twenty-four credits as established by the legislature. Course distribution requirements may be established by the state board of education under RCW 28A.230.090;

(c) If the essential academic learning requirements include a requirement of languages other than English, the requirement may be met by students receiving instruction in one or more American Indian languages;

(d) Supplemental instruction and services for underachieving students through the learning assistance program under RCW 28A.165.005 through 28A.165.065;

(e) Supplemental instruction and services for eligible and enrolled students whose primary language is other than English through the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080;

(f) The opportunity for an appropriate education at public expense as defined by RCW 28A.155.020 for all eligible students with disabilities as defined in RCW 28A.155.020; and

(g) Programs for highly capable students under RCW 28A.185.010 through 28A.185.030.

(4) Nothing contained in this section shall be construed to require individual students to attend school for any particular number of hours per day or to take any particular courses.

(5) Each school district's kindergarten through twelfth grade basic educational program shall be accessible to all students who are five years of age, as provided by RCW 28A.225.160, and less than twenty-one years of age and shall consist of a minimum of one hundred eighty school days per school year in such grades as are conducted by a school district, and one hundred eighty half-days of instruction, or equivalent, in kindergarten, to be increased to a minimum of one hundred eighty school days per school year according to the implementation schedule under RCW 28A.150.315. However, schools administering the Washington kindergarten inventory of developing skills may use up to three school days at the beginning of the school year to meet with parents and families as required in the parent involvement component of the inventory. In addition, effective May 1, 1979, a school district may schedule the last five school days of the one hundred and eighty day school year for noninstructional purposes in the case of students who are graduating from high school, including, but not limited to, the observance of graduation and early release from school upon the request of a student, and all such students may be claimed as a full-time equivalent student to the extent they could otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260.

(6) Nothing in this section precludes a school district from enriching the instructional program of basic education, such as offering additional instruction or providing additional services, programs, or activities that the school district determines to be appropriate for the education of the school district's students.

(7) The state board of education shall adopt rules to implement and ensure compliance with the program requirements imposed by this section, RCW 28A.150.250 and 28A.150.260, and such related supplemental program approval requirements as the state board may establish.

**Sec. 3.** RCW 43.215.010 and 2011 c 295 s 3 and 2011 c 78 s 1 are each reenacted and amended to read as follows:

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

(1) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes the following irrespective of whether there is compensation to the agency:

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Facilities providing child care for periods of less than twenty-four hours when a parent or legal guardian of the child remains on the premises of the facility for the purpose of participating in:

(i) Activities other than employment; or

(ii) Employment of up to two hours per day when the facility is operated by a nonprofit entity that also operates a licensed child care program at the same facility in another location or at another facility;

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

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

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

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

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

(4) "Conviction information" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the applicant.

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

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

(7) "Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

(8) "Early start" means an integrated high quality continuum of early learning programs for children birth-to-five years of age. Components of early start include, but are not limited to, the following:

(a) Home visiting and parent education and support programs;

(b) The early achievers program described in RCW 43.215.100;

(c) Integrated full-day and part-day high quality early learning programs;  
and

(d) High quality preschool for children whose family income is at or below one hundred ten percent of the federal poverty level.

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

~~((8))~~ (10) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.215.300(1) or assessment of civil monetary penalties pursuant to RCW 43.215.300(3).

~~((9))~~ (11) "Negative action" means a court order, court judgment, or an adverse action taken by an agency, in any state, federal, tribal, or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability, and competence to care for or have unsupervised access to children in child care. This may include, but is not limited to:

(a) A decision issued by an administrative law judge;

(b) A final determination, decision, or finding made by an agency following an investigation;

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification, or contract in lieu of the adverse action;

(d) A revocation, denial, or restriction placed on any professional license; or

(e) A final decision of a disciplinary board.

~~((10))~~ (12) "Nonconviction information" means arrest, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the applicant.

~~((11))~~ (13) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

~~((12))~~ (14) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(15) "Washington state preschool program" means an education program for children three-to-five years of age who have not yet entered kindergarten, such as the early childhood education and assistance program.

**\*NEW SECTION.** *Sec. 4. (1)(a) The chairs of the early learning committees of the legislature shall convene a technical working group to:*

- (i) Review federal and state early education funding streams;*
- (ii) Develop technical options for aligning eligibility requirements for child care and Washington state preschool;*
- (iii) Develop recommendations for an effective and responsive eligibility system;*
- (iv) Develop technical options for system designs that blend and braid disparate federal and state funding streams into a single program, including the option of applying for waivers from existing federal requirements; and*
- (v) Present findings and options in a report to the early learning committees of both houses of the legislature by December 1, 2013.*

*(b) At a minimum, the technical working group must be composed of financial and policy staff from the department of social and health services and the department of early learning.*

*(2) The technical working group shall provide monthly progress reports to the staff of the legislative early learning committees and the relevant legislative fiscal committees. The legislative staff shall share the progress reports with the chairs of the legislative committees. The chairs of the committees may provide additional guidance to the working group through legislative staff depending on the information that is shared with the chairs.*

*(3) This section expires December 31, 2013.*

\*Sec. 4 was vetoed. See message at end of chapter.

**Sec. 5.** RCW 43.215.020 and 2010 c 233 s 1, 2010 c 232 s 2, and 2010 c 231 s 6 are each reenacted and amended to read as follows:

(1) The department of early learning is created as an executive branch agency. The department is vested with all powers and duties transferred to it under this chapter and such other powers and duties as may be authorized by law.

(2) The primary duties of the department are to implement state early learning policy and to coordinate, consolidate, and integrate child care and early learning programs in order to administer programs and funding as efficiently as possible. The department's duties include, but are not limited to, the following:

(a) To support both public and private sectors toward a comprehensive and collaborative system of early learning that serves parents, children, and providers and to encourage best practices in child care and early learning programs;

(b) To make early learning resources available to parents and caregivers;

(c) To carry out activities, including providing clear and easily accessible information about quality and improving the quality of early learning

opportunities for young children, in cooperation with the nongovernmental private-public partnership;

(d) To administer child care and early learning programs;

(e) To apply data already collected comparing the following factors and make biennial recommendations to the legislature regarding working connections subsidy and state-funded preschool rates and compensation models that would attract and retain high quality early learning professionals:

(i) State-funded early learning subsidy rates and market rates of licensed early learning homes and centers;

(ii) Compensation of early learning educators in licensed centers and homes and early learning teachers at state higher education institutions;

(iii) State-funded preschool program compensation rates and Washington state head start program compensation rates; and

(iv) State-funded preschool program compensation to compensation in similar comprehensive programs in other states.

(f) To serve as the state lead agency for Part C of the federal individuals with disabilities education act (IDEA);

~~((f))~~ (g) To standardize internal financial audits, oversight visits, performance benchmarks, and licensing criteria, so that programs can function in an integrated fashion;

~~((g))~~ (h) To support the implementation of the nongovernmental private-public partnership and cooperate with that partnership in pursuing its goals including providing data and support necessary for the successful work of the partnership;

~~((h))~~ (i) To work cooperatively and in coordination with the early learning council;

~~((i))~~ (j) To collaborate with the K-12 school system at the state and local levels to ensure appropriate connections and smooth transitions between early learning and K-12 programs;

~~((j))~~ (k) To develop and adopt rules for administration of the program of early learning established in RCW 43.215.141;

~~((k))~~ (l) To develop a comprehensive birth-to-three plan to provide education and support through a continuum of options including, but not limited to, services such as: Home visiting; quality incentives for infant and toddler child care subsidies; quality improvements for family home and center-based child care programs serving infants and toddlers; professional development; early literacy programs; and informal supports for family, friend, and neighbor caregivers; and

~~((l))~~ (m) Upon the development of an early learning information system, to make available to parents timely inspection and licensing action information and provider comments through the internet and other means.

(3) When additional funds are appropriated for the specific purpose of home visiting and parent and caregiver support, the department must reserve at least eighty percent for home visiting services to be deposited into the home visiting services account and up to twenty percent of the new funds for other parent or caregiver support.

(4) Home visiting services must include programs that serve families involved in the child welfare system.

(5) Subject to the availability of amounts appropriated for this specific purpose, the legislature shall fund the expansion in the Washington state preschool program pursuant to RCW 43.215.142 in fiscal year 2014.

(6) The department's programs shall be designed in a way that respects and preserves the ability of parents and legal guardians to direct the education, development, and upbringing of their children, and that recognizes and honors cultural and linguistic diversity. The department shall include parents and legal guardians in the development of policies and program decisions affecting their children.

**Sec. 6.** RCW 43.215.100 and 2007 c 394 s 4 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the department, in collaboration with community and statewide partners, shall implement a voluntary quality rating and improvement system, called the early achievers program, that is applicable to licensed or certified child care centers and homes and early education programs.

(2) The purpose of the (~~voluntary quality rating and improvement system~~) **early achievers program** is: (a) To give parents clear and easily accessible information about the quality of child care and early education programs, support improvement in early learning programs throughout the state, increase the readiness of children for school, and close the disparity in access to quality care; and (b) to establish a common set of expectations and standards that define, measure, and improve the quality of early learning settings.

(3) Participation in the early achievers program is voluntary for licensed or certified child care centers and homes.

(4) By fiscal year 2015, Washington state preschool programs receiving state funds must enroll in the early achievers program and maintain a minimum score level.

(5) Before final implementation of the (~~voluntary quality rating and improvement system~~) **early achievers program**, the department shall report on program progress, as defined within the race to the top federal grant award, and expenditures to the appropriate policy and fiscal committees of the legislature. Nothing in this section changes the department's responsibility to collectively bargain over mandatory subjects.

**Sec. 7.** RCW 43.215.430 and 1994 c 166 s 8 are each amended to read as follows:

The department shall review applications from public or private nonsectarian organizations for state funding of early childhood education and assistance programs (~~and award funds as determined by department rules and based on~~). The department shall consider local community needs (~~and~~), demonstrated capacity (~~to provide services~~), and the need to support a mixed delivery system of early learning that includes alternative models for delivery including licensed centers and licensed family child care providers when reviewing applications.

**Sec. 8.** RCW 43.215.545 and 2006 c 265 s 204 are each amended to read as follows:

The department of early learning shall:

(1) Work in conjunction with the statewide child care resource and referral network as well as local governments, nonprofit organizations, businesses, and community child care advocates to create local child care resource and referral organizations. These organizations may carry out needs assessments, resource development, provider training, technical assistance, and parent information and training;

(2) Actively seek public and private money for distribution as grants to the statewide child care resource and referral network and to existing or potential local child care resource and referral organizations;

(3) Adopt rules regarding the application for and distribution of grants to local child care resource and referral organizations. The rules shall, at a minimum, require an applicant to submit a plan for achieving the following objectives:

(a) Provide parents with information about child care resources, including location of services and subsidies;

(b) Carry out child care provider recruitment and training programs, including training under RCW 74.25.040;

(c) Offer support services, such as parent and provider seminars, toy-lending libraries, and substitute banks;

(d) Provide information for businesses regarding child care supply and demand;

(e) Advocate for increased public and private sector resources devoted to child care;

(f) Provide technical assistance to employers regarding employee child care services; and

(g) Serve recipients of temporary assistance for needy families and working parents with incomes at or below household incomes of ~~((one))~~ two hundred ~~((seventy-five))~~ percent of the federal poverty line;

(4) Provide staff support and technical assistance to the statewide child care resource and referral network and local child care resource and referral organizations;

(5) Maintain a statewide child care licensing data bank and work with department licensors to provide information to local child care resource and referral organizations about licensed child care providers in the state;

(6) Through the statewide child care resource and referral network and local resource and referral organizations, compile data about local child care needs and availability for future planning and development;

(7) Coordinate with the statewide child care resource and referral network and local child care resource and referral organizations for the provision of training and technical assistance to child care providers; ~~((and))~~

(8) Collect and assemble information regarding the availability of insurance and of federal and other child care funding to assist state and local agencies, businesses, and other child care providers in offering child care services;

(9) Subject to the availability of amounts appropriated for this specific purpose, beginning September 1, 2013, increase the base rate for all child care providers by ten percent;

(10) Subject to the availability of amounts appropriated for this specific purpose, provide tiered subsidy rate enhancements to child care providers if the provider meets the following requirements:

(a) The provider enrolls in quality rating and improvement system levels 2, 3, 4, or 5;

(b) The provider is actively participating in the early achievers program;

(c) The provider continues to advance towards level 5 of the early achievers program; and

(d) The provider must complete level 2 within thirty months or the reimbursement rate returns the level 1 rate; and

(11) Require exempt providers to participate in continuing education, if adequate funding is available.

**Sec. 9.** RCW 43.215.135 and 2012 c 253 s 5 and 2012 c 251 s 1 are each reenacted and amended to read as follows:

(1) The department shall establish and implement policies in the working connections child care program to promote stability and quality of care for children from low-income households. Policies for the expenditure of funds constituting the working connections child care program must be consistent with the outcome measures defined in RCW 74.08A.410 and the standards established in this section intended to promote continuity of care for children.

(2) Beginning in fiscal year 2013, authorizations for the working connections child care subsidy shall be effective for twelve months unless a change in circumstances necessitates reauthorization sooner than twelve months. The twelve-month certification applies only if the enrollments in the child care subsidy or working connections child care program are capped.

(3) Subject to the availability of amounts appropriated for this specific purpose, beginning September 1, 2013, working connections child care providers shall receive a five percent increase in the subsidy rate for enrolling in level 2 in the early achievers programs. Providers must complete level 2 and advance to level 3 within thirty months in order to maintain this increase.

Passed by the House April 25, 2013.

Passed by the Senate April 24, 2013.

Approved by the Governor May 21, 2013, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State May 21, 2013.

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

"I am returning, herewith, without my approval as to Section 4, Second Substitute House Bill 1723 entitled:

"AN ACT Relating to expanding and streamlining early learning services and programs"

Section 4 creates a technical working group to review child care and preschool funding sources, eligibility requirements, and system design. A related task force is established in Second Substitute Senate Bill 5595, which involves broader stakeholder participation and a larger scope of the analysis. I am therefore vetoing this section to avoid duplicating efforts that will likely achieve similar results.

I will direct both the Department of Early Learning and Department of Social and Health Services to collaborate with the appropriate legislative committees in developing options to further integrate child care services toward a system that is coordinated, complementary, and user-friendly to parents.

With the exception of Section 4, Second Substitute House Bill 1723 is approved."

## CHAPTER 324

[House Bill 1818]

## ECONOMIC DEVELOPMENT—STREAMLINING PROJECTS

AN ACT Relating to promoting economic development through business and government streamlining projects; adding a new section to chapter 43.330 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that: Since 2010, the department of commerce and the office of regulatory assistance have convened and coordinated a number of cross-agency collaborative regulatory streamlining efforts focused on improving the regulatory experience for small businesses, while maintaining public health and safety; the department of commerce has established efficient and effective regulation as one of its four global priorities to support the mission to grow and improve jobs; the state auditor's office issued a regulatory performance audit in 2012 identifying many agency actions that can also improve the business community's ability to comply with regulatory requirements; and the Washington state economic development commission's 2012 comprehensive statewide strategy emphasized the need for smarter regulations in order to achieve long-term global competitiveness, prosperity, and economic opportunity for all the state's citizens.

(2) The legislature further finds that while individual agency streamlining activities result in improvements, businesses are required to interact with many state and local agencies, all with unique requirements, processes, forms, instructions, payment options, and electronic transaction capabilities. Cross-agency and cross-jurisdictional regulatory improvements are needed to meaningfully improve the overall business customer experience and ability to more easily understand and comply with requirements.

(3) Therefore, the legislature intends to authorize a business regulatory efficiency program administered by the department of commerce with the goal of providing an improved regulatory environment in Washington. By enhancing, simplifying, and better coordinating state and local regulatory processes for specific industry sectors, the amount of time it takes businesses to conduct their interactions with state government will decrease, compliance will increase, and businesses will have the opportunity to generate more revenue and create more jobs, thereby strengthening Washington's economy and overall global competitiveness.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.330 RCW to read as follows:

(1) The department, in collaboration with the office of regulatory assistance and the office of accountability and performance, must conduct multijurisdictional regulatory streamlining projects that each impact a specific industry sector or subsector within a specific geographical location. Planning for an initial pilot project must begin by September 1, 2013, and the initial pilot project must be underway by December 31, 2013. One or more projects must be implemented in each subsequent calendar year through 2019.

