2009

SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
SIXTY-FIRST LEGISLATURE
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Code Reviser

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WASHINGTON SESSION LAWS
GENERAL INFORMATION

1. EDITIONS AVALIABLE.

   (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 pertinent date for the Laws of the 2009 regular session to be the first moment of July 26, 2009.

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

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

6. INDEX AND TABLES.

   A cumulative index and tables of all 2009 laws may be found at the back of the final volume.

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CHAPTER 1

[Initiative 1000]

DEATH WITH DIGNITY ACT

AN ACT Relating to death with dignity; amending RCW 70.122.100; reenacting and amending RCW 42.56.360 and 42.56.360; adding a new chapter to Title 70 RCW; prescribing penalties; providing an effective date; and providing an expiration date.

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

THE WASHINGTON DEATH WITH DIGNITY ACT

General Provisions

NEW SECTION. **Sec. 1.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Attending physician" means the physician who has primary responsibility for the care of the patient and treatment of the patient's terminal disease.

(3) "Competent" means that, in the opinion of a court or in the opinion of the patient's attending physician or consulting physician, psychiatrist, or psychologist, a patient has the ability to make and communicate an informed decision to health care providers, including communication through persons familiar with the patient's manner of communicating if those persons are available.

(4) "Consulting physician" means a physician who is qualified by specialty or experience to make a professional diagnosis and prognosis regarding the patient's disease.

(5) "Counseling" means one or more consultations as necessary between a state licensed psychiatrist or psychologist and a patient for the purpose of determining that the patient is competent and not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

(6) "Health care provider" means a person licensed, certified, or otherwise authorized or permitted by law to administer health care or dispense medication in the ordinary course of business or practice of a profession, and includes a health care facility.

(7) "Informed decision" means a decision by a qualified patient, to request and obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, that is based on an appreciation of the relevant facts and after being fully informed by the attending physician of:

(a) His or her medical diagnosis;

(b) His or her prognosis;

(c) The potential risks associated with taking the medication to be prescribed;

(d) The probable result of taking the medication to be prescribed; and

(e) The feasible alternatives including, but not limited to, comfort care, hospice care, and pain control.

(8) "Medically confirmed" means the medical opinion of the attending physician has been confirmed by a consulting physician who has examined the patient and the patient's relevant medical records.

(9) "Patient" means a person who is under the care of a physician.

(10) "Physician" means a doctor of medicine or osteopathy licensed to practice medicine in the state of Washington.

(11) "Qualified patient" means a competent adult who is a resident of Washington state and has satisfied the requirements of this chapter in order to obtain a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner.

(12) "Self-administer" means a qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner.

(13) "Terminal disease" means an incurable and irreversible disease that has been medically confirmed and will, within reasonable medical judgment, produce death within six months.

Written Request for Medication to End Life in a Humane and Dignified Manner

NEW SECTION. **Sec. 2.** WHO MAY INITIATE A WRITTEN REQUEST FOR MEDICATION. (1) An adult who is competent, is a resident of Washington state, and has been determined by the attending physician and consulting physician to be suffering from a terminal disease, and who has voluntarily expressed his or her wish to die, may make a written request for medication that the patient may self-administer to end his or her life in a humane and dignified manner in accordance with this chapter.

(2) A person does not qualify under this chapter solely because of age or disability.

NEW SECTION. **Sec. 3.** FORM OF THE WRITTEN REQUEST. (1) A valid request for medication under this chapter shall be in substantially the form described in section 22 of this act, signed and dated by the patient and witnessed by at least two individuals who, in the presence of the patient, attest that to the best of their knowledge and belief the patient is competent, acting voluntarily, and is not being coerced to sign the request.

(2) One of the witnesses shall be a person who is not:

(a) A relative of the patient by blood, marriage, or adoption;

(b) A person who at the time the request is signed would be entitled to any portion of the estate of the qualified patient upon death under any will or by operation of law; or

(c) An owner, operator, or employee of a health care facility where the qualified patient is receiving medical treatment or is a resident.

(3) The patient's attending physician at the time the request is signed shall not be a witness.

(4) If the patient is a patient in a long-term care facility at the time the written request is made, one of the witnesses shall be an individual designated by the facility and having the qualifications specified by the department of health by rule.

Safeguards

NEW SECTION. **Sec. 4.** ATTENDING PHYSICIAN RESPONSIBILITIES. (1) The attending physician shall:

(a) Make the initial determination of whether a patient has a terminal disease, is competent, and has made the request voluntarily;

(b) Request that the patient demonstrate Washington state residency under section 13 of this act;

(c) To ensure that the patient is making an informed decision, inform the patient of:

(i) His or her medical diagnosis;

(ii) His or her prognosis;

(iii) The potential risks associated with taking the medication to be prescribed;

(iv) The probable result of taking the medication to be prescribed; and

(v) The feasible alternatives including, but not limited to, comfort care, hospice care, and pain control;

(d) Refer the patient to a consulting physician for medical confirmation of the diagnosis, and for a determination that the patient is competent and acting voluntarily;

(e) Refer the patient for counseling if appropriate under section 6 of this act;

(f) Recommend that the patient notify next of kin;

(g) Counsel the patient about the importance of having another person present when the patient takes the medication prescribed under this chapter and of not taking the medication in a public place;

(h) Inform the patient that he or she has an opportunity to rescind the request at any time and in any manner, and offer the patient an opportunity to rescind at the end of the fifteen-day waiting period under section 9 of this act;

(i) Verify, immediately before writing the prescription for medication under this chapter, that the patient is making an informed decision;

(j) Fulfill the medical record documentation requirements of section 12 of this act;

(k) Ensure that all appropriate steps are carried out in accordance with this chapter before writing a prescription for medication to enable a qualified patient to end his or her life in a humane and dignified manner; and

(l)(i) Dispense medications directly, including ancillary medications intended to facilitate the desired effect to minimize the patient's discomfort, if the attending physician is authorized under statute and rule to dispense and has a current drug enforcement administration certificate; or

(ii) With the patient's written consent:

(A) Contact a pharmacist and inform the pharmacist of the prescription; and

(B) Deliver the written prescription personally, by mail or facsimile to the pharmacist, who will dispense the medications directly to either the patient, the attending physician, or an expressly identified agent of the patient. Medications dispensed pursuant to this subsection shall not be dispensed by mail or other form of courier.

(2) The attending physician may sign the patient's death certificate which shall list the underlying terminal disease as the cause of death.

NEW SECTION. **Sec. 5.** CONSULTING PHYSICIAN CONFIRMATION. Before a patient is qualified under this chapter, a consulting physician shall examine the patient and his or her relevant medical records and confirm, in writing, the attending physician's diagnosis that the patient is suffering from a terminal disease, and verify that the patient is competent, is acting voluntarily, and has made an informed decision.

NEW SECTION. **Sec. 6.** COUNSELING REFERRAL. If, in the opinion of the attending physician or the consulting physician, a patient may be suffering from a psychiatric or psychological disorder or depression causing impaired judgment, either physician shall refer the patient for counseling. Medication to end a patient's life in a humane and dignified manner shall not be prescribed until the person performing the counseling determines that the patient is not suffering from a psychiatric or psychological disorder or depression causing impaired judgment.

NEW SECTION. **Sec. 7.** INFORMED DECISION. A person shall not receive a prescription for medication to end his or her life in a humane and dignified manner unless he or she has made an informed decision. Immediately before writing a prescription for medication under this chapter, the attending physician shall verify that the qualified patient is making an informed decision.

NEW SECTION. **Sec. 8.** FAMILY NOTIFICATION. The attending physician shall recommend that the patient notify the next of kin of his or her request for medication under this chapter. A patient who declines or is unable to notify next of kin shall not have his or her request denied for that reason.

NEW SECTION. **Sec. 9.** WRITTEN AND ORAL REQUESTS. To receive a prescription for medication that the qualified patient may self-administer to end his or her life in a humane and dignified manner, a qualified patient shall have made an oral request and a written request, and reiterate the oral request to his or her attending physician at least fifteen days after making the initial oral request. At the time the qualified patient makes his or her second oral request, the attending physician shall offer the qualified patient an opportunity to rescind the request.

NEW SECTION. **Sec. 10.** RIGHT TO RESCIND REQUEST. A patient may rescind his or her request at any time and in any manner without regard to his or her mental state. No prescription for medication under this chapter may be written without the attending physician offering the qualified patient an opportunity to rescind the request.

NEW SECTION. **Sec. 11.** WAITING PERIODS. (1) At least fifteen days shall elapse between the patient's initial oral request and the writing of a prescription under this chapter.

(2) At least forty-eight hours shall elapse between the date the patient signs the written request and the writing of a prescription under this chapter.

NEW SECTION. **Sec. 12.** MEDICAL RECORD DOCUMENTATION REQUIREMENTS. The following shall be documented or filed in the patient's medical record:

(1) All oral requests by a patient for medication to end his or her life in a humane and dignified manner;

(2) All written requests by a patient for medication to end his or her life in a humane and dignified manner;

(3) The attending physician's diagnosis and prognosis, and determination that the patient is competent, is acting voluntarily, and has made an informed decision;

(4) The consulting physician's diagnosis and prognosis, and verification that the patient is competent, is acting voluntarily, and has made an informed decision;

(5) A report of the outcome and determinations made during counseling, if performed;

(6) The attending physician's offer to the patient to rescind his or her request at the time of the patient's second oral request under section 9 of this act; and

(7) A note by the attending physician indicating that all requirements under this chapter have been met and indicating the steps taken to carry out the request, including a notation of the medication prescribed.