(2) The department must establish and implement a competitive process and select a minimum of one applicant comprised of a public-private partnership for participation in each project. The initial pilot project must focus on the manufacturing sector. The department, in consultation with the economic



development commission, must determine the sectors for subsequent projects. The criteria to be used to select projects must include:

- (a) Evidence of strong business commitment to the project;
  - (b) Evidence of strong commitment by the local government jurisdictions where the project is located to allocate necessary staff to the project and to streamline laws, rules, and administrative process requirements both within their jurisdictions and collaboratively across jurisdictions;
  - (c) Willingness to apply lean principles and tools to streamline the business regulatory experience;
  - (d) Identification of a lead partner capable of providing project management and coordination of partners;
  - (e) Support of the stakeholders necessary to implement the project;
  - (f) A plan and capacity to complete the project within the time frame; and
  - (g) A minimum of fifty percent match must be provided from project partners. The match may be cash, in-kind, or a combination of cash and in-kind.
- (3) The department is encouraged to collaborate with nonprofit industry organizations, the private sector, foundations, and other interested entities to successfully complete each project.
- (4) The department must pursue opportunities for nonstate funding as the match to the fifty percent or more provided by project partners. A maximum of fifty thousand dollars of state funds may be used for a project.
- (5) The department may contract with a third party for expertise and facilitation.
- (6) All state agencies with regulatory requirements that impact the project's industry sector must participate.
- (7) The state agencies, local jurisdictions, business partners, and other participants must jointly:
- (a) Develop a project plan to conduct a cross-jurisdictional review process;
  - (b) Identify and review all laws, rules, and administrative processes and requirements pertaining to the selected sector;
  - (c) Apply specific criteria to evaluate the extent to which the laws, rules, and administrative processes and requirements provide for consistent, clear, and efficient customer experiences while continuing to maintain public health, safety, and environmental standards;
  - (d) Develop an implementation plan and schedule that identifies priority streamlining actions;
  - (e) Present their recommendations to the department for comment and endorsement; and
  - (f) Present their recommendations to the Washington state economic development commission for comment, endorsement, and evaluation.
- (8) The department must document and distribute the streamlined laws, rules, processes, and other potentially replicable information, derived from the projects to the association of Washington cities and Washington state association of counties for distribution to their membership.
- (9) The department must brief the economic development committees of the legislature by January 15, 2014, on the status of the initial pilot project, and must submit a report on the outcomes of the projects to the economic development committees of the legislature by January 15th of each calendar year, from 2015 through 2020. The department must include in the reports any streamlining

recommendations identified in the projects that require statutory changes for implementation and any potentially replicable models, approaches, and tools that could be applied to other sectors and geographical areas.

Passed by the House March 9, 2013.

Passed by the Senate April 28, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

## CHAPTER 325

[Engrossed Substitute House Bill 1846]

### INSURANCE—STAND-ALONE DENTAL COVERAGE

AN ACT Relating to stand-alone dental coverage; and amending RCW 48.43.715, 48.46.243, 48.14.0201, and 48.14.020.

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

**Sec. 1.** RCW 48.43.715 and 2012 c 87 s 13 are each amended to read as follows:

(1) Consistent with federal law, the commissioner, in consultation with the board and the health care authority, shall, by rule, select the largest small group plan in the state by enrollment as the benchmark plan for the individual and small group market for purposes of establishing the essential health benefits in Washington state under P.L. 111-148 of 2010, as amended.

(2) If the essential health benefits benchmark plan for the individual and small group market does not include all of the ten benefit categories specified by section 1302 of P.L. 111-148, as amended, the commissioner, in consultation with the board and the health care authority, shall, by rule, supplement the benchmark plan benefits as needed to meet the minimum requirements of section 1302.

(3) A health plan required to offer the essential health benefits, other than a health plan offered through the federal basic health program or medicaid, under P.L. 111-148 of 2010, as amended, may not be offered in the state unless the commissioner finds that it is substantially equal to the benchmark plan. When making this determination, the commissioner (~~must~~):

(a) Must ensure that the plan covers the ten essential health benefits categories specified in section 1302 of P.L. 111-148 of 2010, as amended; (~~and~~)

(b) May consider whether the health plan has a benefit design that would create a risk of biased selection based on health status and whether the health plan contains meaningful scope and level of benefits in each of the ten essential health benefit categories specified by section 1302 of P.L. 111-148 of 2010, as amended;

(c) Notwithstanding the foregoing, for benefit years beginning January 1, 2015, and only to the extent permitted by federal law and guidance, must establish by rule the review and approval requirements and procedures for pediatric oral services when offered in stand-alone dental plans in the nongrandfathered individual and small group markets outside of the exchange; and

(d) Unless prohibited by federal law and guidance, must allow health carriers to also offer pediatric oral services within the health benefit plan in the nongrandfathered individual and small group markets outside of the exchange.

(4) Beginning December 15, 2012, and every year thereafter, the commissioner shall submit to the legislature a list of state-mandated health benefits, the enforcement of which will result in federally imposed costs to the state related to the plans sold through the exchange because the benefits are not included in the essential health benefits designated under federal law. The list must include the anticipated costs to the state of each state-mandated health benefit on the list and any statutory changes needed if funds are not appropriated to defray the state costs for the listed mandate. The commissioner may enforce a mandate on the list for the entire market only if funds are appropriated in an omnibus appropriations act specifically to pay the state portion of the identified costs.

**Sec. 2.** RCW 48.46.243 and 2008 c 217 s 56 are each amended to read as follows:

(1) Subject to subsection (2) of this section, every contract between a health maintenance organization and its participating providers of health care services shall be in writing and shall set forth that in the event the health maintenance organization fails to pay for health care services as set forth in the agreement, the enrolled participant shall not be liable to the provider for any sums owed by the health maintenance organization. Every such contract shall provide that this requirement shall survive termination of the contract.

(2) The provisions of subsection (1) of this section shall not apply:

(a) To emergency care from a provider who is not a participating provider(;-);

(b) To out-of-area services;

(c) To the delivery of covered pediatric oral services that are substantially equal to the essential health benefits benchmark plan; or(;-)

(d) In exceptional situations approved in advance by the commissioner, if the health maintenance organization is unable to negotiate reasonable and cost-effective participating provider contracts.

(3)(a) Each participating provider contract form shall be filed with the commissioner fifteen days before it is used.

(b) Any contract form not affirmatively disapproved within fifteen days of filing shall be deemed approved, except that the commissioner may extend the approval period an additional fifteen days upon giving notice before the expiration of the initial fifteen-day period. The commissioner may approve such a contract form for immediate use at any time. Approval may be subsequently withdrawn for cause.

(c) Subject to the right of the health maintenance organization to demand and receive a hearing under chapters 48.04 and 34.05 RCW, the commissioner may disapprove such a contract form if it is in any respect in violation of this chapter or if it fails to conform to minimum provisions or standards required by the commissioner by rule under chapter 34.05 RCW.

(4) No participating provider, or insurance producer, trustee, or assignee thereof, may maintain an action against an enrolled participant to collect sums owed by the health maintenance organization.

**Sec. 3.** RCW 48.14.0201 and 2011 c 47 s 8 are each amended to read as follows:

(1) As used in this section, "taxpayer" means a health maintenance organization as defined in RCW 48.46.020, a health care service contractor as defined in ~~((RCW 48.44.010))~~ chapter 48.44 RCW, or a self-funded multiple employer welfare arrangement as defined in RCW 48.125.010.

(2) Each taxpayer must pay a tax on or before the first day of March of each year to the state treasurer through the insurance commissioner's office. The tax must be equal to the total amount of all premiums and prepayments for health care services collected or received by the taxpayer under RCW 48.14.090 during the preceding calendar year multiplied by the rate of two percent. For tax purposes, the reporting of premiums and prepayments must be on a written basis or on a paid-for basis consistent with the basis required by the annual statement.

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

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

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

(5) Moneys collected under this section are deposited in the general fund.

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

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

(b) Amounts received by any taxpayer from the state of Washington as prepayments for health care services provided under:

- (i) The medical care services program as provided in RCW 74.09.035; or
- (ii) The Washington basic health plan on behalf of subsidized enrollees as provided in chapter 70.47 RCW.

(c) Amounts received by any health care service contractor~~((;))~~ as defined in ~~((RCW 48.44.010))~~ chapter 48.44 RCW, or any health maintenance organization as defined in chapter 48.46 RCW, as prepayments for health care services included within the definition of practice of dentistry under RCW 18.32.020, except amounts received for pediatric oral services that qualify as coverage for the minimum essential coverage requirement under P.L. 111-148 (2010), as amended.

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

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

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

(b) If there has not been a final determination of the legality of these taxes, then beginning on the earlier of (i) the date the fourth multiple employer welfare arrangement has been certified by the insurance commissioner, or (ii) April 1, 2006, the arrangement must deposit the taxes imposed by this section into an interest bearing escrow account maintained by the arrangement. Upon a final determination that the taxes are not preempted by the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., all funds in the interest bearing escrow account must be transferred to the state treasurer.

(9) The effect of transferring contracts for health care services from one taxpayer to another taxpayer is to transfer the tax prepayment obligation with respect to the contracts.

(10) On or before June 1st of each year, the commissioner must notify each taxpayer required to make prepayments in that year of the amount of each prepayment and must provide remittance forms to be used by the taxpayer. However, a taxpayer's responsibility to make prepayments is not affected by failure of the commissioner to send, or the taxpayer to receive, the notice or forms.

**Sec. 4.** RCW 48.14.020 and 2009 c 161 s 3 are each amended to read as follows:

(1) Subject to other provisions of this chapter, each authorized insurer except title insurers shall on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax on premiums. Except as provided in subsection ~~((2))~~ (3) of this section, such tax shall be in the amount of two percent of all premiums, excluding amounts returned to or the amount of reductions in premiums allowed to holders of industrial life policies for payment of premiums directly to an office of the insurer, collected or received by the insurer under RCW 48.14.090 during the preceding calendar year other than ocean marine and foreign trade insurances, after deducting premiums paid to policyholders as returned premiums, upon risks or property

resident, situated, or to be performed in this state. For tax purposes, the reporting of premiums shall be on a written basis or on a paid-for basis consistent with the basis required by the annual statement. For the purposes of this section the consideration received by an insurer for the granting of an annuity shall not be deemed to be a premium.

(2) The taxes imposed in this section do not apply to amounts received by any life and disability insurer for health care services included within the definition of practice of dentistry under RCW 18.32.020 except amounts received for pediatric oral services that qualify as coverage for the minimum essential coverage requirement under P.L. 111-148 (2010), as amended.

(3) In the case of insurers which require the payment by their policyholders at the inception of their policies of the entire premium thereon in the form of premiums or premium deposits which are the same in amount, based on the character of the risks, regardless of the length of term for which such policies are written, such tax shall be in the amount of two percent of the gross amount of such premiums and premium deposits upon policies on risks resident, located, or to be performed in this state, in force as of the thirty-first day of December next preceding, less the unused or unabsorbed portion of such premiums and premium deposits computed at the average rate thereof actually paid or credited to policyholders or applied in part payment of any renewal premiums or premium deposits on one-year policies expiring during such year.

~~((3))~~ (4) Each authorized insurer shall with respect to all ocean marine and foreign trade insurance contracts written within this state during the preceding calendar year, on or before the first day of March of each year pay to the state treasurer through the commissioner's office a tax of ninety-five one-hundredths of one percent on its gross underwriting profit. Such gross underwriting profit shall be ascertained by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance) on such ocean marine and foreign trade insurance contracts the net losses paid (i.e., gross losses paid less salvage and recoveries on reinsurance ceded) during such calendar year under such contracts. In the case of insurers issuing participating contracts, such gross underwriting profit shall not include, for computation of the tax prescribed by this subsection, the amounts refunded, or paid as participation dividends, by such insurers to the holders of such contracts.

~~((4))~~ (5) The state does hereby preempt the field of imposing excise or privilege taxes upon insurers or their appointed insurance producers, other than title insurers, and no county, city, town or other municipal subdivision shall have the right to impose any such taxes upon such insurers or these insurance producers.

~~((5))~~ (6) If an authorized insurer collects or receives any such premiums on account of policies in force in this state which were originally issued by another insurer and which other insurer is not authorized to transact insurance in this state on its own account, such collecting insurer shall be liable for and shall pay the tax on such premiums.

Passed by the House April 22, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

## CHAPTER 326

[Engrossed House Bill 1887]

INDUSTRIAL INSURANCE—VOCATIONAL REHABILITATION—  
EDUCATIONAL OPTIONS

AN ACT Relating to increasing educational options under vocational rehabilitation plans; and amending RCW 51.32.099.

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

**Sec. 1.** RCW 51.32.099 and 2011 c 291 s 2 are each amended to read as follows:

(1)(a) The legislature intends to create improved vocational outcomes for Washington state injured workers and employers through legislative and regulatory change under a pilot program for the period of January 1, 2008, through June 30, 2013. This pilot vocational system is intended to allow opportunities for eligible workers to participate in meaningful retraining in high-demand occupations, improve successful return to work and achieve positive outcomes for workers, reduce the incidence of repeat vocational services, increase accountability and responsibility, and improve cost predictability. To facilitate the study and evaluation of the results of the proposed changes, the department shall establish the temporary funding of certain state fund vocational costs through the medical aid account to ensure the appropriate assessments to employers for the costs of their claims for vocational services in accordance with RCW 51.32.0991.

(b) An independent review and study of the effects of the pilot program shall be conducted to determine whether it has achieved the appropriate outcomes at reasonable cost to the system. The review shall include, at a minimum, a report on the department's performance with regard to the provision of vocational services, the skills acquired by workers who receive retraining services, the types of training programs approved, whether the workers are employed, at what jobs and wages after completion of the training program and at various times subsequent to their claim closure, the number and demographics of workers who choose the option provided in subsection (4)(b) of this section, and their employment and earnings status at various times subsequent to claim closure. The department may adopt rules, in collaboration with the subcommittee created under (c)(iii) of this subsection, to further define the scope and elements of the required study. Reports of the independent researcher are due on December 1, 2010, December 1, 2011, and December 1, 2012.

(c) In implementing the pilot program, the department shall:

(i) Establish a vocational initiative project that includes participation by the department as a partner with WorkSource, the established state system that administers the federal workforce investment act of 1998. As a partner, the department shall place vocational professional full-time employees at pilot WorkSource locations; refer some workers for vocational services to these vocational professionals; and work with employers in work source pilot areas to market the benefits of on-the-job training programs and with community colleges to reserve slots in high employer demand programs of study as defined in RCW 28B.50.030. These on-the-job training programs and community college slots may be considered by both department and private sector vocational professionals for vocational plan development. The department will

also assist stakeholders in developing additional vocational training programs in various industries, including but not limited to agriculture and construction. These programs will expand the choices available to injured workers in developing their vocational training plans with the assistance of vocational professionals.

(ii) Develop and maintain a register of state fund and self-insured workers who have been retrained or have selected any of the vocational options described in this section for at least the duration of the pilot program.

(iii) Create a vocational rehabilitation subcommittee made up of members appointed by the director for at least the duration of the pilot program. This subcommittee shall provide the business and labor partnership needed to maintain focus on the intent of the pilot program, as described in this section, and provide consistency and transparency to the development of rules and policies. The subcommittee shall report to the director at least annually and recommend to the director and the legislature any additional statutory changes needed, which may include extension of the pilot period. The subcommittee shall provide input and oversight with the department concerning the study required under (b) of this subsection. The subcommittee shall provide recommendations for additional changes or incentives for injured workers to return to work with their employer of injury. The subcommittee shall also consider options that, under limited circumstances, would allow injured workers to attend baccalaureate institutions under their vocational rehabilitation plans and, by December 31, 2013, the subcommittee shall provide recommendations to the director and the legislature on statutory changes needed to develop those options.

(iv) The department shall develop an annual report concerning Washington's workers' compensation vocational rehabilitation system to the legislature and to the subcommittee by December 1, 2009, and annually thereafter with the final report due by December 1, 2012. The annual report shall include the number of workers who have participated in more than one vocational training plan beginning with plans approved on January 1, 2008, and in which industries those workers were employed. The final report shall include the department's assessment and recommendations for further legislative action, in collaboration with the subcommittee.

(2)(a) For the purposes of this section, the day the worker commences vocational plan development means the date the department or self-insurer notifies the worker of his or her eligibility for plan development services or of an eligibility determination in response to a dispute of a vocational decision.

(b) When the supervisor or supervisor's designee has decided that vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she shall be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. The vocational professional assigned to the claim shall, at the initial meeting with the worker, fully inform the worker of the return-to-work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The department shall provide tools to the vocational professional for communicating this and other information required by RCW 51.32.095 and this section to the worker.



(c) On the date the worker commences vocational plan development, the department shall also inform the employer in writing of the employer's right to make a valid return-to-work offer during the first fifteen days following the commencement of vocational plan development. However, at the sole discretion of the supervisor or the supervisor's designee, an employer may be granted an extension of time of up to ten additional days to make a valid return-to-work offer. The additional days may be allowed by the department with or without a request from the employer. The extension may only be granted if the employer made a return-to-work offer to the worker within fifteen days of the date the worker commenced vocational plan development that met some but not all of the requirements in this section. To be valid, the offer must be for bona fide employment with the employer of injury, consistent with the worker's documented physical and mental restrictions as provided by the worker's health care provider. When the employer makes a valid return-to-work offer, the vocational plan development services and temporary total disability compensation shall be terminated effective on the starting date for the job without regard to whether the worker accepts the return-to-work offer.

(d) Following the time period described in (c) of this subsection, the employer may still provide, and the worker may accept, any valid return-to-work offer. The worker's acceptance of such an offer shall result in the termination of vocational plan development or implementation services and temporary total disability compensation effective the day the employment begins.

(3)(a) All vocational plans must contain an accountability agreement signed by the worker detailing expectations regarding progress, attendance, and other factors influencing successful participation in the plan. Failure to abide by the agreed expectations shall result in suspension of vocational benefits pursuant to RCW 51.32.110.

(b) Any formal education included as part of the vocational plan must be for an accredited or licensed program or other program approved by the department. The department shall develop rules that provide criteria for the approval of nonaccredited or unlicensed programs.

(c) The vocational plan for an individual worker must be completed and submitted to the department within ninety days of the day the worker commences vocational plan development. The department may extend the ninety days for good cause. Criteria for good cause shall be provided in rule. The frequency and reasons for good cause extensions shall be reported to the subcommittee created under subsection (1)(c)(iii) of this section.

(d) Costs for the vocational plan may include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on-the-job training, the cost of furnishing tools and other equipment necessary for self-employment or reemployment, and other necessary expenses in an amount not to exceed twelve thousand dollars. This amount shall be adjusted effective July 1 of each year for vocational plans or retraining benefits available under subsection (4)(b) of this section approved on or after this date but before June 30 of the next year based on the average percentage change in tuition for the next fall quarter for all Washington state community colleges.

(e) The duration of the vocational plan shall not exceed two years from the date the plan is implemented. The worker shall receive temporary total

disability compensation under RCW 51.32.090 and the cost of transportation while he or she is actively and successfully participating in a vocational plan.

(f) If the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(4) Vocational plan development services shall be completed within ninety days of commencing. Except as provided in RCW 51.32.095(3), during vocational plan development the worker shall, with the assistance of a vocational professional, participate in vocational counseling and occupational exploration to include, but not be limited to, identifying possible job goals, training needs, resources, and expenses, consistent with the worker's physical and mental status. A vocational rehabilitation plan shall be developed by the worker and the vocational professional and submitted to the department or self-insurer. Following this submission, the worker shall elect one of the following options:

(a) Option 1: The department or self-insurer implements and the worker participates in the vocational plan developed by the vocational professional and approved by the worker and the department or self-insurer. For state fund claims, the department must review and approve the vocational plan before implementation may begin. If the department takes no action within fifteen days, the plan is deemed approved. The worker may, within fifteen days of the department's approval of the plan or of a determination that the plan is valid following a dispute, elect option 2. However, in the sole discretion of the supervisor or supervisor's designee, the department may approve an election for option 2 benefits that was submitted in writing within twenty-five days of the department's approval of the plan or of a determination that the plan is valid following a dispute if the worker provides a written explanation establishing that he or she was unable to submit his or her election of option 2 benefits within fifteen days. In no circumstance may the department approve of an election for option 2 benefits that was submitted more than twenty-five days after the department's approval of a retraining plan or of a determination that a plan is valid following a dispute.

(i) Following successful completion of the vocational plan, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of transferable skills obtained in the vocational plan.

(ii) If a vocational plan is successfully completed on a claim which is thereafter reopened as provided in RCW 51.32.160, the cost and duration available for any subsequent vocational plan is limited to that in subsection (3)(d) and (e) of this section, less that previously expended.

(b) Option 2: The worker declines further vocational services under the claim and receives an amount equal to six months of temporary total disability compensation under RCW 51.32.090. The award is payable in biweekly payments in accordance with the schedule of temporary total disability payments, until such award is paid in full. These payments shall not include interest on the unpaid balance. However, upon application by the worker, and at the discretion of the department, the compensation may be converted to a lump sum payment. The vocational costs defined in subsection (3)(d) of this section shall remain available to the worker, upon application to the department or self-insurer, for a period of five years. The vocational costs shall, if expended,

be available for programs or courses at any accredited or licensed institution or program from a list of those approved by the department for tuition, books, fees, supplies, equipment, and tools, without department or self-insurer oversight. The department shall issue an order as provided in RCW 51.52.050 confirming the option 2 election, setting a payment schedule, and terminating temporary total disability benefits effective the date of the order confirming that election. The department shall thereafter close the claim. A worker who elects option 2 benefits shall not be entitled to further temporary total, or to permanent total, disability benefits except upon a showing of a worsening in the condition or conditions accepted under the claim such that claim closure is not appropriate, in which case the option 2 selection will be rescinded and the amount paid to the worker will be assessed as an overpayment. A claim that was closed based on the worker's election of option 2 benefits may be reopened as provided in RCW 51.32.160, but cannot be reopened for the sole purpose of allowing the worker to seek vocational assistance.

(i) If within five years from the date the option 2 order becomes final, the worker is subsequently injured or suffers an occupational disease or reopens the claim as provided in RCW 51.32.160, and vocational rehabilitation is found both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1), the duration of any vocational plan under subsection (3)(e) of this section shall not exceed eighteen months.

(ii) If the available vocational costs are utilized by the worker, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of the transferable skills obtained.

(iii) If the available vocational costs are utilized by the worker and the claim is thereafter reopened as provided in RCW 51.32.160, the cost available for any vocational plan is limited to that in subsection (3)(d) of this section less that previously expended.

(iv) Option 2 may only be elected once per worker.

(c) The director, in his or her sole discretion, may provide the worker vocational assistance not to exceed that in subsection (3) of this section, without regard to the worker's prior option selection or benefits expended, where vocational assistance would prevent permanent total disability under RCW 51.32.060.

(5)(a) As used in this section, "vocational plan interruption" means an occurrence which disrupts the plan to the extent the employability goal is no longer attainable. "Vocational plan interruption" does not include institutionally scheduled breaks in educational programs, occasional absence due to illness, or modifications to the plan which will allow it to be completed within the cost and time provisions of subsection (3)(d) and (e) of this section.

(b) When a vocational plan interruption is beyond the control of the worker, the department or self-insurer shall recommence plan development. If necessary to complete vocational services, the cost and duration of the plan may include credit for that expended prior to the interruption. A vocational plan interruption is considered outside the control of the worker when it is due to the closure of the accredited institution, when it is due to a death in the worker's immediate

family, or when documented changes in the worker's accepted medical conditions prevent further participation in the vocational plan.

(c) When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits shall be suspended in accordance with RCW 51.32.110. If plan development or implementation is recommenced, the cost and duration of the plan shall not include credit for that expended prior to the interruption. A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or postinjury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement per subsection (3)(a) of this section.

Passed by the House March 11, 2013.

Passed by the Senate April 17, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

## CHAPTER 327

[House Bill 2058]

### BUDGET TRANSPARENCY—CAPITAL AND TRANSPORTATION

AN ACT Relating to transparency in enacted state capital and transportation budget appropriations and expenditures; amending RCW 44.48.150; and creating a new section.

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

**NEW SECTION. Sec. 1.** The intent of the legislature is to make state capital budget and transportation budget appropriation and expenditure data as transparent and easy to use by the public as is feasible. It is important to provide information to the public on state capital and transportation investments by legislative district and county in a format that is easy to navigate and comprehend. Providing such information contributes to governmental accountability, public participation, agency efficiency, and open government.

**Sec. 2.** RCW 44.48.150 and 2008 c 326 s 2 are each amended to read as follows:

(1) By January 1, 2009, in collaboration with the office of financial management, using existing databases and structures currently shared, the office of the legislative evaluation and accountability program committee shall establish and make available to the public a searchable state expenditure information web site. The state expenditure information web site shall provide access to current budget data, access to current accounting data for budgeted expenditures and staff, and access to historical data. At a minimum, the web site will provide access or links to the following information as data are available:

- (a) State expenditures by fund or account;
- (b) State expenditures by agency, program, and subprogram;
- (c) State revenues by major source;
- (d) State expenditures by object and subobject;
- (e) State agency workloads, caseloads, and performance measures, and recent performance audits; and
- (f) State agency budget data by activity.

(2) "State agency," as used in this section, includes every state agency, office, board, commission, or institution of the executive, legislative, or judicial branches, including institutions of higher education.

(3) The state expenditure information web site shall be updated periodically as subsequent fiscal year data become available, and the prior year expenditure data shall be maintained by the legislative evaluation and accountability program committee as part of its ten-year historical budget data.

(4) By January 1, 2014, current and future capital project and transportation project investments must be coded with the geographic information sufficient to permit the public to search and identify appropriation and expenditure data at the parent and subproject level to the extent available by:

- (a) State legislative district;
- (b) County; and
- (c) Agency project identifier.

(5) The office of the legislative evaluation and accountability program committee must, within existing resources, update the state expenditure information web site to allow the public to search for capital budget and transportation projects by selecting from an online geographical map. The map must allow an in-depth examination of financial and other data associated with such projects. Data elements must include:

- (a) Project title;
- (b) Total appropriation;
- (c) Project description;
- (d) Expenditure data; and
- (e) Administering agency.

(6) The web site must be easy to use, contain current and readily available data, and allow for review and analysis by the public. The legislative evaluation and accountability program committee must test the web site with potential users to ensure that it is easy to navigate and comprehend.

Passed by the House April 27, 2013.

Passed by the Senate April 28, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

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## CHAPTER 328

[Engrossed Senate Bill 5099]

### STATE AGENCIES AND LOCAL GOVERNMENTS—FUEL USAGE

AN ACT Relating to fuel usage of publicly owned vehicles, vessels, and construction equipment; and amending RCW 43.19.648.

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

**Sec. 1.** RCW 43.19.648 and 2012 c 171 s 1 are each amended to read as follows:

(1) Effective June 1, 2015, all state agencies, to the extent determined practicable by the rules adopted by the department of commerce pursuant to RCW 43.325.080, are required to satisfy one hundred percent of their fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel. Compressed natural gas, liquefied natural gas, or propane

may be substituted for electricity or biofuel if the department of commerce determines that electricity and biofuel are not reasonably available.

(2)(a) Effective June 1, 2018, all local government subdivisions of the state, to the extent determined practicable by the rules adopted by the department of commerce pursuant to RCW 43.325.080, are required to satisfy one hundred percent of their fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel. The department of commerce shall convene an advisory committee of representatives of local government subdivisions, representatives from organizations representing each local government subdivision, and either (i) an electric utility or (ii) a natural gas utility, or both, to work with the department to develop the rules. The department may invite additional stakeholders to participate in the advisory committee as needed and determined by the department.

(b) The following are exempt from this requirement: (i) Transit agencies using compressed natural gas on June 1, 2018(~~are exempt from this requirement~~), and (ii) engine retrofits that would void warranties. Nothing in this section is intended to require the replacement of equipment before the end of its useful life. Compressed natural gas, liquefied natural gas, or propane may be substituted for electricity or biofuel if the department of commerce determines that electricity and biofuel are not reasonably available.

(c)(i) Rules adopted pursuant to RCW 43.325.080 must provide the authority for local government subdivisions to elect to exempt police, fire, and other emergency response vehicles, including utility vehicles frequently used for emergency response, from the fuel usage requirement in (a) of this subsection.

(ii) Prior to executing its authority under (c)(i) of this subsection, a local government subdivision must provide notice to the department of commerce of the exemption. The notice must include the rationale for the exemption and an explanation of how the exemption is consistent with rules adopted by the department of commerce.

(d) Before June 1, 2018, local government subdivisions purchasing vessels, vehicles, and construction equipment capable of using biodiesel must request warranty protection for the highest level of biodiesel the vessel, vehicle, or construction equipment is capable of using, up to one hundred percent biodiesel, as long as the costs are reasonably equal to a vessel, vehicle, or construction equipment that is not warranted to use up to one hundred percent biodiesel.

(3) In order to phase in this transition for the state, all state agencies, to the extent determined practicable by the department of commerce by rules adopted pursuant to RCW 43.325.080, are required to achieve forty percent fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel by June 1, 2013. Compressed natural gas, liquefied natural gas, or propane may be substituted for electricity or biofuel if the department of commerce determines that electricity and biofuel are not reasonably available. The department of enterprise services, in consultation with the department of commerce, shall report to the governor and the legislature by December 1, 2013, on what percentage of the state's fuel usage is from electricity or biofuel.

(4) Except for cars owned or operated by the Washington state patrol, when tires on vehicles in the state's motor vehicle fleet are replaced, they must be replaced with tires that have the same or better rolling resistance as the original tires.

(5) By December 31, 2015, the state must, to the extent practicable, install electrical outlets capable of charging electric vehicles in each of the state's fleet parking and maintenance facilities.

(6) The department of transportation's obligations under subsection (3) of this section are subject to the availability of amounts appropriated for the specific purpose identified in subsection (3) of this section.

(7) The department of transportation's obligations under subsection (5) of this section are subject to the availability of amounts appropriated for the specific purpose identified in subsection (5) of this section unless the department receives federal or private funds for the specific purpose identified in subsection (5) of this section.

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

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

Passed by the Senate April 23, 2013.

Passed by the House April 17, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

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## CHAPTER 329

[Engrossed Second Substitute Senate Bill 5193]

### WOLF CONFLICT MANAGEMENT

AN ACT Relating to gray wolf conflict management; amending RCW 77.36.100, 77.36.130, and 46.17.210; reenacting and amending RCW 77.36.010; adding new sections to chapter 77.36 RCW; and creating a new section.

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

**Sec. 1.** RCW 77.36.010 and 2009 c 521 s 184 and 2009 c 333 s 54 are each reenacted and amended to read as follows:

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

(1) "Claim" means an application to the department for compensation under this chapter.

(2) "Commercial crop" means a horticultural or agricultural product, including the growing or harvested product. For the purposes of this chapter all parts of horticultural trees shall be considered a commercial crop and shall be eligible for claims.

(3) "~~((Commercial))~~ Livestock" means cattle, sheep, and horses (~~((held or raised by a person for sale))~~).

(4) "Compensation" means a cash payment, materials, or service.

(5) "Damage" means economic losses caused by wildlife interactions.

(6) "Immediate family member" means spouse, state registered domestic partner, brother, sister, grandparent, parent, child, or grandchild.

(7) "Owner" means a person who has a legal right to commercial crops, (~~commercial~~) livestock, or other property that was damaged during a wildlife interaction.

(8) "Wildlife interaction" means the negative interaction and the resultant damage between wildlife and commercial crops, (~~commercial~~) livestock, or other property.

**NEW SECTION. Sec. 2.** A new section is added to chapter 77.36 RCW to read as follows:

(1) The department may pay no more than fifty thousand dollars per fiscal year from the state wildlife account created in RCW 77.12.170 for claims and assessment costs for injury or loss of livestock caused by wolves submitted under RCW 77.36.100.

(2) Notwithstanding other provisions of this chapter, the department may also accept and expend money from other sources to address injury or loss of livestock or other property caused by wolves consistent with the requirements on that source of funding.

(3) If any wildlife account expenditures authorized under subsection (1) of this section are unspent as of June 30th of a fiscal year, the state treasurer shall transfer the unspent amount to the wolf-livestock conflict account created in section 3 of this act.

**NEW SECTION. Sec. 3.** A new section is added to chapter 77.36 RCW to read as follows:

(1) The wolf-livestock conflict account is created in the custody of the state treasurer. Any transfers under section 2 of this act must be deposited in the account. The department may also deposit into the account any grants, gifts, or donations to the state for the purposes of providing compensation for injury or loss of livestock caused by wolves. Consistent with this chapter, expenditures from the account may be used only for mitigation, assessment, and payments for injury or loss of livestock caused by wolves. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2)(a) The department must maintain a list of claims submitted under RCW 77.36.100, organized chronologically by the date wolf predation is confirmed, for injury or loss of livestock caused by wolves that have been approved for payment but not yet been fully paid by the department. As funding becomes available to the department under this section, section 2 of this act, or any other source, the department must pay claims in the chronologic order they appear on the list. The department must maintain, and is authorized to pay, claims that appear on the list due to injury or loss that occurred in a previous fiscal biennium.

(b) The payment of a claim included on the list maintained by the department under this section is conditional on the availability of specific funding for this purpose and is not a guarantee of reimbursement.



**Sec. 4.** RCW 77.36.100 and 2009 c 333 s 55 are each amended to read as follows:

(1)(a) Except as limited by RCW 77.36.070 (~~(and)~~), 77.36.080, and sections 2 and 3 of this act, the department shall offer to distribute money appropriated to pay claims to the owner of commercial crops for damage caused by wild deer or elk or to the owners of (~~(commercial)~~) livestock that has been killed by bears, wolves, or cougars, or injured by bears, wolves, or cougars to such a degree that the market value of the (~~(commercial)~~) livestock has been diminished. Payments for claims for damage to (~~(commercial)~~) livestock are not subject to the limitations of RCW 77.36.070 and 77.36.080, but may not, except as provided in sections 2 and 3 of this act, exceed the total amount specifically appropriated therefor.

(b) Owners of commercial crops or (~~(commercial)~~) livestock are only eligible for a claim under this subsection if:

(i) The commercial crop owner satisfies the definition of "eligible farmer" in RCW 82.08.855;

(ii) The conditions of RCW 77.36.110 have been satisfied; and

(iii) The damage caused to the commercial crop or (~~(commercial)~~) livestock satisfies the criteria for damage established by the commission under (c) of this subsection.

(c) The commission shall adopt and maintain by rule criteria that clarifies the damage to commercial crops and (~~(commercial)~~) livestock qualifying for compensation under this subsection. An owner of a commercial crop or (~~(commercial)~~) livestock must satisfy the criteria prior to receiving compensation under this subsection. The criteria for damage adopted under this subsection must include, but not be limited to, a required minimum economic loss to the owner of the commercial crop or (~~(commercial)~~) livestock, which may not be set at a value of less than five hundred dollars.