NEW SECTION. **Sec. 13.** RESIDENCY REQUIREMENT. Only requests made by Washington state residents under this chapter may be granted. Factors demonstrating Washington state residency include but are not limited to:

(1) Possession of a Washington state driver's license;

(2) Registration to vote in Washington state; or

(3) Evidence that the person owns or leases property in Washington state.

NEW SECTION. **Sec. 14.** DISPOSAL OF UNUSED MEDICATIONS. Any medication dispensed under this chapter that was not self-administered shall be disposed of by lawful means.

NEW SECTION. **Sec. 15.** REPORTING REQUIREMENTS. (1)(a) The department of health shall annually review all records maintained under this chapter.

(b) The department of health shall require any health care provider upon writing a prescription or dispensing medication under this chapter to file a copy of the dispensing record and such other administratively required documentation with the department. All administratively required documentation shall be mailed or otherwise transmitted as allowed by department of health rule to the department no later than thirty calendar days after the writing of a prescription and dispensing of medication under this chapter, except that all documents required to be filed with the department by the prescribing physician after the death of the patient shall be mailed no later than thirty calendar days after the date of death of the patient. In the event that anyone required under this chapter to report information to the department of health provides an inadequate or incomplete report, the department shall contact the person to request a complete report.

(2) The department of health shall adopt rules to facilitate the collection of information regarding compliance with this chapter. Except as otherwise required by law, the information collected is not a public record and may not be made available for inspection by the public.

(3) The department of health shall generate and make available to the public an annual statistical report of information collected under subsection (2) of this section.

NEW SECTION. **Sec. 16.** EFFECT ON CONSTRUCTION OF WILLS, CONTRACTS, AND STATUTES. (1) Any provision in a contract, will, or other agreement, whether written or oral, to the extent the provision would affect whether a person may make or rescind a request for medication to end his or her life in a humane and dignified manner, is not valid.

(2) Any obligation owing under any currently existing contract shall not be conditioned or affected by the making or rescinding of a request, by a person, for medication to end his or her life in a humane and dignified manner.

NEW SECTION. **Sec. 17.** INSURANCE OR ANNUITY POLICIES. The sale, procurement, or issuance of any life, health, or accident insurance or annuity policy or the rate charged for any policy shall not be conditioned upon or affected by the making or rescinding of a request, by a person, for medication that the patient may self-administer to end his or her life in a humane and dignified manner. A qualified patient's act of ingesting medication to end his or her life in a humane and dignified manner shall not have an effect upon a life, health, or accident insurance or annuity policy.

NEW SECTION. **Sec. 18.** CONSTRUCTION OF ACT. (1) Nothing in this chapter authorizes a physician or any other person to end a patient's life by lethal injection, mercy killing, or active euthanasia. Actions taken in accordance with this chapter do not, for any purpose, constitute suicide, assisted suicide, mercy killing, or homicide, under the law. State reports shall not refer to practice under this chapter as "suicide" or "assisted suicide." Consistent with sections 1 (7), (11), and (12), 2(1), 4(1)(k), 6, 7, 9, 12 (1) and (2), 16 (1) and (2), 17, 19(1) (a) and (d), and 20(2) of this act, state reports shall refer to practice under this chapter as obtaining and self-administering life-ending medication.

(2) Nothing contained in this chapter shall be interpreted to lower the applicable standard of care for the attending physician, consulting physician, psychiatrist or psychologist, or other health care provider participating under this chapter.

Immunities and Liabilities

NEW SECTION. **Sec. 19.** IMMUNITIES—BASIS FOR PROHIBITING HEALTH CARE PROVIDER FROM PARTICIPATION—NOTIFICATION—PERMISSIBLE SANCTIONS. (1) Except as provided in section 20 of this act and subsection (2) of this section:

(a) A person shall not be subject to civil or criminal liability or professional disciplinary action for participating in good faith compliance with this chapter. This includes being present when a qualified patient takes the prescribed medication to end his or her life in a humane and dignified manner;

(b) A professional organization or association, or health care provider, may not subject a person to censure, discipline, suspension, loss of license, loss of privileges, loss of membership, or other penalty for participating or refusing to participate in good faith compliance with this chapter;

(c) A patient's request for or provision by an attending physician of medication in good faith compliance with this chapter does not constitute neglect for any purpose of law or provide the sole basis for the appointment of a guardian or conservator; and

(d) Only willing health care providers shall participate in the provision to a qualified patient of medication to end his or her life in a humane and dignified manner. If a health care provider is unable or unwilling to carry out a patient's request under this chapter, and the patient transfers his or her care to a new health care provider, the prior health care provider shall transfer, upon request, a copy of the patient's relevant medical records to the new health care provider.

(2)(a) A health care provider may prohibit another health care provider from participating under this act on the premises of the prohibiting provider if the prohibiting provider has given notice to all health care providers with privileges to practice on the premises and to the general public of the prohibiting provider's policy regarding participating under this act. This subsection does not prevent a health care provider from providing health care services to a patient that do not constitute participation under this act.

(b) A health care provider may subject another health care provider to the sanctions stated in this subsection if the sanctioning health care provider has notified the sanctioned provider before participation in this act that it prohibits participation in this act:

(i) Loss of privileges, loss of membership, or other sanctions provided under the medical staff bylaws, policies, and procedures of the sanctioning health care provider if the sanctioned provider is a member of the sanctioning provider's medical staff and participates in this act while on the health care facility premises of the sanctioning health care provider, but not including the private medical office of a physician or other provider;

(ii) Termination of a lease or other property contract or other nonmonetary remedies provided by a lease contract, not including loss or restriction of medical staff privileges or exclusion from a provider panel, if the sanctioned provider participates in this act while on the premises of the sanctioning health care provider or on property that is owned by or under the direct control of the sanctioning health care provider; or

(iii) Termination of a contract or other nonmonetary remedies provided by contract if the sanctioned provider participates in this act while acting in the course and scope of the sanctioned provider's capacity as an employee or independent contractor of the sanctioning health care provider. Nothing in this subsection (2)(b)(iii) prevents:

(A) A health care provider from participating in this act while acting outside the course and scope of the provider's capacity as an employee or independent contractor; or

(B) A patient from contracting with his or her attending physician and consulting physician to act outside the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(c) A health care provider that imposes sanctions under (b) of this subsection shall follow all due process and other procedures the sanctioning health care provider may have that are related to the imposition of sanctions on another health care provider.

(d) For the purposes of this subsection:

(i) "Notify" means a separate statement in writing to the health care provider specifically informing the health care provider before the provider's participation

in this act of the sanctioning health care provider's policy about participation in activities covered by this chapter.

(ii) "Participate in this act" means to perform the duties of an attending physician under section 4 of this act, the consulting physician function under section 5 of this act, or the counseling function under section 6 of this act. "Participate in this act" does not include:

(A) Making an initial determination that a patient has a terminal disease and informing the patient of the medical prognosis;

(B) Providing information about the Washington death with dignity act to a patient upon the request of the patient;

(C) Providing a patient, upon the request of the patient, with a referral to another physician; or

(D) A patient contracting with his or her attending physician and consulting physician to act outside of the course and scope of the provider's capacity as an employee or independent contractor of the sanctioning health care provider.

(3) Suspension or termination of staff membership or privileges under subsection (2) of this section is not reportable under RCW 18.130.070. Action taken under section 3, 4, 5, or 6 of this act may not be the sole basis for a report of unprofessional conduct under RCW 18.130.180.

(4) References to "good faith" in subsection (1)(a), (b), and (c) of this section do not allow a lower standard of care for health care providers in the state of Washington.

NEW SECTION. **Sec. 20.** LIABILITIES. (1) A person who without authorization of the patient willfully alters or forges a request for medication or conceals or destroys a rescission of that request with the intent or effect of causing the patient's death is guilty of a class A felony.

(2) A person who coerces or exerts undue influence on a patient to request medication to end the patient's life, or to destroy a rescission of a request, is guilty of a class A felony.

(3) This chapter does not limit further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.

(4) The penalties in this chapter do not preclude criminal penalties applicable under other law for conduct that is inconsistent with this chapter.

NEW SECTION. **Sec. 21.** CLAIMS BY GOVERNMENTAL ENTITY FOR COSTS INCURRED. Any governmental entity that incurs costs resulting from a person terminating his or her life under this chapter in a public place has a claim against the estate of the person to recover such costs and reasonable attorneys' fees related to enforcing the claim.

Additional Provisions

NEW SECTION. **Sec. 22.** FORM OF THE REQUEST. A request for a medication as authorized by this chapter shall be in substantially the following form:

REQUEST FOR MEDICATION TO END MY LIFE
IN A HUMAN [HUMANE] AND DIGNIFIED MANNER

I, ..., am an adult of sound mind.

I am suffering from . . . . . ., which my attending physician has determined is a terminal disease and which has been medically confirmed by a consulting physician.

I have been fully informed of my diagnosis, prognosis, the nature of medication to be prescribed and potential associated risks, the expected result, and the feasible alternatives, including comfort care, hospice care, and pain control.

I request that my attending physician prescribe medication that I may self-administer to end my life in a humane and dignified manner and to contact any pharmacist to fill the prescription.

INITIAL ONE:

. . . . . I have informed my family of my decision and taken their opinions into consideration.

. . . . . I have decided not to inform my family of my decision.

. . . . . I have no family to inform of my decision.

I understand that I have the right to rescind this request at any time.

I understand the full import of this request and I expect to die when I take the medication to be prescribed. I further understand that although most deaths occur within three hours, my death may take longer and my physician has counseled me about this possibility.