(2)(a) Subject to the availability of nonstate funds, nonstate resources other than cash, or amounts appropriated for this specific purpose, the department may offer to provide (~~(noncash)~~) compensation (~~(only)~~) to offset wildlife interactions to a person who applies to the department for compensation for damage to property other than commercial crops or (~~(commercial)~~) livestock that is the result of a mammalian or avian species of wildlife on a case-specific basis if the conditions of RCW 77.36.110 have been satisfied and if the damage satisfies the criteria for damage established by the commission under (b) of this subsection.

(b) The commission shall adopt and maintain by rule criteria for damage to property other than a commercial crop or (~~(commercial)~~) livestock that is damaged by wildlife and may be eligible for compensation under this subsection, including criteria for filing a claim for compensation under this subsection.

(3)(a) To prevent or offset wildlife interactions, the department may offer materials or services to a person who applies to the department for assistance in providing mitigating actions designed to reduce wildlife interactions if the actions are designed to address damage that satisfies the criteria for damage established by the commission under this (~~(subsection)~~) section.

(b) The commission shall adopt and maintain by rule criteria for mitigating actions designed to address wildlife interactions that may be eligible for

materials and services under this section, including criteria for submitting an application under this section.

(4) An owner who files a claim under this section may appeal the decision of the department pursuant to rules adopted by the commission if the claim:

(a) Is denied; or

(b) Is disputed by the owner and the owner disagrees with the amount of compensation determined by the department.

(5) The commission shall adopt rules setting limits and conditions for the department's expenditures on claims and assessments for commercial crops, livestock, other property, and mitigating actions.

**Sec. 5.** RCW 77.36.130 and 2009 c 333 s 58 are each amended to read as follows:

(1) Except as otherwise provided in this section and as limited by RCW 77.36.100, 77.36.070, ~~((and)) 77.36.080, and sections 2 and 3 of this act~~, the cash compensation portion of each claim by the department under this chapter is limited to the lesser of:

(a) The value of the damage to the property by wildlife, reduced by the amount of compensation provided to the claimant by any nonprofit organizations that provide compensation to private property owners due to financial losses caused by wildlife interactions~~((, except that, subject to appropriation to pay compensation for damage to commercial livestock,))~~. The value of killed or injured ~~((commercial))~~ livestock may be no more than ~~((two hundred dollars per sheep, one thousand five hundred dollars per head of cattle, and one thousand five hundred dollars per horse))~~ the market value of the lost livestock subject to the conditions and criteria established by rule of the commission; or

(b) Ten thousand dollars.

(2) The department may offer to pay a claim for an amount in excess of ten thousand dollars to the owners of commercial crops or ~~((commercial))~~ livestock filing a claim under RCW 77.36.100 only if the outcome of an appeal filed by the claimant under RCW 77.36.100 determines a payment higher than ten thousand dollars.

(3) All payments of claims by the department under this chapter must be paid to the owner of the damaged property and may not be assigned to a third party.

(4) The burden of proving all property damage, including damage to commercial crops and ~~((commercial))~~ livestock, belongs to the claimant.

**Sec. 6.** RCW 46.17.210 and 2011 c 171 s 57 are each amended to read as follows:

In addition to all fees and taxes required to be paid upon application for a vehicle registration under chapter 46.16A RCW, the holder of a personalized license plate shall pay an initial fee of ~~((forty-two))~~ fifty-two dollars and ~~((thirty-two))~~ forty-two dollars for each renewal. The personalized license plate fee must be distributed as provided in RCW 46.68.435.

**NEW SECTION. Sec. 7.** Section 6 of this act applies only to vehicle registrations that are due or become due on or after October 1, 2013.

Passed by the Senate April 27, 2013.

Passed by the House April 25, 2013.

Approved by the Governor May 21, 2013.  
Filed in Office of Secretary of State May 21, 2013.

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**CHAPTER 330**

[Substitute Senate Bill 5211]

**LABOR—SOCIAL NETWORK INFORMATION—EMPLOYER LIABILITY**

AN ACT Relating to social networking accounts and profiles; adding new sections to chapter 49.44 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 49.44 RCW to read as follows:

(1) An employer may not:

(a) Request, require, or otherwise coerce an employee or applicant to disclose login information for the employee's or applicant's personal social networking account;

(b) Request, require, or otherwise coerce an employee or applicant to access his or her personal social networking account in the employer's presence in a manner that enables the employer to observe the contents of the account;

(c) Compel or coerce an employee or applicant to add a person, including the employer, to the list of contacts associated with the employee's or applicant's personal social networking account;

(d) Request, require, or cause an employee or applicant to alter the settings on his or her personal social networking account that affect a third party's ability to view the contents of the account; or

(e) Take adverse action against an employee or applicant because the employee or applicant refuses to disclose his or her login information, access his or her personal social networking account in the employer's presence, add a person to the list of contacts associated with his or her personal social networking account, or alter the settings on his or her personal social networking account that affect a third party's ability to view the contents of the account.

(2) This section does not apply to an employer's request or requirement that an employee share content from his or her personal social networking account if the following conditions are met:

(a) The employer requests or requires the content to make a factual determination in the course of conducting an investigation;

(b) The employer undertakes the investigation in response to receipt of information about the employee's activity on his or her personal social networking account;

(c) The purpose of the investigation is to: (i) Ensure compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct; or (ii) investigate an allegation of unauthorized transfer of an employer's proprietary information, confidential information, or financial data to the employee's personal social networking account; and

(d) The employer does not request or require the employee to provide his or her login information.

(3) This section does not:

(a) Apply to a social network, intranet, or other technology platform that is intended primarily to facilitate work-related information exchange, collaboration, or communication by employees or other workers;

(b) Prohibit an employer from requesting or requiring an employee to disclose login information for access to: (i) An account or service provided by virtue of the employee's employment relationship with the employer; or (ii) an electronic communications device or online account paid for or supplied by the employer;

(c) Prohibit an employer from enforcing existing personnel policies that do not conflict with this section; or

(d) Prevent an employer from complying with the requirements of state or federal statutes, rules or regulations, case law, or rules of self-regulatory organizations.

(4) If, through the use of an employer-provided electronic communications device or an electronic device or program that monitors an employer's network, an employer inadvertently receives an employee's login information, the employer is not liable for possessing the information but may not use the login information to access the employee's personal social networking account.

(5) For the purposes of this section and section 2 of this act:

(a) "Adverse action" means: Discharging, disciplining, or otherwise penalizing an employee; threatening to discharge, discipline, or otherwise penalize an employee; and failing or refusing to hire an applicant.

(b) "Applicant" means an applicant for employment.

(c) "Electronic communications device" means a device that uses electronic signals to create, transmit, and receive information, including computers, telephones, personal digital assistants, and other similar devices.

(d) "Employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or other activity in this state and employs one or more employees, and includes the state, any state institution, state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation. "Employer" includes an agent, a representative, or a designee of the employer.

(e) "Login information" means a user name and password, a password, or other means of authentication that protects access to a personal social networking account.

**NEW SECTION. Sec. 2.** A new section is added to chapter 49.44 RCW to read as follows:

An employee or applicant aggrieved by a violation of section 1 of this act may bring a civil action in a court of competent jurisdiction. The court may:

(1) Award a prevailing employee or applicant injunctive or other equitable relief, actual damages, a penalty in the amount of five hundred dollars, and reasonable attorneys' fees and costs; and

(2) Pursuant to RCW 4.84.185, award any prevailing party against whom an action has been brought for a violation of section 1 of this act reasonable expenses and attorneys' fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.

Passed by the Senate April 27, 2013.

Passed by the House April 24, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

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## CHAPTER 331

[Substitute Senate Bill 5362]

### WORKERS' COMPENSATION—VOCATIONAL REHABILITATION

AN ACT Relating to recommendations of the vocational rehabilitation subcommittee for workers' compensation; amending RCW 51.32.095 and 51.32.099; amending 2011 c 291 s 3 (uncodified); amending 2009 c 353 s 7 (uncodified); amending 2007 c 72 s 6 (uncodified); providing expiration dates; and declaring an emergency.

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

**Sec. 1.** RCW 51.32.095 and 2011 c 291 s 1 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 (4) of this section or RCW 51.32.099, as appropriate. An injured worker may not participate in vocational rehabilitation under this section or RCW 51.32.099 if such participation would result in a payment of benefits as described in RCW 51.32.240(5), and any benefits so paid shall be recovered according to the terms of that 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) Notwithstanding subsection (2) of this section, vocational services may be provided to an injured worker who has suffered the loss or complete use of both legs, or arms, or one leg and one arm, or total eyesight when, in the sole discretion of the supervisor or the supervisor's designee, these services will either substantially improve the worker's quality of life or substantially improve the worker's ability to function in an employment setting, regardless of whether or not these services are either necessary or reasonably likely to make the worker employable at any gainful employment. Vocational services must be completed prior to the commencement of the worker's entitlement to benefits under RCW 51.32.060. However, workers who are eligible for vocational services under this subsection are not eligible for option 2 benefits, as provided in RCW 51.32.099(4).

(4)(a) For vocational plans approved prior to July 1, 1999, 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.

(b) When the department has approved a vocational plan for a worker between July 1, 1999, through December 31, 2007, 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, child or dependent care, and other necessary expenses for any such worker in an amount not to exceed four thousand dollars in any fifty-two week period, and the cost of transportation and 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.

(c) The expenses allowed under (a) or (b) of this subsection may include training fees for on-the-job training and the cost of furnishing tools and other equipment necessary for self-employment or reemployment. However, compensation or payment of retraining with job placement expenses under (a) or (b) of this subsection may not be authorized for a period of more than fifty-two weeks, except 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.

(d) 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.

(e) Costs paid under this subsection shall be chargeable to the employer's cost experience or shall be paid by the self-insurer as the case may be.

(5) In addition to the vocational rehabilitation expenditures provided for under subsection (4) of this section and RCW 51.32.099, 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 or licensed advanced registered nurse practitioner 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.

(6) When the department has approved a vocational plan for a worker prior to January 1, 2008, regardless of whether the worker has begun participating in the approved plan, costs for vocational rehabilitation benefits allowed by the supervisor or supervisor's designee under subsection (1) of this section are limited to those provided under subsections (4) and (5) of this section.

For vocational plans approved for a worker between January 1, 2008, through June 30, ~~((2013))~~ 2016, total vocational costs allowed by the supervisor or supervisor's designee under subsection (1) of this section shall be limited to those provided under the pilot program established in RCW 51.32.099, and vocational rehabilitation services shall conform to the requirements in RCW 51.32.099.

(7) 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 and under RCW 51.32.099. The state fund shall make referrals for vocational rehabilitation services based on these performance criteria.

(8) 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 and RCW 51.32.099.

(9) The benefits in this section and RCW 51.32.099 shall be provided for the injured workers of self-insured employers. Self-insurers shall report both benefits provided and benefits denied under this section and RCW 51.32.099 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 or RCW 51.32.099, 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.

(10) Except as otherwise provided in this section or RCW 51.32.099, the benefits provided for in this section and RCW 51.32.099 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.

**Sec. 2.** RCW 51.32.099 and 2011 c 291 s 2 are each amended to read as follows:

(1)(a) The legislature intends to create improved vocational outcomes for Washington state injured workers and employers through legislative and regulatory change under a pilot program for the period of January 1, 2008, through June 30, ~~((2013))~~ 2016. This pilot vocational system is intended to allow opportunities for eligible workers to participate in meaningful retraining in high-demand occupations, improve successful return to work and achieve

positive outcomes for workers, reduce the incidence of repeat vocational services, increase accountability and responsibility, and improve cost predictability. To facilitate the study and evaluation of the results of the proposed changes, the department shall establish the temporary funding of certain state fund vocational costs through the medical aid account to ensure the appropriate assessments to employers for the costs of their claims for vocational services in accordance with RCW 51.32.0991.

~~(b) ((An independent review and study of the effects of the pilot program shall be conducted to determine whether it has achieved the appropriate outcomes at reasonable cost to the system. The review shall include, at a minimum, a report on the department's performance with regard to the provision of vocational services, the skills acquired by workers who receive retraining services, the types of training programs approved, whether the workers are employed, at what jobs and wages after completion of the training program and at various times subsequent to their claim closure, the number and demographics of workers who choose the option provided in subsection (4)(b) of this section, and their employment and earnings status at various times subsequent to claim closure. The department may adopt rules, in collaboration with the subcommittee created under (c)(iii) of this subsection, to further define the scope and elements of the required study. Reports of the independent researcher are due on December 1, 2010, December 1, 2011, and December 1, 2012.~~

~~(e))~~ In implementing the pilot program, the department shall:

(i) Establish a vocational initiative project that includes participation by the department as a partner with WorkSource, the established state system that administers the federal workforce investment act of 1998. As a partner, the department shall place vocational professional full-time employees at pilot WorkSource locations; refer some workers for vocational services to these vocational professionals; and work with employers in work source pilot areas to market the benefits of on-the-job training programs and with community colleges to reserve slots in high employer demand programs of study as defined in RCW 28B.50.030. These on-the-job training programs and community college slots may be considered by both department and private sector vocational professionals for vocational plan development. The department will also assist stakeholders in developing additional vocational training programs in various industries, including but not limited to agriculture and construction. These programs will expand the choices available to injured workers in developing their vocational training plans with the assistance of vocational professionals.

(ii) Develop and maintain a register of state fund and self-insured workers who have been retrained or have selected any of the vocational options described in this section for at least the duration of the pilot program.

(iii) Create a vocational rehabilitation subcommittee made up of members appointed by the director for at least the duration of the pilot program. This subcommittee shall provide the business and labor partnership needed to maintain focus on the intent of the pilot program, as described in this section, and provide consistency and transparency to the development of rules and policies. The subcommittee shall report to the director at least annually and recommend to the director and the legislature any additional statutory changes needed, which may include extension of the pilot period. The subcommittee



shall provide input and oversight with the department concerning the study required under (b) of this subsection. The subcommittee shall provide recommendations for additional changes or incentives for injured workers to return to work with their employer of injury.

(iv) ~~In collaboration with the subcommittee,~~ the department shall develop an annual report concerning Washington's workers' compensation vocational rehabilitation system to the legislature ~~((and to the subcommittee by December 1, 2009, and annually thereafter))~~ with the final report due by December 1, ~~((2012))~~ 2015. ~~((The annual report shall include the number of workers who have participated in more than one vocational training plan beginning with plans approved on January 1, 2008, and in which industries those workers were employed.))~~ The final report shall include ~~((the department's))~~ an assessment and recommendations for further legislative action ~~((, in collaboration with the subcommittee)).~~

(2)(a) For the purposes of this section, the day the worker commences vocational plan development means the date the department or self-insurer notifies the worker of his or her eligibility for plan development services or of an eligibility determination in response to a dispute of a vocational decision.

(b) When the supervisor or supervisor's designee has decided that vocational rehabilitation is both necessary and likely to make the worker employable at gainful employment, he or she shall be provided with services necessary to develop a vocational plan that, if completed, would render the worker employable. The vocational professional assigned to the claim shall, at the initial meeting with the worker, fully inform the worker of the return-to-work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The department shall provide tools to the vocational professional for communicating this and other information required by RCW 51.32.095 and this section to the worker.

(c) On the date the worker commences vocational plan development, the department shall also inform the employer in writing of the employer's right to make a valid return-to-work offer during the first fifteen days following the commencement of vocational plan development. However, at the sole discretion of the supervisor or the supervisor's designee, an employer may be granted an extension of time of up to ten additional days to make a valid return-to-work offer. The additional days may be allowed by the department with or without a request from the employer. The extension may only be granted if the employer made a return-to-work offer to the worker within fifteen days of the date the worker commenced vocational plan development that met some but not all of the requirements in this section. To be valid, the offer must be for bona fide employment with the employer of injury, consistent with the worker's documented physical and mental restrictions as provided by the worker's health care provider. When the employer makes a valid return-to-work offer, the vocational plan development services and temporary total disability compensation shall be terminated effective on the starting date for the job without regard to whether the worker accepts the return-to-work offer.

(d) Following the time period described in (c) of this subsection, the employer may still provide, and the worker may accept, any valid return-to-work offer. The worker's acceptance of such an offer shall result in the termination of

vocational plan development or implementation services and temporary total disability compensation effective the day the employment begins.

(3)(a) All vocational plans must contain an accountability agreement signed by the worker detailing expectations regarding progress, attendance, and other factors influencing successful participation in the plan. Failure to abide by the agreed expectations shall result in suspension of vocational benefits pursuant to RCW 51.32.110.

(b) Any formal education included as part of the vocational plan must be for an accredited or licensed program or other program approved by the department. The department shall develop rules that provide criteria for the approval of nonaccredited or unlicensed programs.

(c) The vocational plan for an individual worker must be completed and submitted to the department within ninety days of the day the worker commences vocational plan development. The department may extend the ninety days for good cause. Criteria for good cause shall be provided in rule. The frequency and reasons for good cause extensions shall be reported to the subcommittee created under subsection (1)((e)) (b)(iii) of this section.

(d) Costs for the vocational plan may include books, tuition, fees, supplies, equipment, child or dependent care, training fees for on-the-job training, the cost of furnishing tools and other equipment necessary for self-employment or reemployment, and other necessary expenses in an amount not to exceed twelve thousand dollars. This amount shall be adjusted effective July 1 of each year for vocational plans or retraining benefits available under subsection (4)(b) of this section approved on or after this date but before June 30 of the next year based on the average percentage change in tuition for the next fall quarter for all Washington state community colleges.

(e) The duration of the vocational plan shall not exceed two years from the date the plan is implemented. The worker shall receive temporary total disability compensation under RCW 51.32.090 and the cost of transportation while he or she is actively and successfully participating in a vocational plan.

(f) If the worker is required to reside away from his or her customary residence, the reasonable cost of board and lodging shall also be paid.

(4) Vocational plan development services shall be completed within ninety days of commencing. Except as provided in RCW 51.32.095(3), during vocational plan development the worker shall, with the assistance of a vocational professional, participate in vocational counseling and occupational exploration to include, but not be limited to, identifying possible job goals, training needs, resources, and expenses, consistent with the worker's physical and mental status. A vocational rehabilitation plan shall be developed by the worker and the vocational professional and submitted to the department or self-insurer. Following this submission, the worker shall elect one of the following options:

(a) Option 1: The department or self-insurer implements and the worker participates in the vocational plan developed by the vocational professional and approved by the worker and the department or self-insurer. For state fund claims, the department must review and approve the vocational plan before implementation may begin. If the department takes no action within fifteen days, the plan is deemed approved. The worker may, within fifteen days of the department's approval of the plan or of a determination that the plan is valid following a dispute, elect option 2. However, in the sole discretion of the

supervisor or supervisor's designee, the department may approve an election for option 2 benefits that was submitted in writing within twenty-five days of the department's approval of the plan or of a determination that the plan is valid following a dispute if the worker provides a written explanation establishing that he or she was unable to submit his or her election of option 2 benefits within fifteen days. In no circumstance may the department approve of an election for option 2 benefits that was submitted more than twenty-five days after the department's approval of a retraining plan or of a determination that a plan is valid following a dispute.

(i) Following successful completion of the vocational plan, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of transferable skills obtained in the vocational plan.

(ii) If a vocational plan is successfully completed on a claim which is thereafter reopened as provided in RCW 51.32.160, the cost and duration available for any subsequent vocational plan is limited to that in subsection (3)(d) and (e) of this section, less that previously expended.

(b) Option 2: The worker declines further vocational services under the claim and receives an amount equal to six months of temporary total disability compensation under RCW 51.32.090. The award is payable in biweekly payments in accordance with the schedule of temporary total disability payments, until such award is paid in full. These payments shall not include interest on the unpaid balance. However, upon application by the worker, and at the discretion of the department, the compensation may be converted to a lump sum payment. The vocational costs defined in subsection (3)(d) of this section shall remain available to the worker, upon application to the department or self-insurer, for a period of five years. The vocational costs shall, if expended, be available for programs or courses at any accredited or licensed institution or program from a list of those approved by the department for tuition, books, fees, supplies, equipment, and tools, without department or self-insurer oversight. The department shall issue an order as provided in RCW 51.52.050 confirming the option 2 election, setting a payment schedule, and terminating temporary total disability benefits effective the date of the order confirming that election. The department shall thereafter close the claim. A worker who elects option 2 benefits shall not be entitled to further temporary total, or to permanent total, disability benefits except upon a showing of a worsening in the condition or conditions accepted under the claim such that claim closure is not appropriate, in which case the option 2 selection will be rescinded and the amount paid to the worker will be assessed as an overpayment. A claim that was closed based on the worker's election of option 2 benefits may be reopened as provided in RCW 51.32.160, but cannot be reopened for the sole purpose of allowing the worker to seek vocational assistance.

(i) If within five years from the date the option 2 order becomes final, the worker is subsequently injured or suffers an occupational disease or reopens the claim as provided in RCW 51.32.160, and vocational rehabilitation is found both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1), the duration of any vocational plan under subsection (3)(e) of this section shall not exceed eighteen months.

(ii) If the available vocational costs are utilized by the worker, any subsequent assessment of whether vocational rehabilitation is both necessary and likely to enable the injured worker to become employable at gainful employment under RCW 51.32.095(1) shall include consideration of the transferable skills obtained.

(iii) If the available vocational costs are utilized by the worker and the claim is thereafter reopened as provided in RCW 51.32.160, the cost available for any vocational plan is limited to that in subsection (3)(d) of this section less that previously expended.

(iv) Option 2 may only be elected once per worker.

(c) The director, in his or her sole discretion, may provide the worker vocational assistance not to exceed that in subsection (3) of this section, without regard to the worker's prior option selection or benefits expended, where vocational assistance would prevent permanent total disability under RCW 51.32.060.

(5)(a) As used in this section, "vocational plan interruption" means an occurrence which disrupts the plan to the extent the employability goal is no longer attainable. "Vocational plan interruption" does not include institutionally scheduled breaks in educational programs, occasional absence due to illness, or modifications to the plan which will allow it to be completed within the cost and time provisions of subsection (3)(d) and (e) of this section.

(b) When a vocational plan interruption is beyond the control of the worker, the department or self-insurer shall recommence plan development. If necessary to complete vocational services, the cost and duration of the plan may include credit for that expended prior to the interruption. A vocational plan interruption is considered outside the control of the worker when it is due to the closure of the accredited institution, when it is due to a death in the worker's immediate family, or when documented changes in the worker's accepted medical conditions prevent further participation in the vocational plan.

(c) When a vocational plan interruption is the result of the worker's actions, the worker's entitlement to benefits shall be suspended in accordance with RCW 51.32.110. If plan development or implementation is recommenced, the cost and duration of the plan shall not include credit for that expended prior to the interruption. A vocational plan interruption is considered a result of the worker's actions when it is due to the failure to meet attendance expectations set by the training or educational institution, failure to achieve passing grades or acceptable performance review, unaccepted or postinjury conditions that prevent further participation in the vocational plan, or the worker's failure to abide by the accountability agreement per subsection (3)(a) of this section.

**Sec. 3.** 2011 c 291 s 3 (uncodified) is amended to read as follows:  
This act expires June 30, (~~2013~~) 2016.

**Sec. 4.** 2009 c 353 s 7 (uncodified) is amended to read as follows:  
Section 5 of this act expires June 30, (~~2013~~) 2016.

**Sec. 5.** 2007 c 72 s 6 (uncodified) is amended to read as follows:  
This act expires June 30, (~~2013~~) 2016.

NEW SECTION. **Sec. 6.** Section 1 of this act expires June 30, 2016.

NEW SECTION. **Sec. 7.** Section 2 of this act expires June 30, 2016.

**NEW SECTION. Sec. 8.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 11, 2013.

Passed by the House April 15, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

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## CHAPTER 332

[Engrossed Second Substitute Senate Bill 5405]

### FOSTER CARE—EXTENDED SERVICES

AN ACT Relating to extended foster care services; amending RCW 13.34.145, 13.34.267, 74.13.020, 74.13.031, 43.88C.010, 74.13.107, and 43.131.416; reenacting and amending RCW 13.34.030, 74.13.020, and 74.13.031; adding a new section to chapter 74.13 RCW; adding a new section to chapter 13.34 RCW; creating new sections; providing an effective date; 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 the federal fostering connections to success and increasing adoptions act of 2008 provides important new opportunities to increase the impact of state funding through maximizing the amount of federal funding available to promote permanency and positive outcomes for dependent youth.

(2) The legislature also finds that children and adolescents who are legal dependents of Washington state have experienced significant trauma and loss, putting them at increased risk for poor life outcomes. Longitudinal research on the adult functioning of former foster youth indicates a disproportionate likelihood that youth aging out of foster care and those who spent several years in care will experience poor outcomes in a variety of areas, including limited human capital upon which to build economic security and inability to fully take advantage of secondary and postsecondary educational opportunities, untreated mental or behavioral health problems, involvement in the criminal justice and corrections systems, and early parenthood combined with second-generation child welfare involvement.

(3) The legislature further finds that research also demonstrates that access to adequate and appropriate supports during the period of transition from foster care to independence can have significant positive impacts on adult functioning and can improve outcomes relating to educational attainment and postsecondary enrollment, employment and earnings, and reduced rates of teen pregnancies.

**Sec. 2.** RCW 13.34.030 and 2011 1st sp.s. c 36 s 13 are each reenacted and amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" means when the child's parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child's parent, guardian, or other custodian for a period of three

months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child," "juvenile," and "youth" means:

(a) Any individual under the age of eighteen years; or

(b) Any individual age eighteen to twenty-one years who is eligible to receive and who elects to receive the extended foster care services authorized under RCW 74.13.031. A youth who remains dependent and who receives extended foster care services under RCW 74.13.031 shall not be considered a "child" under any other statute or for any other purpose.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

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

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child;

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circumstances which constitute a danger of substantial damage to the child's psychological or physical development; or

(d) Is receiving extended foster care services, as authorized by RCW 74.13.031.

(7) "Developmental disability" means a disability attributable to intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to an intellectual disability or to require treatment similar to that required for individuals with intellectual disabilities, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial limitation to the individual.

(8) "Extended foster care services" means residential and other support services the department is authorized to provide under RCW 74.13.031. These services may include placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(9) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding, including a guardian appointed pursuant to chapter 13.36 RCW; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" does not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(10) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A

"court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(11) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(12) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(13) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, aged, blind, or disabled assistance benefits, medical care services under RCW 74.09.035, pregnant women assistance benefits, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(14) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(15) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(16) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(17) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in RCW 13.38.040.

(18) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the

reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(19) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services as defined in RCW 74.13.020.

(20) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

(21) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings. Supervised independent living settings must be approved by the children's administration or the court.

(22) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program.

**Sec. 3.** RCW 13.34.145 and 2011 c 330 s 6 are each amended to read as follows:

(1) The purpose of a permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and reach decisions regarding the permanent placement of the child.

(a) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the



home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as provided in this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or a permanent custody order is entered, or the dependency is dismissed. Every effort shall be made to provide stability in long-term placement, and to avoid disruption of placement, unless the child is being returned home or it is in the best interest of the child.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(3) When the youth is at least age seventeen years but not older than seventeen years and six months, the department shall provide the youth with written documentation which explains the availability of extended foster care services and detailed instructions regarding how the youth may access such services after he or she reaches age eighteen years.

(4) At the permanency planning hearing, the court shall conduct the following inquiry:

(a) If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate.

(b) In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. The court shall review the permanency plan prepared by the agency and make explicit findings regarding each of the following:

(i) The continuing necessity for, and the safety and appropriateness of, the placement;

(ii) The extent of compliance with the permanency plan by the department or supervising agency and any other service providers, the child's parents, the child, and the child's guardian, if any;

(iii) The extent of any efforts to involve appropriate service providers in addition to department or supervising agency staff in planning to meet the special needs of the child and the child's parents;

(iv) The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child;

(v) The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement; and

(vi) If the child has been placed outside of his or her home for fifteen of the most recent twenty-two months, not including any period during which the child was a runaway from the out-of-home placement or the first six months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan, whether reasonable efforts were made by the department or supervising agency to achieve the goal of the permanency plan, and the circumstances which prevent the child from any of the following:

- (A) Being returned safely to his or her home;
- (B) Having a petition for the involuntary termination of parental rights filed on behalf of the child;
- (C) Being placed for adoption;
- (D) Being placed with a guardian;
- (E) Being placed in the home of a fit and willing relative of the child; or
- (F) Being placed in some other alternative permanent placement, including independent living or long-term foster care.

At this hearing, the court shall order the department or supervising agency to file a petition seeking termination of parental rights if the child has been in out-of-home care for fifteen of the last twenty-two months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not appropriate. Any good cause finding shall be reviewed at all subsequent hearings pertaining to the child. For purposes of this section, "good cause exception" includes but is not limited to the following: The child is being cared for by a relative; the department has not provided to the child's family such services as the court and the department have deemed necessary for the child's safe return home; or the department has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the child's best interests.

(c)(i) If the permanency plan identifies independent living as a goal, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial, personal, social, educational, and nonfinancial affairs prior to approving independent living as a permanency plan of care. The court will inquire whether the child has been provided information about extended foster care services.

(ii) The permanency plan shall also specifically identify the services, including extended foster care services, where appropriate, that will be provided to assist the child to make a successful transition from foster care to independent living.

(iii) The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(d) If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall:

(i) Enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280, 13.34.215(6), and 13.34.096; and

(ii) If the department or supervising agency is recommending a placement other than the child's current placement with a foster parent, relative, or other suitable person, enter a finding as to the reasons for the recommendation for a change in placement.

~~((4))~~ (5) In all cases, at the permanency planning hearing, the court shall:

(a)(i) Order the permanency plan prepared by the supervising agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

~~((5))~~ (6) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

~~((6))~~ (7) Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

~~((7))~~ (8) If the court orders the child returned home, casework supervision by the department or supervising agency shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

~~((8))~~ (9) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

~~((9))~~ (10) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection ~~((8))~~ (9) of this section are met.

~~((10))~~ (11) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the department or supervising agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

~~((11))~~ (12) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to

effectuate the return of the child to the parent, including but not limited to, visitation rights. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

~~((12))~~ (13) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter.

**Sec. 4.** RCW 13.34.267 and 2012 c 52 s 4 are each amended to read as follows:

(1) In order to facilitate the delivery of extended foster care services, the court, upon the agreement of the youth to participate in the extended foster care program, shall ~~((postpone for six months the dismissal of a))~~ maintain the dependency proceeding for any ((child) youth who is ((a) dependent ((child)) in foster care at the age of eighteen years and who, at the time of his or her eighteenth birthday, is:

(a) Enrolled in a secondary education program or a secondary education equivalency program; ~~((or))~~

(b) Enrolled and participating in a postsecondary academic or postsecondary vocational program, or has applied for and can demonstrate that he or she intends to timely enroll in a postsecondary academic or postsecondary vocational program; or

(c) Participating in a program or activity designed to promote employment or remove barriers to employment.

(2) If the court maintains the dependency proceeding of a youth pursuant to subsection (1) of this section, the youth is eligible to receive extended foster care services pursuant to RCW 74.13.031, subject to the youth's continuing eligibility and agreement to participate.

(3) A dependent youth receiving extended foster care services is a party to the dependency proceeding. The youth's parent or guardian must be dismissed from the dependency proceeding when the youth reaches the age of eighteen.

(4) The court shall dismiss the dependency proceeding for any youth who is a dependent in foster care and who, at the age of eighteen years, does not meet any of the criteria described in subsection (1)(a) through (c) of this section or does not agree to participate in the program.

~~((2)(a) The six month postponement under this subsection is intended to allow a reasonable window of opportunity for an eligible youth who reaches the age of eighteen to request extended foster care services from the department or supervising agency. The court shall dismiss the dependency if the youth:~~

~~(i) Has not requested extended foster care services from the department by the end of the six month period; or~~

~~(ii) Is no longer eligible for extended foster care services under RCW 74.13.031(10) at any point during the six month period.~~

~~(b) Until the youth requests to participate in the extended foster care program, the department is relieved of any supervisory responsibility for the youth.~~

~~(3) A youth who participates in extended foster care while completing a secondary education or equivalency program may continue to receive extended foster care services for the purpose of participating in a postsecondary academic or postsecondary vocational education program if, at the time the secondary education or equivalency program is completed, the youth has applied to and can~~

~~demonstrate that he or she intends to timely enroll in a postsecondary academic or vocational education program. The dependency shall be dismissed if the youth fails to timely enroll or continue in the postsecondary program, or reaches age twenty-one, whichever is earlier.~~

~~(4) A youth receiving extended foster care services is a party to the dependency proceeding. The youth's parent or guardian shall be dismissed from the dependency proceeding when the youth reaches the age of eighteen years.))~~

(5) The court shall order a youth participating in extended foster care services to be under the placement and care authority of the department, subject to the youth's continuing agreement to participate in extended foster care services. The department may establish foster care rates appropriate to the needs of the youth participating in extended foster care services. The department's placement and care authority over a youth receiving extended foster care services is solely for the purpose of providing services and does not create a legal responsibility for the actions of the youth receiving extended foster care services.

(6) The court shall appoint counsel to represent a youth, as defined in RCW 13.34.030(2)(b), in dependency proceedings under this section.

(7) The case plan for and delivery of services to a youth receiving extended foster care services is subject to the review requirements set forth in RCW 13.34.138 and 13.34.145, and should be applied in a developmentally appropriate manner, as they relate to youth age eighteen to twenty-one years. Additionally, the court shall consider:

(a) Whether the youth is safe in his or her placement;

(b) Whether the youth continues to be eligible for extended foster care services;

(c) Whether the current placement is developmentally appropriate for the youth;

(d) The youth's development of independent living skills; and

(e) The youth's overall progress toward transitioning to full independence and the projected date for achieving such transition.

(8) Prior to the review hearing, the youth's attorney shall indicate whether there are any contested issues and may provide additional information necessary for the court's review.