I make this request voluntarily and without reservation, and I accept full moral responsibility for my actions.

Signed: . . . . . .

Dated: . . . . . .

DECLARATION OF WITNESSES

By initialing and signing below on or after the date the person named above signs, we declare that the person making and signing the above request:

Witness 1 Initials	Witness 2 Initials	
. . . . .	. . . . .	1. Is personally known to us or has provided proof of identity;
. . . . .	. . . . .	2. Signed this request in our presence on the date of the person's signature;
. . . . .	. . . . .	3. Appears to be of sound mind and not under duress, fraud, or undue influence;
. . . . .	. . . . .	4. Is not a patient for whom either of us is the attending physician.

Printed Name of Witness 1: . . . . . .

Signature of Witness 1/Date: . . . . . .

Printed Name of Witness 2: . . . . . .

Signature of Witness 2/Date: . . . . . .

NOTE: One witness shall not be a relative by blood, marriage, or adoption of the person signing this request, shall not be entitled to any portion of the person's estate upon death, and shall not own, operate, or be employed at a health care facility where the person is a patient or resident. If the patient is an inpatient at a health care facility, one of the witnesses shall be an individual designated by the facility.

Sec. 23. RCW 42.56.360 and 2007 c 261 s 4 and 2007 c 259 s 49 are each reenacted and amended to read as follows:

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510 or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, and notifications or reports of adverse events or incidents made under RCW 70.56.020 or 70.56.040, regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170;

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1); ((~~and~~))

(h) Information obtained by the department of health under chapter 70.225 RCW; and

(i) Information collected by the department of health under chapter 70.— RCW (sections 1 through 22, 26 through 28, and 30 of this act) except as provided in section 15 of this act.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

Sec. 24. RCW 42.56.360 and 2007 c 273 s 25, 2007 c 261 s 4, and 2007 c 259 s 49 are each reenacted and amended to read as follows:

(1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) Information obtained by the board of pharmacy or the department of health and its representatives as provided in RCW 69.41.044, 69.41.280, and 18.64.420;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, and notifications or reports of adverse events or incidents made under RCW 70.56.020 or 70.56.040, regardless of which agency is in possession of the information and documents;

(d)(i) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310;

(ii) If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this subsection (1)(d) as exempt from disclosure;

(iii) If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department of health under RCW 70.05.170;

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1); ((~~and~~))

(h) Information obtained by the department of health under chapter 70.225 RCW; and

(i) Information collected by the department of health under chapter 70.— RCW (sections 1 through 22, 26 through 28, and 30 of this act) except as provided in section 15 of this act.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients.

Sec. 25. RCW 70.122.100 and 1992 c 98 s 10 are each amended to read as follows:

Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing ((~~or physician-assisted suicide, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying~~)), lethal injection, or active euthanasia.

NEW SECTION. **Sec. 26.** SHORT TITLE. This act may be known and cited as the Washington death with dignity act.

NEW SECTION. **Sec. 27.** SEVERABILITY. 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. 28.** EFFECTIVE DATE. This act takes effect one hundred twenty days after the election at which it is approved, except for section 24 of this act which takes effect July 1, 2009.

NEW SECTION. **Sec. 29.** Sections 1 through 22, 26 through 28, and 30 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec. 30.** CAPTIONS, PART HEADINGS, AND SUBPART HEADINGS NOT LAW. Captions, part headings, and subpart headings used in this act are not any part of the law.

NEW SECTION. **Sec. 31.** Section 23 of this act expires July 1, 2009.

Originally filed in Office of Secretary of State January 24, 2008.

Approved by the People of the State of Washington in the General Election on November 4, 2008.

CHAPTER 2

[Initiative 1029]

LONG-TERM CARE SERVICES—ELDERLY—PERSONS WITH DISABILITIES ACT

AN ACT Relating to long-term care services for the elderly and persons with disabilities; amending RCW 74.39A.009, 74.39A.340, 74.39A.350, 74.39A.050, and 18.130.040; reenacting and amending RCW 18.130.040; adding new sections to chapter 74.39A RCW; adding a new section to chapter 18.88A RCW; adding a new chapter to Title 18 RCW; creating new sections; providing an effective date; and providing a contingent effective date.

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

NEW SECTION. **Sec. 1.** It is the intent of the people through this initiative to protect the safety of and improve the quality of care to the vulnerable elderly and persons with disabilities.

The people find and declare that current procedures to train and educate long-term care workers and to protect the elderly or persons with disabilities from caregivers with a criminal background are insufficient. The people find and declare that long-term care workers for the elderly or persons with

disabilities should have a federal criminal background check and a formal system of education and experiential qualifications leading to a certification test.

The people find that the quality of long-term care services for the elderly and persons with disabilities is dependent upon the competency of the workers who provide those services. To assure and enhance the quality of long-term care services for the elderly and persons with disabilities, the people recognize the need for federal criminal background checks and increased training requirements. Their establishment should protect the vulnerable elderly and persons with disabilities, bring about a more stabilized workforce, improve the quality of long-term care services, and provide a valuable resource for recruitment into long-term care services for the elderly and persons with disabilities.

Sec. 2. RCW 74.39A.009 and 2007 c 361 s 2 are each amended to read as follows:

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

(1) "Adult family home" means a home licensed under chapter 70.128 RCW.

(2) "Adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

(3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services, and the resident is housed in a private apartment-like unit.

(4) "Boarding home" means a facility licensed under chapter 18.20 RCW.

(5) "Core competencies" means basic training topics, including but not limited to, communication skills, worker self-care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, long-term care worker roles and boundaries, supporting activities of daily living, and food preparation and handling.

(6) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

((~~(6)~~)) (7) "Department" means the department of social and health services.

((~~(7)~~)) (8) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

(9) "Direct care worker" means a paid caregiver who provides direct, hands-on personal care services to persons with disabilities or the elderly requiring long-term care.

(10) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

(((~~(8)~~))) (11) "Functionally disabled person" or "person who is functionally disabled" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, or developmental disability, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(((~~(9)~~))) (12) "Home and community services" means adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed by the department.

(((~~(10)~~))) (13) "Home care aide" means a long-term care worker who has obtained certification as a home care aide by the department of health.

(14) "Individual provider" is defined according to RCW 74.39A.240.

(15) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

(((~~(11)~~))) (16)(a) "Long-term care workers for the elderly or persons with disabilities" or "long-term care workers" includes all persons who are long-term care workers for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71 RCW, all direct care workers in state-licensed boarding homes, assisted living facilities, and adult family homes, respite care providers, community residential service providers, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers" do not include: (i) Persons employed in nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or (ii) persons who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

(((~~(12)~~))) (17) "Nursing home" means a facility licensed under chapter 18.51 RCW.

(((~~(13)~~))) (18) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.

(19) "Population specific competencies" means basic training topics unique to the care needs of the population the long-term care worker is serving, including but not limited to, mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.

(20) "Qualified instructor" means a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands-on personal care and other assistance services to the elderly or persons with disabilities requiring long-term care.

(21) "Secretary" means the secretary of social and health services.

(((~~(14)~~))) (22) "Secretary of health" means the secretary of health or the secretary's designee.

(23) "Training partnership" means a joint partnership or trust ((~~established and maintained jointly by~~)) that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and ((~~examinations required under this chapter, and educational, career~~)) workforce development, or other services to individual providers.

(((~~(15)~~))) (24) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW.

NEW SECTION. **Sec. 3.** A new section is added to chapter 74.39A RCW to read as follows:

All long-term care workers for the elderly or persons with disabilities hired after January 1, 2010, shall be screened through state and federal background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. These background checks shall include checking against the federal bureau of investigation fingerprint identification records system and against the national sex offenders registry or their successor programs. The department shall share this information with the department of health. The department shall not pass on the cost of these criminal background checks to the workers or their employers. The department shall adopt rules to implement the provisions of this section by August 1, 2009.

NEW SECTION. **Sec. 4.** (1) Effective January 1, 2010, except as provided in section 7 of this act, the department of health shall require that any person hired as a long-term care worker for the elderly or persons with disabilities must be certified as a home care aide within one hundred fifty days from the date of being hired.

(2) Except as provided in section 7 of this act, certification as a home care aide requires both completion of seventy-five hours of training and successful completion of a certification examination pursuant to sections 5 and 6 of this act.

(3) 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 pursuant to this chapter.

(4) The department of health shall adopt rules by August 1, 2009, to implement this section.

NEW SECTION. **Sec. 5.** A new section is added to chapter 74.39A RCW to read as follows:

(1) Effective January 1, 2010, except as provided in section 7 of this act, all persons employed as long-term care workers for the elderly or persons with disabilities must meet the minimum training requirements in this section within one hundred twenty calendar days of employment.

(2) All persons employed as long-term care workers must obtain seventy-five hours of entry-level training approved by the department. A long-term care worker must accomplish five of these seventy-five hours before becoming eligible to provide care.

(3) Training required by subsection (4)(c) of this section will be applied towards training required under RCW 18.20.270 or 70.128.230 as well as any statutory or regulatory training requirements for long-term care workers employed by supportive living providers.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The seventy-five hours of entry-level training required shall be as follows:

(a) Before a long-term care worker is eligible to provide care, he or she must complete two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment;

(b) Before a long-term care worker is eligible to provide care, he or she must complete three hours of safety training, including basic safety precautions, emergency procedures, and infection control; and

(c) All long-term care workers must complete seventy hours of long-term care basic training, including training related to core competencies and population specific competencies.

(5) 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 on the competencies and training topics in this section.