~~((9) Upon the request of the youth, or when the youth is no longer eligible to receive extended foster care services according to rules adopted by the department, the court shall dismiss the dependency.))~~

**NEW SECTION. Sec. 5.** A new section is added to chapter 74.13 RCW to read as follows:

(1) A youth who has reached age eighteen years may request extended foster care services authorized under RCW 74.13.031 at any time before he or she reaches the age of nineteen years if on or after the effective date of this section:

(a) The dependency proceeding of the youth was dismissed pursuant to RCW 13.34.267(4) at the time that he or she reached age eighteen years; or

(b) The court, after holding the dependency case open pursuant to RCW 13.34.267(1), has dismissed the case because the youth became ineligible for extended foster care services.

(2)(a) Upon a request for extended foster care services by a youth pursuant to subsection (1) of this section, a determination that the youth is eligible for extended foster care services, and the completion of a voluntary placement agreement, the department shall provide extended foster care services to the youth.

(b) In order to continue receiving extended foster care services after entering into a voluntary placement agreement with the department, the youth must agree to the entry of an order of dependency within one hundred eighty days of the date that the youth is placed in foster care pursuant to a voluntary placement agreement.

(3) A youth may enter into a voluntary placement agreement for extended foster care services only once. A youth may transition among the eligibility categories identified in RCW 74.13.031 while under the same voluntary placement agreement, provided that the youth remains eligible for extended foster care services during the transition.

(4) "Voluntary placement agreement," for the purposes of this section, means a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program.

**NEW SECTION. Sec. 6.** A new section is added to chapter 13.34 RCW to read as follows:

(1)(a) If a youth prior to reaching age nineteen years requests extended foster care services from the department pursuant to section 5 of this act, and the department declines to enter into a voluntary placement agreement with the youth, the department must provide written documentation to the youth which contains:

(i) The date that the youth requested extended foster care services;

(ii) The department's reasons for declining to enter into a voluntary placement agreement with the youth and the date of the department's decision; and

(iii) Information regarding the youth's right to ask the court to establish a dependency for the purpose of providing extended foster care services and his or her right to counsel to assist in making that request.

(b) The written documentation pursuant to (a) of this subsection must be provided to the youth within ten days of the department's decision not to enter into a voluntary placement agreement with the youth.

(2)(a) A youth seeking to participate in extended foster care after being declined by the department under subsection (1) of this section may file a notice of intent to file a petition for dependency, asking the court to determine his or her eligibility for extended foster care services, and to enter an order of dependency. If the youth chooses to file such notice, it must be filed within thirty days of the date of the department's decision.

(b) Upon filing the notice, the youth must be provided counsel at no cost to him or her. Upon receipt of the youth's petition, the court must set a hearing date to determine whether the petition should be granted.

**Sec. 7.** RCW 74.13.020 and 2012 c 205 s 12 are each amended to read as follows:

For purposes of this chapter:

(1) "Case management" means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child protective services" has the same meaning as in RCW 26.44.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

"Child welfare services" does not include child protection services.

(5) "Committee" means the child welfare transformation design committee.

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

(7) "Extended foster care services" means residential and other support services the department is authorized to provide to foster children. These services may include(~~(, but are not limited to,)~~) placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(8) "Measurable effects" means a statistically significant change which occurs as a result of the service or services a supervising agency is assigned in a performance-based contract, in time periods established in the contract.

(9) "Out-of-home care services" means services provided after the shelter care hearing to or for children in out-of-home care, as that term is defined in RCW 13.34.030, and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family reunification, independent living, emergency shelter, residential group care, and foster care, including relative placement.

(10) "Performance-based contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and

the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts shall also include provisions that link the performance of the contractor to the level and timing of reimbursement.

(11) "Permanency services" means long-term services provided to secure a child's safety, permanency, and well-being, including foster care services, family reunification services, adoption services, and preparation for independent living services.

(12) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

(13) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services, as defined in this section. This definition is applicable on or after December 30, 2015.

(14) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

(15) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings. Supervised independent living settings must be approved by the children's administration or the court.

(16) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program.

**Sec. 8.** RCW 74.13.020 and 2012 c 259 s 7 and 2012 c 205 s 12 are each reenacted and amended to read as follows:

For purposes of this chapter:

(1) "Case management" means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child protective services" has the same meaning as in RCW 26.44.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:



(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

"Child welfare services" does not include child protection services.

(5) "Committee" means the child welfare transformation design committee.

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

(7) "Extended foster care services" means residential and other support services the department is authorized to provide to foster children. These services include, but are not limited to, placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(8) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

(9) "Measurable effects" means a statistically significant change which occurs as a result of the service or services a supervising agency is assigned in a performance-based contract, in time periods established in the contract.

(10) "Out-of-home care services" means services provided after the shelter care hearing to or for children in out-of-home care, as that term is defined in RCW 13.34.030, and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family reunification, independent living, emergency shelter, residential group care, and foster care, including relative placement.

(11) "Performance-based contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts shall also include provisions that link the performance of the contractor to the level and timing of reimbursement.

(12) "Permanency services" means long-term services provided to secure a child's safety, permanency, and well-being, including foster care services, family reunification services, adoption services, and preparation for independent living services.

(13) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and

are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

(14) "Supervising agency" means an agency licensed by the state under RCW 74.15.090, or licensed by a federally recognized Indian tribe located in this state under RCW 74.15.190, that has entered into a performance-based contract with the department to provide case management for the delivery and documentation of child welfare services, as defined in this section. This definition is applicable on or after December 30, 2015.

(15) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

(16) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings. Supervised independent living settings must be approved by the children's administration or the court.

(17) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program.

**Sec. 9.** RCW 74.13.031 and 2012 c 52 s 2 are each amended to read as follows:

(1) The department and supervising agencies shall develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, the department and supervising agencies shall recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and the department shall annually report to the governor and the legislature concerning the department's and supervising agency's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) The department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) The department or supervising agencies shall offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) The department or supervising agencies shall monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. Under this section children in out-of-home care and in-home dependencies and their caregivers shall receive a private and individual face-to-face visit each month. The department and the supervising agencies shall randomly select no less than ten percent of the caregivers currently providing care to receive one unannounced face-to-face visit in the caregiver's home per year. No caregiver will receive an unannounced visit through the random selection process for two consecutive years. If the caseworker makes a good faith effort to conduct the unannounced visit to a caregiver and is unable to do so, that month's visit to that caregiver need not be unannounced. The department and supervising agencies are encouraged to group monthly visits to caregivers by geographic area so that in the event an unannounced visit cannot be completed, the caseworker may complete other required monthly visits. The department shall use a method of random selection that does not cause a fiscal impact to the department.

The department or supervising agencies shall conduct the monthly visits with children and caregivers to whom it is providing child welfare services.

(6) The department and supervising agencies shall have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) The department and supervising agency shall have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) The department and supervising agency shall have authority to purchase care for children.

(9) The department shall establish a children's services advisory committee with sufficient members representing supervising agencies which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10)(a) The department and supervising agencies shall ~~((have authority to))~~ provide continued extended foster care services to ~~((youth ages eighteen to twenty-one years to participate in or complete))~~ nonminor dependents who are:

(i) Enrolled in a secondary education program or a secondary education equivalency program~~((-or-))~~;

(ii) Enrolled and participating in a postsecondary academic or postsecondary vocational education program; or

(iii) Participating in a program or activity designed to promote employment or remove barriers to employment.

(b) To be eligible for extended foster care services, the nonminor dependent must have been dependent and in foster care at the time that he or she reached age eighteen years. If the dependency case of the nonminor dependent was dismissed pursuant to RCW 13.34.267, he or she may receive extended foster care services pursuant to a voluntary placement agreement under section 5 of this act or pursuant to an order of dependency issued by the court under section 6 of this act. A nonminor dependent whose dependency case was dismissed by the court must have requested extended foster care services before reaching age nineteen years.

(c) The department shall develop and implement rules regarding youth eligibility requirements.

(11) The department shall have authority to provide adoption support benefits, or relative guardianship subsidies on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a relative guardianship at age sixteen or older and who meet the criteria described in subsection (10) of this section.

(12) The department shall refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(13) The department and supervising agencies shall have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(14) Within amounts appropriated for this specific purpose, the supervising agency or department shall provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(15) The department and supervising agencies shall have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(16) The department and supervising agencies shall consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department and supervising agencies are performing the

duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels.

(17)(a) The department shall, within current funding levels, place on its public web site a document listing the duties and responsibilities the department has to a child subject to a dependency petition including, but not limited to, the following:

(i) Reasonable efforts, including the provision of services, toward reunification of the child with his or her family;

(ii) Sibling visits subject to the restrictions in RCW 13.34.136(2)(b)(ii);

(iii) Parent-child visits;

(iv) Statutory preference for placement with a relative or other suitable person, if appropriate; and

(v) Statutory preference for an out-of-home placement that allows the child to remain in the same school or school district, if practical and in the child's best interests.

(b) The document must be prepared in conjunction with a community-based organization and must be updated as needed.

**Sec. 10.** RCW 74.13.031 and 2012 c 259 s 8 and 2012 c 52 s 2 are each reenacted and amended to read as follows:

(1) The department and supervising agencies shall develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, the department and supervising agencies shall recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and the department shall annually report to the governor and the legislature concerning the department's and supervising agency's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) The department shall investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against

a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) As provided in RCW 26.44.030(11), the department may respond to a report of child abuse or neglect by using the family assessment response.

(5) The department or supervising agencies shall offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(6) The department or supervising agencies shall monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. Under this section children in out-of-home care and in-home dependencies and their caregivers shall receive a private and individual face-to-face visit each month. The department and the supervising agencies shall randomly select no less than ten percent of the caregivers currently providing care to receive one unannounced face-to-face visit in the caregiver's home per year. No caregiver will receive an unannounced visit through the random selection process for two consecutive years. If the caseworker makes a good faith effort to conduct the unannounced visit to a caregiver and is unable to do so, that month's visit to that caregiver need not be unannounced. The department and supervising agencies are encouraged to group monthly visits to caregivers by geographic area so that in the event an unannounced visit cannot be completed, the caseworker may complete other required monthly visits. The department shall use a method of random selection that does not cause a fiscal impact to the department.

The department or supervising agencies shall conduct the monthly visits with children and caregivers to whom it is providing child welfare services.

(7) The department and supervising agencies shall have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(8) The department and supervising agency shall have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(9) The department and supervising agency shall have authority to purchase care for children.

(10) The department shall establish a children's services advisory committee with sufficient members representing supervising agencies which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(11)(a) The department and supervising agencies shall ~~((have authority to))~~ provide continued extended foster care services to ~~((youth ages eighteen to twenty-one years to participate in or complete))~~ nonminor dependents who are:

(i) Enrolled in a secondary education program or a secondary education equivalency program;

(ii) Enrolled and participating in a postsecondary academic or postsecondary vocational education program; or

(iii) Participating in a program or activity designed to promote employment or remove barriers to employment.

(b) To be eligible for extended foster care services, the nonminor dependent must have been dependent and in foster care at the time that he or she reached age eighteen years. If the dependency case of the nonminor dependent was dismissed pursuant to RCW 13.34.267, he or she may receive extended foster care services pursuant to a voluntary placement agreement under section 5 of this act or pursuant to an order of dependency issued by the court under section 6 of this act. A nonminor dependent whose dependency case was dismissed by the court must have requested extended foster care services before reaching age nineteen years.

(c) The department shall develop and implement rules regarding youth eligibility requirements.

(12) The department shall have authority to provide adoption support benefits, or relative guardianship subsidies on behalf of youth ages eighteen to twenty-one years who achieved permanency through adoption or a relative guardianship at age sixteen or older and who meet the criteria described in subsection (11) of this section.

(13) The department shall refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(14) The department and supervising agencies shall have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department under subsections (4), (7), and (8) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(15) Within amounts appropriated for this specific purpose, the supervising agency or department shall provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(16) The department and supervising agencies shall have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(17) The department and supervising agencies shall consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department and supervising agencies are performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels.

(18)(a) The department shall, within current funding levels, place on its public web site a document listing the duties and responsibilities the department has to a child subject to a dependency petition including, but not limited to, the following:

(i) Reasonable efforts, including the provision of services, toward reunification of the child with his or her family;

(ii) Sibling visits subject to the restrictions in RCW 13.34.136(2)(b)(ii);

(iii) Parent-child visits;

(iv) Statutory preference for placement with a relative or other suitable person, if appropriate; and

(v) Statutory preference for an out-of-home placement that allows the child to remain in the same school or school district, if practical and in the child's best interests.

(b) The document must be prepared in conjunction with a community-based organization and must be updated as needed.

**Sec. 11.** RCW 43.88C.010 and 2012 c 217 s 3 are each amended to read as follows:

(1) The caseload forecast council is hereby created. The council shall consist of two individuals appointed by the governor and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The council shall employ a caseload forecast supervisor to supervise the preparation of all caseload forecasts. As used in this chapter, "supervisor" means the caseload forecast supervisor.

(3) Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three-year term the council shall consider extension of the supervisor's term by one year. The council may fix the compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(4) The caseload forecast council shall oversee the preparation of and approve, by an affirmative vote of at least four members, the official state caseload forecasts prepared under RCW 43.88C.020. If the council is unable to approve a forecast before a date required in RCW 43.88C.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.



(5) A councilmember who does not cast an affirmative vote for approval of the official caseload forecast may request, and the supervisor shall provide, an alternative forecast based on assumptions specified by the member.

(6) Members of the caseload forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7) "Caseload," as used in this chapter, means:

(a) The number of persons expected to meet entitlement requirements and require the services of public assistance programs, state correctional institutions, state correctional noninstitutional supervision, state institutions for juvenile offenders, the common school system, long-term care, medical assistance, foster care, and adoption support;

(b) The number of students who are eligible for the Washington college bound scholarship program and are expected to attend an institution of higher education as defined in RCW 28B.92.030.

(8) The caseload forecast council shall forecast the temporary assistance for needy families and the working connections child care programs as a courtesy.

(9) The caseload forecast council shall forecast youth participating in the extended foster care program pursuant to RCW 74.13.031 separately from other children who are residing in foster care and who are under eighteen years of age.

(10) Unless the context clearly requires otherwise, the definitions provided in RCW 43.88.020 apply to this chapter.

**Sec. 12.** RCW 74.13.107 and 2012 c 204 s 2 are each amended to read as follows:

(1) The child and family reinvestment account is created in the state treasury. Moneys in the account may be spent only after appropriation. Moneys in the account may be expended solely for improving outcomes related to: (a) Safely reducing entry into the foster care system and preventing reentry; (b) safely increasing reunifications; (c) achieving permanency for children unable to be reunified; and (d) improving outcomes for youth who will age out of the foster care system. Moneys may be expended for shared savings under performance-based contracts.

(2) Revenues to the child and family reinvestment account consist of: (a) Savings to the state general fund resulting from reductions in foster care caseloads and per capita costs, as calculated and transferred into the account under this section; and (b) any other public or private funds appropriated to or deposited in the account.

(3)(a) The department of social and health services, in collaboration with the office of financial management and the caseload forecast council, shall develop a methodology for calculating the savings under this section. The methodology must be used for the 2013-2015 fiscal biennium, and for each biennium thereafter. The methodology must establish a baseline for calculating savings. In developing the methodology, the department of social and health services shall incorporate the relevant requirements of any demonstration waiver granted to the state under P.L. 112-34. The savings must be based on actual caseload and per capita expenditures.

(b) The caseload and the per capita expenditures for youth in extended foster care pursuant to RCW 74.13.031 and as determined under RCW 43.88C.010(9) shall not be included in the following:

(i) The calculation of savings transferred to the account; or

(ii) The capped allocation of the demonstration waiver granted to the state under P.L. 112-34.

(c) By December 1, 2012, the department of social and health services shall submit the proposed methodology to the governor and the appropriate committees of the legislature. The methodology is deemed approved unless the legislature enacts legislation to modify or reject the methodology.

~~((b))~~ (d) The department of social and health services shall use the methodology established in (a) of this subsection to calculate savings to the state general fund for transfer into the child and family reinvestment account in fiscal year 2014 and each fiscal year thereafter. Savings calculated by the department under this section are not subject to RCW 43.79.460. The department shall report the amount of the state general fund savings achieved to the office of financial management and the fiscal committees of the legislature at the end of each fiscal year. The office of financial management shall provide notice to the state treasurer of the amount of state general fund savings, as calculated by the department of social and health services, for transfer into the child and family reinvestment account.

~~((e))~~ (e) Nothing in this section prohibits (i) the caseload forecast council from forecasting the foster care caseload under RCW 43.88C.010 or (ii) the department from including maintenance funding in its budget submittal for caseload costs that exceed the baseline established in (a) of this subsection.

**Sec. 13.** RCW 43.131.416 and 2012 c 204 s 5 are each amended to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2019:

(1) 2012 c 204 s 1 (uncodified);

(2) RCW 74.13.107 and 2013 c ... s 12 (section 12 of this act) & 2012 c 204 s 2; and

(3) RCW 43.135.0341 and 2012 c 204 s 3.

**NEW SECTION. Sec. 14.** No later than September 1, 2013, the department of social and health services shall develop recommendations regarding the needs of dependent youth in juvenile rehabilitation administration institutions and report those recommendations to the governor and appropriate legislative committees. The report must include specific recommendations regarding how these youth may access services under the extended foster care program. The recommendations must be developed by the children's administration and the juvenile rehabilitation administration in consultation with youth who have been involved with the juvenile rehabilitation administration and representatives from community stakeholders and the courts.