(6) Individual providers under RCW 74.39A.270 shall be compensated for training time required by this section.

(7) The department of health shall adopt rules by August 1, 2009, to implement subsections (1), (2), and (3) of this section.

(8) The department shall adopt rules by August 1, 2009, to implement subsections (4) and (5) of this section.

NEW SECTION. **Sec. 6.** (1) Effective January 1, 2010, except as provided in section 7 of this act, the department of health shall require that all long-term care workers successfully complete a certification examination. Any long-term care worker failing to make the required grade for the examination will not be certified as a home care aide.

(2) The department of health, in consultation with consumer and worker representatives, shall develop a home care aide certification examination to evaluate whether an applicant possesses the skills and knowledge necessary to practice competently. Unless excluded by section 7 (1) and (2) of this act, only those who have completed the training requirements in section 5 of this act shall be eligible to sit for this examination.

(3) The examination shall include both a skills demonstration and a written or oral knowledge test. The examination papers, all grading of the papers, and records related to the grading of skills demonstration shall be preserved for a

period of not less than one year. The department of health shall establish rules governing the number of times and under what circumstances individuals who have failed the examination may sit for the examination, including whether any intermediate remedial steps should be required.

(4) All examinations shall be conducted by fair and wholly impartial methods. The certification examination shall be administered and evaluated by the department of health or by a contractor to the department of health that is neither an employer of long-term care workers or private contractors providing training services under this chapter.

(5) The department of health has the authority to:

(a) Establish forms, procedures, and examinations necessary to certify home care aides pursuant to this chapter;

(b) Hire clerical, administrative, and investigative staff as needed to implement this section;

(c) Issue certification as a home care aide to any applicant who has successfully completed the home care aide examination;

(d) Maintain the official record of all applicants and persons with certificates;

(e) Exercise disciplinary authority as authorized in chapter 18.130 RCW; and

(f) Deny certification to applicants who do not meet training, competency examination, and conduct requirements for certification.

(6) The department of health shall adopt rules by August 1, 2009, that establish the procedures and examinations necessary to carry this section into effect.

NEW SECTION. **Sec. 7.** The following long-term care workers are not required to become a certified home care aide pursuant to this chapter.

(1) Registered nurses, licensed practical nurses, certified nursing assistants, medicare-certified home health aides, or other persons who hold a similar health credential, as determined by the secretary of health, or persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010, if the secretary of health determines that the circumstances do not require certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in section 5 of this act but must successfully complete a certification examination pursuant to section 6 of this act.

(2) A person already employed as a long-term care worker prior to January 1, 2010, who completes all of his or her training requirements in effect as of the date he or she was hired, is not required to obtain certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in section 5 of this act but must successfully complete a certification examination pursuant to section 6 of this act.

(3) All long-term care workers employed by supported living providers are not required to obtain certification under this chapter.

(4) An individual provider caring only for his or her biological, step, or adoptive child or parent is not required to obtain certification under this chapter.

(5) Prior to June 30, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month is not required to obtain certification under this chapter.

(6) A long-term care worker exempted by this section from the training requirements contained in section 5 of this act may not be prohibited from enrolling in training pursuant to that section.

(7) The department of health shall adopt rules by August 1, 2009, to implement this section.

NEW SECTION. **Sec. 8.** A new section is added to chapter 74.39A RCW to read as follows:

(1) Effective January 1, 2010, a biological, step, or adoptive parent who is the individual provider only for his or her developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days of becoming an individual provider.

(2) Effective January 1, 2010, individual providers identified in (a) and (b) of this subsection must complete thirty-five hours of training within the first one hundred twenty days of becoming an individual provider. Five of the thirty-five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include:

(a) An individual provider caring only for his or her biological, step, or adoptive child or parent unless covered by subsection (1) of this section; and

(b) Before January 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(3) 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.

(4) The department shall adopt rules by August 1, 2009, to implement this section.

Sec. 9. RCW 74.39A.340 and 2007 c 361 s 4 are each amended to read as follows:

(1) The department of health shall ensure that all long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year. This requirement applies beginning on January 1, 2010.

(2) Completion of continuing education as required in this section is a prerequisite to maintaining home care aide certification under this act.

(3) Unless voluntarily certified as a home care aide under this act, subsection (1) of this section does not apply to:

(a) An individual provider caring only for his or her biological, step, or adoptive child; and

(b) Before June 30, 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 by August 1, 2009, to implement subsections (1), (2), and (3) of this section.

(7) The department shall adopt rules by August 1, 2009, to implement subsection (4) of this section.

Sec. 10. RCW 74.39A.350 and 2007 c 361 s 5 are each amended to read as follows:

The department shall offer, directly or through contract, training opportunities sufficient for a long-term care worker to accumulate ((~~sixty-five~~)) seventy hours of training within a reasonable time period. For individual providers represented by an exclusive bargaining representative under RCW 74.39A.270, the training opportunities shall be offered through ((~~a contract with~~)) the training partnership established under RCW 74.39A.360. Training topics shall include, but are not limited to: Client rights; personal care; mental illness; dementia; developmental disabilities; depression; medication assistance; advanced communication skills; positive client behavior support; developing or improving client-centered activities; dealing with wandering or aggressive client behaviors; medical conditions; nurse delegation core training; peer mentor training; and advocacy for quality care training. The department may not require long-term care workers to obtain the training described in this section. This requirement to offer advanced training applies beginning January 1, ((~~2010~~)) 2011.

NEW SECTION. **Sec. 11.** A new section is added to chapter 18.88A RCW to read as follows:

By August 1, 2009, the department of health shall develop, in consultation with the nursing care quality assurance commission and consumer and worker representatives, rules permitting reciprocity to the maximum extent possible under federal law between home care aide certification and nursing assistant certification.

NEW SECTION. **Sec. 12.** A new section is added to chapter 74.39A RCW to read as follows:

(1) The department shall deny payment to any individual provider of home care services who has not been certified by the department of health as a home care aide as required under this act or, if exempted from certification by section 7 of this act, has not completed his or her required training pursuant to this act.

(2) The department may terminate the contract of any individual provider of home care services, or take any other enforcement measure deemed appropriate by the department if the individual provider's certification is revoked under this

act or, if exempted from certification by section 7 of this act, has not completed his or her required training pursuant to this act.

(3) The department shall take appropriate enforcement action related to the contract of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under this act or, if exempted from certification by section 7 of this act, has not completed his or her required training pursuant to this act.

(4) Chapter 34.05 RCW shall govern actions by the department under this section.

(5) The department shall adopt rules by August 1, 2009, to implement this section.

NEW SECTION. **Sec. 13.** (1) The uniform disciplinary act, chapter 18.130 RCW, governs uncertified practice, issuance of certificates, and the discipline of persons with certificates under this chapter. The secretary of health shall be the disciplinary authority under this chapter.

(2) The secretary of health may take action to immediately suspend the certification of a long-term care worker upon finding that conduct of the long-term care worker has caused or presents an imminent threat of harm to a functionally disabled person in his or her care.

(3) If the secretary of health imposes suspension or conditions for continuation of certification, the suspension or conditions for continuation are effective immediately upon notice and shall continue in effect pending the outcome of any hearing.

(4) The department of health shall take appropriate enforcement action related to the licensure of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under this chapter or, if exempted from certification by section 7 of this act, has not completed his or her required training pursuant to this chapter.

(5) Chapter 34.05 RCW shall govern actions by the department of health under this section.

(6) The department of health shall adopt rules by August 1, 2009, to implement this section.

Sec. 14. RCW 74.39A.050 and 2004 c 140 s 6 are each amended to read as follows:

The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing or contract inspections, the department shall interview an appropriate percentage of residents, family members, resident case managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) ((~~To the extent funding is available, all long-term care staff directly responsible for the care, supervision, or treatment of vulnerable persons should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis according to law and rules adopted by the department.~~)) All long-term care workers shall be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. This information will be shared with the department of health to advance the purposes of this act.

(8) No provider or ((~~staff~~)) long-term care worker, or prospective provider or ((~~staff~~)) long-term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) The department shall establish, by rule, a state registry which contains identifying information about ((~~personal care aides~~)) long-term care workers identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information will also be shared with the department of health to advance the purposes of this act.

(10) ((~~The department shall by rule develop training requirements for individual providers and home care agency providers. Effective March 1,~~

~~2002,~~)) Until December 31, 2009, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules by March 1, 2002, for the implementation of this section ((~~based on the recommendations of the community long-term care training and education steering committee established in RCW 74.39A.190~~)). The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department by rule.

(11) Until December 31, 2009, 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.

(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department-approved training. ((~~In the rule-making process, the department shall adopt rules based on the recommendations of the community long-term care training and education steering committee established in RCW 74.39A.190.~~))

(13) The department shall establish, by rule, ((~~training,~~)) background checks((~~,~~)) and other quality assurance requirements for ((~~personal aides~~)) long-term care workers who provide in-home services funded by medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers.

(14) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

(15) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training

program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998.

Sec. 15. RCW 18.130.040 and 2007 c 269 s 17, 2007 c 253 s 13, and 2007 c 70 s 11 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) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

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

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

(x) Persons registered under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;

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

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

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

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

(xvi) Chemical dependency professionals certified under chapter 18.205 RCW;

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

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

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW; ((~~and~~))

(xxiv) Athletic trainers licensed under chapter 18.250 RCW; and

(xxv) Home care aides certified under chapter 18.— RCW (the new chapter created in section 18 of this act).