**NEW SECTION. Sec. 15.** This act applies prospectively only and not retroactively. It applies to:

(1) Dependency matters that have an open court case on the effective date of this section; and

(2) Dependency matters for which a petition is filed on or after the effective date of this section.

NEW SECTION. Sec. 16. Sections 7 and 9 of this act expire December 1, 2013.

NEW SECTION. Sec. 17. Sections 8 and 10 of this act take effect December 1, 2013.

Passed by the Senate April 25, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

### CHAPTER 333

[Senate Bill 5417]

#### CODE CITIES—ANNEXATION—UNINCORPORATED TERRITORY

AN ACT Relating to the annexation of unincorporated territory within a code city; and amending RCW 35A.14.295.

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

**Sec. 1.** RCW 35A.14.295 and 1997 c 429 s 36 are each amended to read as follows:

(1) The legislative body of a code city may resolve to annex territory ~~((containing residential property owners))~~ to the city if there is within the city, unincorporated territory:

(a) Containing less than one hundred ~~seventy-five~~ acres and having ~~((at least eighty percent))~~ all of the boundaries of such area contiguous to the code city; or

(b) Of any size and having at least eighty percent of the boundaries of such area contiguous to the city ~~((if such area existed before June 30, 1994))~~, and is within the same county and within the same urban growth area designated under RCW 36.70A.110, and the city ~~((was))~~ is planning under chapter 36.70A RCW ~~((as of June 30, 1994))~~.

(2) The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing therein as nearly as may be, and set a date for a public hearing on such resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks prior to the date of the hearing, in one or more newspapers of general circulation within the code city and one or more newspapers of general circulation within the area to be annexed.

(3) For purposes of subsection (1)(b) of this section, territory bounded by a river, lake, or other body of water is considered contiguous to a city that is also bounded by the same river, lake, or other body of water.

Passed by the Senate April 22, 2013.

Passed by the House April 9, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

## CHAPTER 334

[Substitute Senate Bill 5456]

## INVOLUNTARY TREATMENT ACT—DETENTIONS

AN ACT Relating to detentions under the involuntary treatment act; and adding new sections to chapter 71.05 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 71.05 RCW to read as follows:

A designated mental health professional conducting an evaluation of a person under RCW 71.05.150 or 71.05.153 must consult with any examining emergency room physician regarding the physician's observations and opinions relating to the person's condition, and whether, in the view of the physician, detention is appropriate. The designated mental health professional shall take serious consideration of observations and opinions by examining emergency room physicians in determining whether detention under this chapter is appropriate. The designated mental health professional must document the consultation with an examining emergency room physician, including the physician's observations or opinions regarding whether detention of the person is appropriate.

**NEW SECTION. Sec. 2.** A new section is added to chapter 71.05 RCW to read as follows:

A designated mental health professional who conducts an evaluation for imminent likelihood of serious harm or imminent danger because of being gravely disabled under RCW 71.05.153 must also evaluate the person under RCW 71.05.150 for likelihood of serious harm or grave disability that does not meet the imminent standard for emergency detention.

Passed by the Senate April 27, 2013.

Passed by the House April 17, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

## CHAPTER 335

[Engrossed Substitute Senate Bill 5480]

## MENTAL HEALTH INVOLUNTARY COMMITMENT—DATES

AN ACT Relating to mental health involuntary commitment laws; amending 2011 2nd sp.s. c 6 ss 1 and 3 (uncodified); providing an effective date; and providing an expiration date.

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

**Sec. 1.** 2011 2nd sp.s. c 6 s 1 (uncodified) is amended to read as follows: Sections 2 and 3 of this act take effect July 1, (~~2015~~) 2014.

**Sec. 2.** 2011 2nd sp.s. c 6 s 3 (uncodified) is amended to read as follows: Section 2 of this act expires July 1, (~~2015~~) 2014.

Passed by the Senate April 23, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

## CHAPTER 336

[Substitute Senate Bill 5591]

## DEPARTMENT OF LICENSING—CONFIDENTIAL IDENTIFICATION

AN ACT Relating to confidential license plates, drivers' licenses, identicards, and vessel registrations; amending RCW 46.01.130 and 46.08.066; reenacting and amending RCW 42.56.230; and declaring an emergency.

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

**Sec. 1.** RCW 46.01.130 and 2010 c 161 s 203 are each amended to read as follows:

The director:

(1) Shall supervise and control the issuing of vehicle certificates of title, vehicle registrations, and vehicle license plates, and has the full power to do all things necessary and proper to carry out the provisions of the law relating to the registration of vehicles;

(2) May appoint and employ deputies, assistants, representatives, and clerks;

(3) May establish branch offices in different parts of the state;

(4) May appoint county auditors in Washington state or, in the absence of a county auditor, the department or an official of county government as agents for applications for and the issuance of vehicle certificates of title and vehicle registrations; and

(5)(a) Shall investigate the conviction records and pending charges of any current employee of or prospective employee being considered for any position with the department (~~that~~) who has or will have:

(i)~~(A)~~ The ability to create or modify records of applicants for enhanced drivers' licenses and identicards issued under RCW 46.20.202; and

~~((#))~~ (B) The ability to issue enhanced drivers' licenses and identicards under RCW 46.20.202; or

(ii) Access to information pertaining to vehicle license plates, drivers' licenses, or identicards under RCW 46.08.066, or vessel registrations issued under RCW 88.02.330 that, alone or in combination with any other information, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity.

(b) The investigation consists of a background check as authorized under RCW 10.97.050, 43.43.833, and 43.43.834, and the federal bureau of investigation. The background check must be conducted through the Washington state patrol criminal identification section and may include a national check from the federal bureau of investigation, which is through the submission of fingerprints. The director shall use the information solely to determine the character, suitability, and competence of current or prospective employees subject to this section.

(c) The director shall investigate the conviction records and pending charges of an employee subject to this subsection every five years.

(d) Criminal justice agencies shall provide the director with information that they may possess and that the director may require solely to determine the employment suitability of current or prospective employees subject to this section.

**Sec. 2.** RCW 46.08.066 and 2010 c 161 s 211 are each amended to read as follows:

(1) The department may issue confidential license plates to:

(a) Units of local government and agencies of the federal government for law enforcement purposes only;

(b) Any state official elected on a statewide basis for use on official business. Only one set of confidential license plates may be issued to these elected officials;

(c) Any other public officer or public employee for the personal security of the officer or employee when recommended by the chief of the Washington state patrol. These confidential license plates may only be used on an unmarked publicly owned or controlled vehicle of the employing government agency for the conduct of official business for the period of time that the personal security of the state official, public officer, or other public employee may require; and

(d) The office of the state treasurer. These confidential license plates may only be used on an unmarked state owned or controlled vehicle when required for the safe transportation of either state funds or negotiable securities to or from the office of the state treasurer.

(2) The use of confidential license plates on other vehicles owned or operated by the state of Washington by any officer or employee of the state is limited to confidential, investigative, or undercover work of state law enforcement agencies, confidential public health work, and confidential public assistance fraud or child support investigations.

(3)(a) The department may issue confidential drivers' licenses and identicards to commissioned officers of state and local law enforcement agencies and agencies of the federal government only for undercover or covert law enforcement activities.

(b) Any driver's license or identicard issued under this subsection shall display an expiration date that complies with the department's rules, but a driver's license or identicard issued under this subsection may be used only during the duration of the officer's assignment to an undercover or covert operation.

(c) Any driver's license or identicard issued under this subsection must be returned to the department within thirty days of the end of the officer's undercover assignment. Any driver's license or identicard issued under this subsection must be returned to the department immediately upon the officer's retirement, termination, dismissal, change in job assignment, or leave from the agency.

(4) The director may adopt rules governing applications for, and the use of, confidential license plates, drivers' licenses, and identicards.

**Sec. 3.** RCW 42.56.230 and 2011 c 350 s 2 and 2011 c 173 s 1 are each reenacted and amended to read as follows:

The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) Personal information(ç) including, but not limited to, addresses, telephone numbers, personal electronic mail addresses, social security numbers,

emergency contact and date of birth information for a participant in a public or nonprofit program serving or pertaining to children, adolescents, or students, including but not limited to early learning or child care services, parks and recreation programs, youth development programs, and after-school programs. Emergency contact information may be provided to appropriate authorities and medical personnel for the purpose of treating the individual during an emergency situation;

(3) 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;

(4) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would: (a) Be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, 84.40.340, or any ordinance authorized under RCW 35.102.145; or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(5) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

(6) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093; and

(7)(a) (~~Documents and related materials and scanned images of documents and related materials~~) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identicaid.

(b) Information provided under RCW 46.20.111 that indicates that an applicant declined to register with the selective service system.

(c) Any record pertaining to a vehicle license plate, driver's license, or identicaid issued under RCW 46.08.066 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement, confidential public health work, public assistance fraud, or child support investigative activity. This exemption does not prevent the release of the total number of vehicle license plates, drivers' licenses, or identicards that, under RCW 46.08.066, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(d) Any record pertaining to a vessel registration issued under RCW 88.02.330 that, alone or in combination with any other records, may reveal the identity of an individual, or reveal that an individual is or was, performing an undercover or covert law enforcement activity. This exemption does not prevent the release of the total number of vessel registrations that, under RCW 88.02.330, an agency or department has applied for, been issued, denied, returned, destroyed, lost, and reported for misuse.

(e) Upon request by the legislature, the department of licensing shall provide a report to the legislature containing all of the information in (c) and (d) of this subsection that is subject to public disclosure.

**NEW SECTION. Sec. 4.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate April 19, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

## CHAPTER 337

[Second Substitute Senate Bill 5595]

### CHILD CARE REFORM

AN ACT Relating to child care reform; adding a new section to chapter 43.215 RCW; creating new sections; 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 43.215 RCW to read as follows:

(1) The standards and guidelines described in this section are intended for the guidance of the department and the department of social and health services. 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.

(2) When providing services to parents applying for or receiving working connections child care benefits, the department must provide training to departmental employees on professionalism.

(3) When providing services to parents applying for or receiving working connections child care benefits, the department of social and health services has the following responsibilities:

(a) To return all calls from parents receiving working connections child care benefits within two business days of receiving the call;

(b) To develop a process by which parents receiving working connections child care benefits can submit required forms and information electronically by June 30, 2015;

(c) To notify providers and parents ten days before the loss of working connections child care benefits; and

(d) To provide parents with a document that explains in detail and in easily understood language what services they are eligible for, how they can appeal an adverse decision, and the parents' responsibilities in obtaining and maintaining eligibility for working connections child care.

**NEW SECTION. Sec. 2.** (1)(a) A legislative task force on child care improvements for the future is established with members as provided in this subsection.

(i) The president of the senate shall appoint two members from each of the two largest caucuses of the senate.

(ii) The speaker of the house of representatives shall appoint two members from each of the two largest caucuses in the house of representatives.

(iii) The president of the senate and the speaker of the house of representatives shall appoint fifteen members representing the following interests:

(A) The department of early learning;

(B) The department of social and health services;



- (C) The early learning advisory committee;
- (D) Thrive by five;
- (E) Private pay child care consumers;
- (F) Child care consumers receiving a subsidy;
- (G) Family child care providers;
- (H) Child care center providers;
- (I) Exempt child care providers;
- (J) The collective bargaining unit representing child care providers;
- (K) School-age child care providers;
- (L) Child care aware;

(M) The Washington state association of head start and the early childhood education and assistance program;

- (N) The early learning action alliance; and
- (O) Puget Sound educational service district.

(b) The task force shall choose its cochairs from among its legislative leadership. The members of the majority party in each house shall convene the first meeting.

(2) The task force shall address the following issues:

(a) The creation of a tiered reimbursement model that works for both consumers and providers and provides incentives for quality child care across communities;

(b) The development of recommendations and an implementation plan for expansion of the program referred to in RCW 43.215.400 to include a mixed delivery system that integrates community-based early learning providers, including but not limited to family child care, child care centers, schools, and educational services districts. Recommendations shall include:

(i) Areas of alignment and conflicts in restrictions and eligibility requirements associated with early learning funding and services;

(ii) A funding plan that blends and maximizes existing resources and identifies new revenue and other funding sources; and

(iii) Incentives for integrating child care and preschool programming to better serve working families;

(c) The development of recommendations for market rate reimbursement to allow access to high quality child care; and

(d) The development of recommendations for a further graduation of the copay scale to eliminate the cliff that occurs at subsidy cut off.

(3) Staff support for the task force must be provided by the senate committee services and the house of representatives office of program research.

(4) The task force shall report its findings and recommendations to the governor and the appropriate committees of the legislature no later than December 31, 2013.

(5) This section expires July 1, 2014.

**NEW SECTION. Sec. 3.** (1) The legislature finds that the Aclara group report on the eligibility requirements for working connections child care which came from the pedagogy of lean management and focused on identifying and eliminating nonvalue added work should be followed. The legislature further finds that, following some of the recommendations in the report, would result in simplifying and streamlining the child care system to improve access and customer service without decreasing the program's integrity.

(2) By December 1, 2013, the department and the department of social and health services shall accomplish the following:

(a) Eliminate the current custody/visitation policy and design a subsidy system that is flexible and accounts for small fluctuations in family circumstances;

(b) Create broad authorization categories so that relatively minor changes in parents' work schedule does not require changes in authorization;

(c) Establish rules to specify that parents who receive working connections child care benefits and participate in one hundred ten hours or more of approved work or related activities are eligible for full-time child care services; and

(d) Clarify and simplify the requirement to count child support as income.

Passed by the Senate April 27, 2013.

Passed by the House April 23, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

## CHAPTER 338

[Second Substitute Senate Bill 5732]

### BEHAVIORAL HEALTH SERVICES

AN ACT Relating to improving behavioral health services provided to adults in Washington state; amending RCW 71.24.025 and 18.19.210; adding new sections to chapter 43.20A RCW; adding a new section to chapter 70.97 RCW; adding a new section to chapter 71.05 RCW; creating a new section; providing an effective date; and providing an expiration date.

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

**NEW SECTION. Sec. 1.** (1)(a) Beginning May 1, 2014, the legislature shall convene a task force to examine reform of the adult behavioral health system, with voting members as provided in this subsection.

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

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

(iii) The governor shall appoint five members consisting of the secretary of the department of social and health services or the secretary's designee, the director of the health care authority or the director's designee, the director of the office of financial management or the director's designee, the secretary of the department of corrections or the secretary's designee, and a representative of the governor.

(iv) The governor shall request participation by a representative of tribal governments.

(b) The task force shall choose two cochairs from among its legislative members.

(c) The task force shall adopt a bottom-up approach and welcome input and participation from all stakeholders interested in the improvement of the adult behavioral health system. To that end, the task force must invite participation from, at a minimum, the following: Behavioral health service recipients and their families; local government; representatives of regional support networks; representatives of county coordinators; law enforcement; city and county jails; tribal representatives; behavioral health service providers; housing providers;

labor representatives; counties with state hospitals; mental health advocates; public defenders with involuntary mental health commitment or mental health court experience; medicaid managed care plan representatives; long-term care service providers; the Washington state hospital association; and individuals with expertise in evidence-based and research-based behavioral health service practices. Leadership of subcommittees formed by the task force may be drawn from this body of invited participants.

(2) The task force shall undertake a systemwide review of the adult behavioral health system and make recommendations for reform concerning, but not limited to, the following:

(a) The means by which services are delivered for adults with mental illness and chemical dependency disorders;

(b) Availability of effective means to promote recovery and prevent harm associated with mental illness;

(c) Crisis services, including boarding of mental health patients outside of regularly certified treatment beds;

(d) Best practices for cross-system collaboration between behavioral health treatment providers, medical care providers, long-term care service providers, entities providing health home services to high-risk medicaid clients, law enforcement, and criminal justice agencies; and

(e) Public safety practices involving persons with mental illness with forensic involvement.

(3) Staff support for the task force must be provided by the senate committee services and the house of representatives office of program research.

(4) Legislative members of the task force must be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(5) The expenses of the task force must be paid jointly by the senate and house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(6) The task force shall report its findings and recommendations to the governor and the appropriate committees of the legislature by January 1, 2015.

(7) This section expires June 1, 2015.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.20A RCW to read as follows:

(1) The systems responsible for financing, administration, and delivery of publicly funded mental health and chemical dependency services to adults must be designed and administered to achieve improved outcomes for adult clients served by those systems through increased use and development of evidence-based, research-based, and promising practices, as defined in RCW 71.24.025. For purposes of this section, client outcomes include: Improved health status; increased participation in employment and education; reduced involvement with the criminal justice system; enhanced safety and access to treatment for forensic patients; reduction in avoidable utilization of and costs associated with hospital, emergency room, and crisis services; increased housing stability; improved quality of life, including measures of recovery and resilience; and decreased population level disparities in access to treatment and treatment outcomes.

(2) The department and the health care authority must implement a strategy for the improvement of the adult behavioral health system.

(a) The department must establish a steering committee that includes at least the following members: Behavioral health service recipients and their families; local government; representatives of regional support networks; representatives of county coordinators; law enforcement; city and county jails; tribal representatives; behavioral health service providers, including at least one chemical dependency provider and at least one psychiatric advanced registered nurse practitioner; housing providers; medicaid managed care plan representatives; long-term care service providers; organizations representing health care professionals providing services in mental health settings; the Washington state hospital association; the Washington state medical association; individuals with expertise in evidence-based and research-based behavioral health service practices; and the health care authority.