(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 and licenses and registrations issued under chapter 18.260 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; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

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

Sec. 16. RCW 18.130.040 and 2008 c ... (Fourth Substitute House Bill No. 1103) s 18 are each 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) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

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

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

(x) Persons registered under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;

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

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

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

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

(xvi) Chemical dependency professionals certified under chapter 18.205 RCW;

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

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

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW; ((~~and~~))

(xxiv) Athletic trainers licensed under chapter 18.250 RCW; and

(xxv) Home care aides certified under chapter 18.— RCW (the new chapter created in section 18 of this act).

(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 and licenses and registrations issued under chapter 18.260 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; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. 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. 17.** The definitions in RCW 74.39A.009 apply throughout chapter 18.— RCW (the new chapter created in section 18 of this act) unless the context clearly requires otherwise.

NEW SECTION. **Sec. 18.** Sections 4, 6, 7, 13, and 17 of this act constitute a new chapter in Title 18 RCW.

NEW SECTION. **Sec. 19.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

NEW SECTION. **Sec. 20.** 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. 21.** This act may be known and cited as the better background checks and improved training for long-term care workers for the elderly and persons with disabilities initiative of 2008.

NEW SECTION. **Sec. 22.** Section 11 of this act takes effect September 1, 2009.

NEW SECTION. **Sec. 23.** Section 15 of this act does not take effect if section 18, chapter ... (Fourth Substitute House Bill No. 1103), Laws of 2008 is signed into law by April 6, 2008.

NEW SECTION. **Sec. 24.** Section 16 of this act takes effect if section 18, chapter ... (Fourth Substitute House Bill No. 1103), Laws of 2008 is signed into law by April 6, 2008.

Originally filed in Office of Secretary of State March 28, 2008.

Approved by the People of the State of Washington in the General Election on November 4, 2008.

CHAPTER 3

[Engrossed Substitute House Bill 1906]

ECONOMIC SECURITY ACT—UNEMPLOYMENT COMPENSATION

AN ACT Relating to improving economic security through unemployment compensation; amending RCW 50.20.120, 50.22.150, 50.60.020, 50.60.030, 50.60.060, 50.60.070, 50.60.090, 50.60.100, 50.29.021, and 50.29.025; adding a new section to chapter 50.20 RCW; adding new sections to chapter 50.22 RCW; creating new sections; providing an effective date; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** This act may be known and cited as the economic security act of 2009.

PART I - TEMPORARY BENEFIT INCREASE

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

(1) This section applies beginning May 3, 2009.

(2)(a) For claims with an effective date before May 3, 2009, in weeks of unemployment beginning on or after May 3, 2009, an individual's weekly benefit amount shall be the amount established under RCW 50.20.120 and subsection (3) of this section plus an additional forty-five dollars. For individuals who have a balance of regular unemployment benefits available, the weekly benefit amount under this subsection (2)(a) is payable for all remaining weeks of regular, extended, emergency, supplemental, or additional benefits on that claim. For individuals who have exhausted regular benefits but have a balance of training benefits available as provided in section 4 of this act or RCW 50.22.150, the weekly benefit amount under this subsection (2)(a) is payable for all remaining weeks of training benefits, but not for weeks of extended, emergency, supplemental, or additional benefits on that claim unless specifically authorized under federal or state law.

(b) For claims with an effective date on or after May 3, 2009, and before January 3, 2010, an individual's weekly benefit amount shall be the amount established under RCW 50.20.120 and subsection (3) of this section plus an additional forty-five dollars. The weekly benefit amount under this subsection (2)(b) is payable for all weeks of regular, extended, emergency, supplemental, or additional benefits on that claim.

(3)(a) For benefit years beginning before May 3, 2009, in weeks of unemployment beginning on or after May 3, 2009, the minimum amount payable weekly shall be one hundred fifty-five dollars. For individuals who have a balance of regular unemployment benefits available, the minimum amount payable weekly under this subsection (3)(a) is payable for all remaining weeks of regular, extended, emergency, supplemental, or additional benefits on that claim. For individuals who have exhausted regular benefits but have a balance of training benefits available as provided in section 4 of this act or RCW

50.22.150, the minimum amount payable weekly under this subsection (3)(a) is payable for all remaining weeks of training benefits, but not for weeks of extended, emergency, supplemental, or additional benefits on that claim unless specifically authorized under federal or state law.

(b) For benefit years beginning on or after May 3, 2009, and before January 3, 2010, the minimum amount payable weekly shall be one hundred fifty-five dollars. The minimum amount payable weekly under this subsection (3)(b) is payable for all weeks of regular, extended, emergency, supplemental, or additional benefits on that claim.

(4) The weekly benefit amounts and the minimum amounts payable weekly under this section shall increase the maximum benefits payable to the individual under RCW 50.20.120(1) by a corresponding dollar amount.

(5) The weekly benefit amounts under this section shall increase the maximum amount payable weekly, irrespective of the provisions of RCW 50.20.120(3).

(6) Payment of benefits to individuals whose weekly benefit amounts are increased under this section shall be subject to the same terms and conditions under this title that apply to the payment of benefits to individuals whose benefit amounts are established under RCW 50.20.120.

(7) This section does not apply to claims with an effective date on or after January 3, 2010.

Sec. 3. RCW 50.20.120 and 2006 c 13 s 1 are each amended to read as follows:

Except as provided in section 2 of this act, benefits shall be payable as provided in this section.

(1)(((~~(a) Subject to the other provisions of this title, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of thirty times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title: PROVIDED, That as to any week which falls in an extended benefit period as defined in RCW 50.22.010(1), an individual's eligibility for maximum benefits in excess of twenty-six times his or her weekly benefit amount will be subject to the terms and conditions set forth in RCW 50.22.020.~~

~~(b) With respect to claims that have an effective date on or after the first Sunday of the calendar month immediately following the month in which the commissioner finds that the state unemployment rate is six and eight-tenths percent or less,~~)) For claims with an effective date on or after April 4, 2004, benefits shall be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of twenty-six times the weekly benefit amount, as determined in subsection (2) of this section, or one-third of the individual's base year wages under this title.

(2)(((~~(a) For claims with an effective date before January 4, 2004, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.~~

~~(b) With respect to claims with an effective date on or after January 4, 2004, and before January 2, 2005, an individual's weekly benefit amount shall be an amount equal to one twenty-fifth of the average quarterly wages of the~~

~~individual's total wages during the three quarters of the individual's base year in which such total wages were highest.~~

~~(c)(i) With respect to claims with an effective date on or after January 2, 2005, except as provided in (c)(ii) of this subsection, an individual's weekly benefit amount shall be an amount equal to one percent of the total wages paid in the individual's base year.~~

~~(ii) With respect to~~)) For claims with an effective date on or after ((~~the first Sunday following~~)) April ((~~22~~)) 24, 2005, an individual's weekly benefit amount shall be an amount equal to three and eighty-five one-hundredths percent of the average quarterly wages of the individual's total wages during the two quarters of the individual's base year in which such total wages were highest.

(3) The maximum and minimum amounts payable weekly shall be determined as of each June 30th to apply to benefit years beginning in the twelve-month period immediately following such June 30th.

(a)((~~(i) With respect to claims that have an effective date before January 4, 2004, the maximum amount payable weekly shall be seventy percent of the "average weekly wage" for the calendar year preceding such June 30th.~~

~~(ii) With respect to claims that have an effective date on or after January 4, 2004,~~)) The maximum amount payable weekly shall be either four hundred ninety-six dollars or sixty-three percent of the "average weekly wage" for the calendar year preceding such June 30th, whichever is greater.

(b) The minimum amount payable weekly shall be fifteen percent of the "average weekly wage" for the calendar year preceding such June 30th.

(4) If any weekly benefit, maximum benefit, or minimum benefit amount computed herein is not a multiple of one dollar, it shall be reduced to the next lower multiple of one dollar.

PART II - TRAINING BENEFITS PROGRAMS

NEW SECTION. **Sec. 4.** A new section is added to chapter 50.22 RCW to read as follows:

(1) This section applies to claims with an effective date on or after April 5, 2009.

(2) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits when:

(a) The individual is a dislocated worker as defined in RCW 50.04.075 and, after assessment of the individual's labor market, occupation, or skills, is determined to need job-related training to find suitable employment in the individual's labor market. The assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets and high-demand occupations identified in local labor market areas by the local workforce development councils in cooperation with the employment security department and its labor market information division; or

(b) For claims with an effective date on or after September 7, 2009, the individual:

(i) Earned an average hourly wage in the individual's base year that is less than one hundred thirty percent of the state minimum wage, and after assessment, it is determined that the individual's earning potential will be

enhanced through vocational training. The individual's average hourly wage is calculated by dividing the total wages paid by the total hours worked in the individual's base year;

(ii) Served in the United States military or the Washington national guard during the twelve-month period prior to the application date, was honorably discharged from military service or the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market;

(iii) Is currently serving in the Washington national guard and, after assessment, is determined to need job-related training to find suitable employment in the individual's labor market; or

(iv) Is disabled due to an injury or illness and, after assessment, is determined to be unable to return to his or her previous occupation and to need job-related training to find suitable employment in the individual's labor market.

(3)(a) The individual must develop an individual training program that is submitted to the commissioner for approval within ninety days after the individual is notified by the employment security department of the requirements of this section;

(b) The individual must enter the approved training program by one hundred twenty days after the date of the notification, unless the employment security department determines that the training is not available during the one hundred twenty days, in which case the individual enters training as soon as it is available;

(c) The department may waive the deadlines established under this subsection for reasons deemed by the commissioner to be good cause.

(4) The individual must be enrolled in training approved under this section on a full-time basis as determined by the educational institution, except that less than full-time training may be approved when the individual has a physical, mental, or emotional disability that precludes enrollment on a full-time basis.

(5) The individual must make satisfactory progress in the training as defined by the commissioner and certified by the educational institution.

(6) An individual is not eligible for training benefits under this section if he or she:

(a) Is a standby claimant who expects recall to his or her regular employer; or

(b) Has a definite recall date that is within six months of the date he or she is laid off.

(7) The following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(b) "High-demand occupation" means an occupation with a substantial number of current or projected employment opportunities.

(c) "Training benefits" means additional benefits paid under this section.

(d) "Training program" means:

(i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(ii) A vocational training program at an educational institution that:

(A) Is targeted to training for a high-demand occupation;

(B) Is likely to enhance the individual's marketable skills and earning power; and

(C) Meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(8) Benefits shall be paid as follows:

(a) The total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

(b) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits.

(c) Training benefits shall be paid before any extended benefits but not before any similar federally funded program.

(d) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim.

(9) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(10) Individuals who receive training benefits under RCW 50.22.150 or this section are not eligible for training benefits under this section for five years from the last receipt of training benefits.

(11) An individual eligible to receive a trade readjustment allowance under chapter 2, Title II of the trade act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance.

(12) An individual eligible to receive emergency unemployment compensation under any federal law shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(13) All base year employers are interested parties to the approval of training and the granting of training benefits.

(14) Each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and high-demand occupations and skill sets. Each local workforce development council shall update this information annually or more frequently if needed.

(15) The commissioner shall adopt rules as necessary to implement this section.

Sec. 5. RCW 50.22.150 and 2002 c 149 s 2 are each amended to read as follows:

(1) This section applies to claims with an effective date before April 5, 2009.

(2) Subject to availability of funds, training benefits are available for an individual who is eligible for or has exhausted entitlement to unemployment compensation benefits and who:

(a) Is a dislocated worker as defined in RCW 50.04.075;

(b) Except as provided under subsection ((~~(2)~~)) (3) of this section, has demonstrated, through a work history, sufficient tenure in an occupation or in work with a particular skill set. This screening will take place during the assessment process;

(c) Is, after assessment of demand for the individual's occupation or skills in the individual's labor market, determined to need job-related training to find suitable employment in his or her labor market. Beginning July 1, 2001, the assessment of demand for the individual's occupation or skill sets must be substantially based on declining occupation or skill sets identified in local labor market areas by the local workforce development councils, in cooperation with the employment security department and its labor market information division, under subsection ((~~(10)~~)) (11) of this section;

(d) Develops an individual training program that is submitted to the commissioner for approval within sixty days after the individual is notified by the employment security department of the requirements of this section;

(e) Enters the approved training program by ninety days after the date of the notification, unless the employment security department determines that the training is not available during the ninety-day period, in which case the individual enters training as soon as it is available; and

(f) Is enrolled in training approved under this section on a full-time basis as determined by the educational institution, and is making satisfactory progress in the training as certified by the educational institution.

((~~(2)~~)) (3) Until June 30, 2002, the following individuals who meet the requirements of subsection ((~~(1)~~)) (2) of this section may, without regard to the tenure requirements under subsection ((~~(1)~~)) (2)(b) of this section, receive training benefits as provided in this section:

(a) An exhaustee who has base year employment in the aerospace industry assigned the standard industrial classification code "372" or the North American industry classification system code "336411";

(b) An exhaustee who has base year employment in the forest products industry, determined by the department, but including the industries assigned the major group standard industrial classification codes "24" and "26" or any equivalent codes in the North American industry classification system code, and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment; or

(c) An exhaustee who has base year employment in the fishing industry assigned the standard industrial classification code "0912" or any equivalent codes in the North American industry classification system code.

((~~(3)~~)) (4) An individual is not eligible for training benefits under this section if he or she:

(a) Is a standby claimant who expects recall to his or her regular employer;

(b) Has a definite recall date that is within six months of the date he or she is laid off; or

(c) Is unemployed due to a regular seasonal layoff which demonstrates a pattern of unemployment consistent with the provisions of RCW 50.20.015. Regular seasonal layoff does not include layoff due to permanent structural downsizing or structural changes in the individual's labor market.

((~~(4)~~)) (5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Educational institution" means an institution of higher education as defined in RCW 28B.10.016 or an educational institution as defined in RCW 28C.04.410, including equivalent educational institutions in other states.

(b) "Sufficient tenure" means earning a plurality of wages in a particular occupation or using a particular skill set during the base year and at least two of the four twelve-month periods immediately preceding the base year.

(c) "Training benefits" means additional benefits paid under this section.

(d) "Training program" means:

(i) An education program determined to be necessary as a prerequisite to vocational training after counseling at the educational institution in which the individual enrolls under his or her approved training program; or

(ii) A vocational training program at an educational institution:

(A) That is targeted to training for a high demand occupation. Beginning July 1, 2001, the assessment of high demand occupations authorized for training under this section must be substantially based on labor market and employment information developed by local workforce development councils, in cooperation with the employment security department and its labor market information division, under subsection ((~~(10)~~)) (11) of this section;

(B) That is likely to enhance the individual's marketable skills and earning power; and

(C) That meets the criteria for performance developed by the workforce training and education coordinating board for the purpose of determining those training programs eligible for funding under Title I of P.L. 105-220.

"Training program" does not include any course of education primarily intended to meet the requirements of a baccalaureate or higher degree, unless the training meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

((~~(5)~~)) (6) Benefits shall be paid as follows:

(a)(i) Except as provided in (a)(iii) of this subsection, for exhaustees who are eligible under subsection ((~~(1)~~)) (2) of this section, the total training benefit amount shall be fifty-two times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(ii) For exhaustees who are eligible under subsection ((~~(2)~~)) (3) of this section, for claims filed before June 30, 2002, the total training benefit amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year; or

(iii) For exhaustees eligible under subsection ((~~(1)~~)) (2) of this section from industries listed under subsection ((~~(2)~~)) (3)(a) of this section, for claims filed on or after June 30, 2002, but before January 5, 2003, the total training benefit

amount shall be seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits and extended benefits paid, or deemed paid, with respect to the benefit year.

(b) The weekly benefit amount shall be the same as the regular weekly amount payable during the applicable benefit year and shall be paid under the same terms and conditions as regular benefits. The training benefits shall be paid before any extended benefits but not before any similar federally funded program.

(c) Training benefits are not payable for weeks more than two years beyond the end of the benefit year of the regular claim.

(((~~(6)~~))) (7) The requirement under RCW 50.22.010(10) relating to exhausting regular benefits does not apply to an individual otherwise eligible for training benefits under this section when the individual's benefit year ends before his or her training benefits are exhausted and the individual is eligible for a new benefit year. These individuals will have the option of remaining on the original claim or filing a new claim.

(((~~(7)~~))) (8)(a) Except as provided in (b) of this subsection, individuals who receive training benefits under this section or under any previous additional benefits program for training are not eligible for training benefits under this section for five years from the last receipt of training benefits under this section or under any previous additional benefits program for training.

(b) With respect to claims that are filed before January 5, 2003, an individual in the aerospace industry assigned the standard industrial code "372" or the North American industry classification system code "336411" who received training benefits under this section, and who had been making satisfactory progress in a training program but did not complete the program, is eligible, without regard to the five-year limitation of this section and without regard to the requirement of subsection (((~~(1)~~))) (2)(b) of this section, if applicable, to receive training benefits under this section in order to complete that training program. The total training benefit amount that applies to the individual is seventy-four times the individual's weekly benefit amount, reduced by the total amount of regular benefits paid, or deemed paid, with respect to the benefit year in which the training program resumed and, if applicable, reduced by the amount of training benefits paid, or deemed paid, with respect to the benefit year in which the training program commenced.

(((~~(8)~~))) (9) An individual eligible to receive a trade readjustment allowance under chapter 2 of Title II of the Trade Act of 1974, as amended, shall not be eligible to receive benefits under this section for each week the individual receives such trade readjustment allowance. An individual eligible to receive emergency unemployment compensation, so called, under any federal law, shall not be eligible to receive benefits under this section for each week the individual receives such compensation.

(((~~(9)~~))) (10) All base year employers are interested parties to the approval of training and the granting of training benefits.

(((~~(10)~~))) (11) By July 1, 2001, each local workforce development council, in cooperation with the employment security department and its labor market information division, must identify occupations and skill sets that are declining and occupations and skill sets that are in high demand. For the purposes of RCW 50.22.130 through 50.22.150 and section 9, chapter 2, Laws of 2000,

"high demand" means demand for employment that exceeds the supply of qualified workers for occupations or skill sets in a labor market area. Local workforce development councils must use state and locally developed labor market information. Thereafter, each local workforce development council shall update this information annually or more frequently if needed.

((~~(11)~~)) (12) The commissioner shall adopt rules as necessary to implement this section.

NEW SECTION. **Sec. 6.** A new section is added to chapter 50.22 RCW to read as follows:

The employment security department shall report to the appropriate committees of the legislature by December 1, 2009, and every year thereafter, on the status of the training benefits program and the resulting outcomes. The department shall include in its report:

(1) A demographic analysis of participants in the training benefits program under this section including the number of claimants per North American industry classification system code and the gender, race, age, and geographic representation of participants;

(2) The duration of training benefits claimed per claimant;

(3) An analysis of the training provided to participants including the occupational category supported by the training, those participants who complete training in relationship to those that do not, and the reasons for noncompletion of approved training programs;

(4) The employment and wage history of participants, including the pretraining and posttraining wage and whether those participating in training return to their previous employer after training terminates; and

(5) An identification and analysis of administrative costs at both the local and state level for administering this program.