(b) The adult behavioral health system improvement strategy must include:

(i) An assessment of the capacity of the current publicly funded behavioral health services system to provide evidence-based, research-based, and promising practices;

(ii) Identification, development, and increased use of evidence-based, research-based, and promising practices;

(iii) Design and implementation of a transparent quality management system, including analysis of current system capacity to implement outcomes reporting and development of baseline and improvement targets for each outcome measure provided in this section;

(iv) Identification and phased implementation of service delivery, financing, or other strategies that will promote improvement of the behavioral health system as described in this section and incentivize the medical care, behavioral health, and long-term care service delivery systems to achieve the improvements described in this section and collaborate across systems. The strategies must include phased implementation of public reporting of outcome and performance measures in a form that allows for comparison of performance and levels of improvement between geographic regions of Washington; and

(v) Identification of effective methods for promoting workforce capacity, efficiency, stability, diversity, and safety.

(c) The department must seek private foundation and federal grant funding to support the adult behavioral health system improvement strategy.

(d) By May 15, 2014, the Washington state institute for public policy, in consultation with the department, the University of Washington evidence-based practice institute, the University of Washington alcohol and drug abuse institute, and the Washington institute for mental health research and training, shall prepare an inventory of evidence-based, research-based, and promising practices for prevention and intervention services pursuant to subsection (1) of this section. The department shall use the inventory in preparing the behavioral health improvement strategy. The department shall provide the institute with data necessary to complete the inventory.

(e) By August 1, 2014, the department must report to the governor and the relevant fiscal and policy committees of the legislature on the status of implementation of the behavioral health improvement strategy, including strategies developed or implemented to date, timelines, and costs to accomplish

phased implementation of the adult behavioral health system improvement strategy.

(3) The department must contract for the services of an independent consultant to review the provision of forensic mental health services in Washington state and provide recommendations as to whether and how the state's forensic mental health system should be modified to provide an appropriate treatment environment for individuals with mental disorders who have been charged with a crime while enhancing the safety and security of the public and other patients and staff at forensic treatment facilities. By August 1, 2014, the department must submit a report regarding the recommendations of the independent consultant to the governor and the relevant fiscal and policy committees of the legislature.

**NEW SECTION. Sec. 3.** A new section is added to chapter 70.97 RCW to read as follows:

To the extent that funds are specifically appropriated for this purpose, the department must issue a request for a proposal for enhanced services facility services by June 1, 2014, and complete the procurement process by January 1, 2015.

**NEW SECTION. Sec. 4.** A new section is added to chapter 71.05 RCW to read as follows:

When a person has been involuntarily committed for treatment to a hospital for a period of ninety or one hundred eighty days, and the superintendent or professional person in charge of the hospital determines that the person no longer requires active psychiatric treatment at an inpatient level of care, the regional support network responsible for resource management services for the person must work with the hospital to develop an individualized discharge plan and arrange for a transition to the community in accordance with the person's individualized discharge plan within twenty-one days of the determination.

**Sec. 5.** RCW 71.24.025 and 2012 c 10 s 59 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020;

(b) Being gravely disabled as defined in RCW 71.05.020 or, in the case of a child, a gravely disabled minor as defined in RCW 71.34.020; or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

(2) "Available resources" means funds appropriated for the purpose of providing community mental health programs, federal funds, except those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals.

(3) "Child" means a person under the age of eighteen years.

(4) "Chronically mentally ill adult" or "adult who is chronically mentally ill" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(5) "Clubhouse" means a community-based program that provides rehabilitation services and is certified by the department of social and health services.

(6) "Community mental health program" means all mental health services, activities, or programs using available resources.

(7) "Community mental health service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from public sources.

(8) "Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for children who are acutely mentally ill or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, recovery services, and other services determined by regional support networks.

(9) "Consensus-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, and may have anecdotal or case study support, or that is agreed but not possible to perform studies with random assignment and controlled groups.

(10) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

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

(12) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

(13) "Emerging best practice" or "promising practice" means a ~~((practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice))~~ program or practice that, based on statistical analyses or a well established theory of change, shows potential for meeting the evidence-based or research-based criteria, which may include the use of a program that is evidence-based for outcomes other than those listed in subsection (14) of this section.

(14) "Evidence-based" means a program or practice that has ~~((had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population))~~ been tested in heterogeneous or intended populations with multiple randomized, or statistically controlled evaluations, or both; or one large multiple site randomized, or statistically controlled evaluation, or both, where the weight of the evidence from a systemic review demonstrates sustained improvements in at least one outcome. "Evidence-based" also means a program or practice that can be implemented with a set of procedures to allow successful replication in Washington and, when possible, is determined to be cost-beneficial.

(15) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW or an entity deemed to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department, that meets state minimum standards or persons licensed under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

(16) "Long-term inpatient care" means inpatient services for persons committed for, or voluntarily receiving intensive treatment for, periods of ninety days or greater under chapter 71.05 RCW. "Long-term inpatient care" as used in this chapter does not include: (a) Services for individuals committed under chapter 71.05 RCW who are receiving services pursuant to a conditional release or a court-ordered less restrictive alternative to detention; or (b) services for individuals voluntarily receiving less restrictive alternative treatment on the grounds of the state hospital.

(17) "Mental health services" means all services provided by regional support networks and other services provided by the state for persons who are mentally ill.

(18) "Mentally ill persons," "persons who are mentally ill," and "the mentally ill" mean persons and conditions defined in subsections (1), (4), (27), and (28) of this section.

(19) "Recovery" means the process in which people are able to live, work, learn, and participate fully in their communities.

(20) "Regional support network" means a county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region.

(21) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(22) "Research-based" means a program or practice that has ~~((some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices))~~ been tested with a single randomized, or statistically controlled evaluation, or both, demonstrating sustained desirable outcomes; or where the weight of the evidence from a systemic review supports sustained outcomes as described in subsection (14) of this section but does not meet the full criteria for evidence-based.

(23) "Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for persons who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service persons who are mentally ill in nursing homes, assisted living facilities, and adult family homes, and may include outpatient services provided as an element in a package of services in a supported housing model. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

(24) "Resilience" means the personal and community qualities that enable individuals to rebound from adversity, trauma, tragedy, threats, or other stresses, and to live productive lives.

(25) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for: (a) Adults and children who are acutely mentally ill; (b) adults who are chronically mentally ill; (c) children who are severely emotionally disturbed; or (d) adults who are seriously disturbed and determined solely by a regional support network to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding enrollment of adults and children who are mentally ill in services and their individual service plan to designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

(26) "Secretary" means the secretary of social and health services.

(27) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to himself or herself or others, or to the property of others, as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status, or under a less restrictive alternative order, at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;



(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in chapter 71.34 RCW, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

(28) "Severely emotionally disturbed child" or "child who is severely emotionally disturbed" means a child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a caretaker who is mentally ill or inadequate;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(29) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for:

(a) Delivery of mental health services; (b) licensed service providers for the provision of mental health services; (c) residential services; and (d) community support services and resource management services.

(30) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(31) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest.

**Sec. 6.** RCW 18.19.210 and 2008 c 135 s 9 are each amended to read as follows:

(1)(a) An applicant for registration as an agency affiliated counselor who applies to the department within seven days of employment by an agency may work as an agency affiliated counselor for up to sixty days while the application is processed. The applicant must stop working on the sixtieth day of employment if the registration has not been granted for any reason.

(b) The applicant may not provide unsupervised counseling prior to completion of a criminal background check performed by either the employer or the secretary. For purposes of this subsection, "unsupervised" means the supervisor is not physically present at the location where the counseling occurs.

(2) Agency affiliated counselors shall notify the department if they are either no longer employed by the agency identified on their application or are now employed with another agency, or both. Agency affiliated counselors may not engage in the practice of counseling unless they are currently affiliated with an agency.

NEW SECTION. Sec. 7. A new section is added to chapter 43.20A RCW to read as follows:

(1) By November 30, 2013, the department and the health care authority must report to the governor and the relevant fiscal and policy committees of the legislature, consistent with RCW 43.01.036, a plan that establishes a tribal-centric behavioral health system incorporating both mental health and chemical dependency services. The plan must assure that child, adult, and older adult American Indians and Alaskan Natives eligible for medicaid have increased access to culturally appropriate mental health and chemical dependency services. The plan must:

(a) Include implementation dates, major milestones, and fiscal estimates as needed;

(b) Emphasize the use of culturally appropriate evidence-based and promising practices;

(c) Address equitable access to crisis services, outpatient care, voluntary and involuntary hospitalization, and behavioral health care coordination;

(d) Identify statutory changes necessary to implement the tribal-centric behavioral health system; and

(e) Be developed with the department's Indian policy advisory committee and the American Indian health commission, in consultation with Washington's federally recognized tribes.

(2) The department shall enter into agreements with the tribes and urban Indian health programs and modify regional support network contracts as necessary to develop a tribal-centric behavioral health system that better serves the needs of the tribes.

NEW SECTION. Sec. 8. Section 4 of this act takes effect July 1, 2018.

Passed by the Senate April 28, 2013.

Passed by the House April 24, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

## CHAPTER 339

[Engrossed Substitute Senate Bill 5744]

## LOGGING INDUSTRY SAFETY

AN ACT Relating to reporting on the progress of the logger safety initiative; adding a new section to chapter 51.04 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that many Washington workers involved in manual logging in the logging industry suffer industrial injuries with greater frequency and severity than workers in other industries. The legislature further finds that the incidence and severity of injury is particularly high among young workers during the early periods of employment in manual logging. The legislature recognizes the importance of improving safety performance in the logging industry to reduce industrial injuries for workers and resulting workers' compensation premium rates for employers. The legislature acknowledges that industry participants, including private land owners, timber industry employers, the department of natural resources, and the department of labor and industries, have formed a logger safety task force to develop and implement a logger safety initiative. The goal of the initiative is to reduce the frequency and severity of injuries in the logging industry. The task force will create a program that will establish sector-wide standards for worker training and supervision; establish a certification process for individual company safety programs; and review the progress of logging operations through mandatory performance-based audits. The legislature further recognizes that as the safety culture in the logging industry evolves, the frequency and severity of injuries will decrease, which will drive down industrial insurance costs for logging industry employers. While the industrial insurance costs will decline over time as safety improves, the legislature acknowledges that an immediate reduction in industrial insurance rates for the 2014 rate year for participating logging employers provides an additional incentive for these employers to commit to the logger safety initiative. Therefore, the legislature intends to monitor development and implementation of the logger safety initiative.

**NEW SECTION. Sec. 2.** A new section is added to chapter 51.04 RCW to read as follows:

(1) The department shall include one or more representatives of logging industry workers on the logger safety task force. In addition, the department shall reach out to all employers in the logging industry, including those having one or more on the job fatalities in the last five years, and invite them to participate in the logger safety initiative. All participants must comply with the requirements of the logger safety initiative.

(2) By December 31, 2013, the department shall report back to the appropriate committees of the legislature on the development and implementation of the logger safety initiative. The report shall provide a status update on implementation of the initiative and participation in the safety program, including a description and summary of the worker training and supervision standards and the certification process for individual companies. The report shall also contain a description and summary of any industrial insurance rate reduction or other incentive for rate year 2014 that will be applied to employers participating in the initiative. The report may provide

recommendations for legislative consideration to further the goals of the initiative.

Passed by the Senate April 27, 2013.

Passed by the House April 16, 2013.

Approved by the Governor May 21, 2013.

Filed in Office of Secretary of State May 21, 2013.

CHAPTER 340

[Filed by Washington Citizens' Commission on Salaries for Elected Officials]

SALARIES—STATE ELECTED OFFICIALS

AN ACT Relating to salaries of elected officials; and amending RCW 43.03.011, 43.03.012, and 43.03.013.

Be it enacted by the Washington citizens' commission on salaries for elected officials of the State of Washington:

Sec. 1. RCW 43.03.011 and 2011 c 380 s 1 are each amended to read as follows:

Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salaries of the state elected officials of the executive branch shall be as follows:

(1) Effective September 1, ((2010)) 2012:

- (a) Governor. . . . . \$ 166,891
- (b) Lieutenant governor . . . . . \$ 93,948
- (c) Secretary of state . . . . . \$ 116,950
- (d) Treasurer. . . . . \$ 116,950
- (e) Auditor . . . . . \$ 116,950
- (f) Attorney general . . . . . \$ 151,718
- (g) Superintendent of public instruction . . . . . \$ 121,618
- (h) Commissioner of public lands . . . . . \$ 121,618
- (i) Insurance commissioner . . . . . \$ 116,950

(2) Effective September 1, ((2011)) 2013:

- (a) Governor. . . . . \$ 166,891
- (b) Lieutenant governor . . . . . \$ ((93,948)) 97,000
- (c) Secretary of state . . . . . \$ 116,950
- (d) Treasurer. . . . . \$ ((116,950)) 125,000
- (e) Auditor . . . . . \$ 116,950
- (f) Attorney general . . . . . \$ 151,718
- (g) Superintendent of public instruction . . . . . \$ ((121,618)) 124,050
- (h) Commissioner of public lands . . . . . \$ ((121,618)) 124,050
- (i) Insurance commissioner . . . . . \$ 116,950

(3) Effective September 1, ((2012)) 2014:

- (a) Governor. . . . . \$ 166,891
- (b) Lieutenant governor . . . . . \$ ((93,948)) 97,000
- (c) Secretary of state . . . . . \$ 116,950
- (d) Treasurer. . . . . \$ ((116,950)) 125,000
- (e) Auditor . . . . . \$ 116,950
- (f) Attorney general . . . . . \$ 151,718
- (g) Superintendent of public instruction . . . . . \$ ((121,618)) 127,772

- (h) Commissioner of public lands . . . . . \$ ~~((121,618))~~ 124,050
- (i) Insurance commissioner . . . . . \$ 116,950

(4) The lieutenant governor shall receive the fixed amount of his or her salary plus 1/260th of the difference between his or her salary and that of the governor for each day that the lieutenant governor is called upon to perform the duties of the governor by reason of the absence from the state, removal, resignation, death, or disability of the governor.

**Sec. 2.** RCW 43.03.012 and 2011 c 380 s 2 are each amended to read as follows:

Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 2.04.092, 2.06.062, 2.08.092, 3.58.010, and 43.03.310, the annual salaries of the judges of the state shall be as follows:

- (1) Effective September 1, (~~(2010))~~ 2012:
  - (a) Justices of the supreme court . . . . . \$ 164,221
  - (b) Judges of the court of appeals . . . . . \$ 156,328
  - (c) Judges of the superior court . . . . . \$ 148,832
  - (d) Full-time judges of the district court . . . . . \$ 141,710
- (2) Effective September 1, (~~(2011))~~ 2013:
  - (a) Justices of the supreme court . . . . . \$ ~~((164,221))~~ 167,505
  - (b) Judges of the court of appeals . . . . . \$ ~~((156,328))~~ 159,455
  - (c) Judges of the superior court . . . . . \$ ~~((148,832))~~ 151,809
  - (d) Full-time judges of the district court . . . . . \$ ~~((141,710))~~ 144,544
- (3) Effective September 1, (~~(2012))~~ 2014:
  - (a) Justices of the supreme court . . . . . \$ ~~((164,221))~~ 172,531
  - (b) Judges of the court of appeals . . . . . \$ ~~((156,328))~~ 164,238
  - (c) Judges of the superior court . . . . . \$ ~~((148,832))~~ 156,363
  - (d) Full-time judges of the district court . . . . . \$ ~~((141,710))~~ 148,881

(4) The salary for a part-time district court judge shall be the proportion of full-time work for which the position is authorized, multiplied by the salary for a full-time district court judge.

**Sec. 3.** RCW 43.03.013 and 2011 c 380 s 3 are each amended to read as follows:

Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salary of members of the legislature shall be:

- (1) Effective September 1, (~~(2010))~~ 2012:
  - (a) Legislators . . . . . \$ 42,106
  - (b) Speaker of the house . . . . . \$ 50,106
  - (c) Senate majority leader . . . . . \$ 50,106
  - (d) House minority leader . . . . . \$ 46,106
  - (e) Senate minority leader . . . . . \$ 46,106
- (2) Effective September 1, (~~(2011))~~ 2013:
  - (a) Legislators . . . . . \$ 42,106
  - (b) Speaker of the house . . . . . \$ 50,106
  - (c) Senate majority leader . . . . . \$ 50,106
  - (d) House minority leader . . . . . \$ 46,106
  - (e) Senate minority leader . . . . . \$ 46,106
- (3) Effective September 1, (~~(2012))~~ 2014:

(a) Legislators .....	\$ 42,106
(b) Speaker of the house .....	\$ 50,106
(c) Senate majority leader .....	\$ 50,106
(d) House minority leader .....	\$ 46,106
(e) Senate minority leader .....	\$ 46,106

Filed in Office of Secretary of State May 28, 2013.

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AUTHENTICATION

I, K. Kyle Thiessen, 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 2013 session (63rd Legislature), chapters 154 through 340, 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 14th day of August, 2013.



K. KYLE THIESSEN  
Code Reviser