PART III - SHARED WORK PROGRAM

Sec. 7. RCW 50.60.020 and 1983 c 207 s 2 are each amended to read as follows:

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

(1) "Affected ((~~unit~~)) employee" means a specified ((~~plant, department, shift, or other definable unit consisting of one or more employees~~)) employee, to which an approved shared work compensation plan applies.

(2) "Fringe benefits" include health insurance, retirement benefits under benefit pension plans as defined in section 3(35) of the employee retirement income security act of 1974, paid vacation and holidays, and sick leave, which are incidents of employment in addition to cash remuneration.

(3) "Shared work benefits" means the benefits payable to ((~~employees in~~)) an affected ((~~unit~~)) employee under an approved shared work compensation plan as distinguished from the benefits otherwise payable under this title.

(4) "Shared work compensation plan" means a plan of an employer, or of an employers' association, under which there is a reduction in the number of hours worked by employees rather than temporary layoffs.

(5) "Shared work employer" means an employer, one or more of whose employees are covered by a shared work compensation plan.

(6) "Usual weekly hours of work" means the normal number of hours of work for ((~~full-time employees in the affected unit~~)) the affected employee when ((~~that unit~~)) he or she is ((~~operating~~)) working on a full-time basis, not to exceed forty hours and not including overtime.

(7) "Unemployment compensation" means the benefits payable under this title other than shared work benefits and includes any amounts payable pursuant to an agreement under federal law providing for compensation, assistance, or allowances with respect to unemployment.

(8) "Employers' association" means an association which is a party to a collective bargaining agreement under which there is a shared work compensation plan.

Sec. 8. RCW 50.60.030 and 1985 c 43 s 1 are each amended to read as follows:

An employer or employers' association wishing to participate in a shared work compensation program shall submit a written and signed shared work compensation plan to the commissioner for approval. The commissioner shall approve a shared work compensation plan only if the following criteria are met:

(1) The plan identifies the affected ((~~units~~)) employees to which it applies;

(2) ((~~An~~)) Each affected employee ((~~in an affected unit are~~)) is identified by name, social security number, and by any other information required by the commissioner;

(3) The usual weekly hours of work for ((~~an~~)) each affected employee ((~~in an affected unit~~)) are reduced by not less than ten percent and not more than fifty percent;

(4) Fringe benefits will continue to be provided on the same basis as before the reduction in work hours. In no event shall the level of health benefits be reduced due to a reduction in hours;

(5) The plan certifies that the aggregate reduction in work hours for each affected employee is in lieu of temporary layoffs ((~~which would have affected at least ten percent of the employees in the affected units to which the plan applies and~~)) which would have resulted in an equivalent reduction in work hours;

(6) ((~~The plan applies to at least ten percent of the employees in the affected unit;~~

~~(7)~~)) The plan is approved in writing by the collective bargaining agent for each collective bargaining agreement covering any affected employee ((~~in the affected unit~~));

((~~(8)~~)) (7) The plan will not subsidize seasonal employers during the off season nor subsidize employers who have traditionally used part-time employees; and

((~~(9)~~)) (8) The employer agrees to furnish reports necessary for the proper administration of the plan and to permit access by the commissioner to all records necessary to verify the plan before approval and after approval to evaluate the application of the plan.

In addition to subsections (1) through ((~~(9)~~)) (8) of this section, the commissioner shall take into account any other factors which may be pertinent.

Sec. 9. RCW 50.60.060 and 1983 c 207 s 6 are each amended to read as follows:

A shared work compensation plan shall be effective on the date ((~~specified in the plan or on~~)) agreed upon by the department and the employer but no later than the first day of the second calendar week after the date of the commissioner's approval, ((~~whichever is later~~)) unless a later date is requested by the employer. The plan shall expire at the end of the twelfth full calendar month after its effective date, or on the date specified in the plan if that date is earlier, unless the plan is revoked before that date by the commissioner. If a plan is revoked by the commissioner, it shall terminate on the date specified in the commissioner's order of revocation.

Sec. 10. RCW 50.60.070 and 1983 c 207 s 7 are each amended to read as follows:

The commissioner may revoke approval of a shared work compensation plan for good cause. The revocation order shall be in writing and shall specify the date the revocation is effective and the reasons for the revocation. Good cause for revocation shall include failure to comply with the assurances given in the plan, unreasonable revision of productivity standards ((~~for the affected unit~~)), conduct or occurrences tending to defeat the intent and effective operation of the plan, and violation of the criteria on which approval of the plan was based.

Such action may be initiated at any time by the commissioner on his or her own motion, on the motion of any of the affected ((~~unit~~)) employees, or on the motion of the appropriate collective bargaining agents. The commissioner shall review each plan at least once within the twelve month period the plan is in effect to assure that it continues to meet the requirements of this chapter.

Sec. 11. RCW 50.60.090 and 1983 c 207 s 9 are each amended to read as follows:

An individual is eligible to receive shared work benefits with respect to any week only if, in addition to meeting the conditions of eligibility for other benefits under this title, the commissioner finds that:

(1) The individual was employed during that week as ((~~a member of~~)) an affected ((~~unit~~)) employee under an approved shared work compensation plan which was in effect for that week;

(2) The individual was able to work and was available for additional hours of work and for full-time work with the shared work employer; and

(3) Notwithstanding any other provision of this chapter, an individual is deemed to have been unemployed in any week for which remuneration is payable to him or her as an affected employee ((~~in an affected unit~~)) for less than his or her normal weekly hours of work as specified under the approved shared work compensation plan in effect for that week.

Sec. 12. RCW 50.60.100 and 1983 c 207 s 10 are each amended to read as follows:

(1) The shared work weekly benefit amount shall be the product of the regular weekly unemployment compensation benefit amount multiplied by the percentage of reduction in the individual's usual weekly hours of work;

(2) No individual is eligible in any benefit year for more than the maximum entitlement established for benefits under this title, including benefits under this chapter((~~, nor may an individual be paid shared work benefits for more than a~~

~~total of twenty-six weeks in any twelve-month period under a shared work compensation plan~~));

(3) The shared work benefits paid an individual shall be deducted from the total benefit amount established for that individual's benefit year;

(4) Claims for shared work benefits shall be filed in the same manner as claims for other benefits under this title or as prescribed by the commissioner by rule;

(5) Provisions otherwise applicable to unemployment compensation claimants under this title apply to shared work claimants to the extent that they are not inconsistent with this chapter;

(6)(a) If an individual works in the same week for an employer other than the shared work employer and his or her combined hours of work for both employers are equal to or greater than the usual weekly hours of work with the shared work employer, the individual shall not be entitled to benefits under this chapter or title;

(b) If an individual works in the same week for both the shared work employer and another employer and his or her combined hours of work for both employers are less than his or her usual weekly hours of work, the benefit amount payable for that week shall be the weekly unemployment compensation benefit amount reduced by the same percentage that the combined hours are of the usual weekly hours of work((~~. A week for which benefits are paid under this subsection shall count as a week of shared work benefits~~));

(7) An individual who does not work during a week for the shared work employer, and is otherwise eligible, shall be paid his or her full weekly unemployment compensation benefit amount((~~. Such a week shall not be counted as a week for which shared work benefits were received~~));

(8) An individual who does not work for the shared work employer during a week but works for another employer, and is otherwise eligible, shall be paid benefits for that week under the partial unemployment compensation provisions of this title. ((~~Such a week shall not be counted as a week for which shared work benefits were received.~~))

PART IV - EXPERIENCE RATING AND CONTRIBUTION RATES

Sec. 13. RCW 50.29.021 and 2008 c 323 s 2 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(2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050(2)(b) (v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 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(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.

(g) The forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in section 2 of this act 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 section 2(3) of this act, 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) Training benefits paid to an individual under section 4 of this act shall not be charged to the experience rating account of any contribution paying employer.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; or

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.06 RCW.

(b) The employer requesting relief of charges under this subsection must request relief in writing within thirty days following mailing to the last known address of the notification of the valid initial determination of such claim, stating the date and reason for the separation or the circumstances of continued employment. The commissioner, upon investigation of the request, shall determine whether relief should be granted.

Sec. 14. RCW 50.29.025 and 2007 c 51 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be determined under this subsection.

(a) A fund balance ratio shall be determined by dividing the balance in the unemployment compensation fund as of the September 30th immediately preceding the rate year by the total remuneration paid by all employers subject to contributions during the second calendar year preceding the rate year and reported to the department by the following March 31st. The division shall be carried to the fourth decimal place with the remaining fraction, if any, disregarded. The fund balance ratio shall be expressed as a percentage.

(b) The interval of the fund balance ratio, expressed as a percentage, shall determine which tax schedule in (e) of this subsection shall be in effect for assigning tax rates for the rate year. The intervals for determining the effective tax schedule shall be:

Interval of the Fund Balance Ratio Expressed as a Percentage	Effective Tax Schedule
2.90 and above	AA
2.10 to 2.89	A
1.70 to 2.09	B
1.40 to 1.69	C
1.00 to 1.39	D
0.70 to 0.99	E
Less than 0.70	F

(c) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (i) Identification number; (ii) benefit ratio; (iii) taxable payrolls for the four calendar quarters immediately preceding the computation date and reported to the department by the cut-off date; (iv) a cumulative total of taxable payrolls consisting of the employer's taxable payroll plus the taxable payrolls of all other employers preceding him or her in the array; and (v) the percentage equivalent of the cumulative total of taxable payrolls.

(d) Each employer in the array shall be assigned to one of twenty rate classes according to the percentage intervals of cumulative taxable payrolls set forth in (e) of this subsection: PROVIDED, That if an employer's taxable payroll falls within two or more rate classes, the employer and any other employer with the same benefit ratio shall be assigned to the lowest rate class which includes any portion of the employer's taxable payroll.

(e) Except as provided in RCW 50.29.026, the contribution rate for each employer in the array shall be the rate specified in the following tables for the rate class to which he or she has been assigned, as determined under (d) of this subsection, within the tax schedule which is to be in effect during the rate year:

Percent of Cumulative Taxable Payrolls			Schedules of Contributions Rates for Effective Tax Schedule						
From	To	Rate Class	AA	A	B	C	D	E	F
0.00	5.00	1	0.47	0.47	0.57	0.97	1.47	1.87	2.47
5.01	10.00	2	0.47	0.47	0.77	1.17	1.67	2.07	2.67
10.01	15.00	3	0.57	0.57	0.97	1.37	1.77	2.27	2.87
15.01	20.00	4	0.57	0.73	1.11	1.51	1.90	2.40	2.98
20.01	25.00	5	0.72	0.92	1.30	1.70	2.09	2.59	3.08
25.01	30.00	6	0.91	1.11	1.49	1.89	2.29	2.69	3.18
30.01	35.00	7	1.00	1.29	1.69	2.08	2.48	2.88	3.27
35.01	40.00	8	1.19	1.48	1.88	2.27	2.67	3.07	3.47
40.01	45.00	9	1.37	1.67	2.07	2.47	2.87	3.27	3.66

45.01	50.00	10	1.56	1.86	2.26	2.66	3.06	3.46	3.86
50.01	55.00	11	1.84	2.14	2.45	2.85	3.25	3.66	3.95
55.01	60.00	12	2.03	2.33	2.64	3.04	3.44	3.85	4.15
60.01	65.00	13	2.22	2.52	2.83	3.23	3.64	4.04	4.34
65.01	70.00	14	2.40	2.71	3.02	3.43	3.83	4.24	4.54
70.01	75.00	15	2.68	2.90	3.21	3.62	4.02	4.43	4.63
75.01	80.00	16	2.87	3.09	3.42	3.81	4.22	4.53	4.73
80.01	85.00	17	3.27	3.47	3.77	4.17	4.57	4.87	4.97
85.01	90.00	18	3.67	3.87	4.17	4.57	4.87	4.97	5.17
90.01	95.00	19	4.07	4.27	4.57	4.97	5.07	5.17	5.37
95.01	100.00	20	5.40	5.40	5.40	5.40	5.40	5.40	5.40

(f) The contribution rate for each employer not qualified to be in the array shall be as follows:

(i) Employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due shall be assigned a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year, except employers who have an approved agency-deferred payment contract by September 30 of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to a contribution rate two-tenths higher than that in rate class 20 for the applicable rate year; and

(ii) For all other employers not qualified to be in the array, the contribution rate shall be a rate equal to the average industry rate as determined by the commissioner; however, the rate may not be less than one percent.

(2) Beginning with contributions assessed for rate year 2005, the contribution rate for each employer subject to contributions under RCW 50.24.010 shall be the sum of the array calculation factor rate and the graduated social cost factor rate determined under this subsection, and the solvency surcharge determined under RCW 50.29.041, if any.

(a) The array calculation factor rate shall be determined as follows:

(i) An array shall be prepared, listing all qualified employers in ascending order of their benefit ratios. The array shall show for each qualified employer: (A) Identification number; (B) benefit ratio; and (C) taxable payrolls for the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(ii) Each employer in the array shall be assigned to one of forty rate classes according to his or her benefit ratio as follows, and, except as provided in RCW 50.29.026, the array calculation factor rate for each employer in the array shall be the rate specified in the rate class to which the employer has been assigned:

Benefit Ratio		Rate Class	Rate (percent)
At least	Less than		
	0.000001	1	0.00
0.000001	0.001250	2	0.13
0.001250	0.002500	3	0.25

0.002500	0.003750	4	0.38
0.003750	0.005000	5	0.50
0.005000	0.006250	6	0.63
0.006250	0.007500	7	0.75
0.007500	0.008750	8	0.88
0.008750	0.010000	9	1.00
0.010000	0.011250	10	1.15
0.011250	0.012500	11	1.30
0.012500	0.013750	12	1.45
0.013750	0.015000	13	1.60
0.015000	0.016250	14	1.75
0.016250	0.017500	15	1.90
0.017500	0.018750	16	2.05
0.018750	0.020000	17	2.20
0.020000	0.021250	18	2.35
0.021250	0.022500	19	2.50
0.022500	0.023750	20	2.65
0.023750	0.025000	21	2.80
0.025000	0.026250	22	2.95
0.026250	0.027500	23	3.10
0.027500	0.028750	24	3.25
0.028750	0.030000	25	3.40
0.030000	0.031250	26	3.55
0.031250	0.032500	27	3.70
0.032500	0.033750	28	3.85
0.033750	0.035000	29	4.00
0.035000	0.036250	30	4.15
0.036250	0.037500	31	4.30
0.037500	0.040000	32	4.45
0.040000	0.042500	33	4.60
0.042500	0.045000	34	4.75
0.045000	0.047500	35	4.90
0.047500	0.050000	36	5.05
0.050000	0.052500	37	5.20
0.052500	0.055000	38	5.30
0.055000	0.057500	39	5.35
0.057500		40	5.40

(b) The graduated social cost factor rate shall be determined as follows:

(i)(A) Except as provided in (b)(i)(B) and (C) of this subsection, the commissioner shall calculate the flat social cost factor for a rate year by dividing the total social cost by the total taxable payroll. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The flat social cost factor shall be expressed as a percentage.

(B) If, on the cut-off date, the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide more than ten months of unemployment benefits, the commissioner shall calculate the flat social cost factor for the rate year immediately following the cut-off date by reducing the total social cost by the dollar amount that represents the number of months for which the balance in the unemployment compensation fund on the cut-off date will provide benefits above ten months and dividing the result by the total taxable payroll. However, the calculation under this subsection (2)(b)(i)(B) for a rate year may not result in a flat social cost factor that is more than four-tenths lower than the calculation under (b)(i)(A) of this subsection for that rate year.

For the purposes of this subsection, the commissioner shall determine the number of months of unemployment benefits in the unemployment compensation fund using the benefit cost rate for the average of the three highest calendar benefit cost rates in the twenty consecutive completed calendar years immediately preceding the cut-off date or a period of consecutive calendar years immediately preceding the cut-off date that includes three recessions, if longer.

(C) The minimum flat social cost factor calculated under this subsection (2)(b) shall be six-tenths of one percent, except that if the balance in the unemployment compensation fund is determined by the commissioner to be an amount that will provide:

(I) At least twelve months but less than fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent; or

(II) At least fourteen months of unemployment benefits, the minimum shall be five-tenths of one percent, except that, for employers in rate class 1, the minimum shall be forty-five hundredths of one percent.

(ii)(A) Except as provided in (b)(ii)(B) of this subsection, the graduated social cost factor rate for each employer in the array is the flat social cost factor multiplied by the percentage specified as follows for the rate class to which the employer has been assigned in (a)(ii) of this subsection, except that the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed six and five-tenths percent or, for employers whose North American industry classification system code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," may not exceed six percent through rate year 2007 and may not exceed five and seven-tenths percent for rate year 2008 and thereafter:

(I) Rate class 1 - 78 percent;

(II) Rate class 2 - 82 percent;

(III) Rate class 3 - 86 percent;

(IV) Rate class 4 - 90 percent;

(V) Rate class 5 - 94 percent;

(VI) Rate class 6 - 98 percent;
(VII) Rate class 7 - 102 percent;
(VIII) Rate class 8 - 106 percent;
(IX) Rate class 9 - 110 percent;
(X) Rate class 10 - 114 percent;
(XI) Rate class 11 - 118 percent; and
(XII) Rate classes 12 through 40 - 120 percent.

(B) For contributions assessed beginning July 1, 2005, through December 31, 2007, for employers whose North American industry classification system code is "111," "112," "1141," "115," "3114," "3117," "42448," or "49312," the graduated social cost factor rate is zero.

(iii) For the purposes of this section:

(A) "Total social cost" means the amount calculated by subtracting the array calculation factor contributions paid by all employers with respect to the four consecutive calendar quarters immediately preceding the computation date and paid to the employment security department by the cut-off date from the total unemployment benefits paid to claimants in the same four consecutive calendar quarters. To calculate the flat social cost factor for rate year 2005, the commissioner shall calculate the total social cost using the array calculation factor contributions that would have been required to be paid by all employers in the calculation period if (a) of this subsection had been in effect for the relevant period. To calculate the flat social cost factor for rate years 2010 and 2011, the forty-five dollar increase paid as part of an individual's weekly benefit amount as provided in section 2 of this act shall not be considered for purposes of calculating the total unemployment benefits paid to claimants in the four consecutive calendar quarters immediately preceding the computation date.

(B) "Total taxable payroll" means the total amount of wages subject to tax, as determined under RCW 50.24.010, for all employers in the four consecutive calendar quarters immediately preceding the computation date and reported to the employment security department by the cut-off date.

(c) For employers who do not meet the definition of "qualified employer" by reason of failure to pay contributions when due:

(i) The array calculation factor rate shall be two-tenths higher than that in rate class 40, except employers who have an approved agency-deferred payment contract by September 30th of the previous rate year. If any employer with an approved agency-deferred payment contract fails to make any one of the succeeding deferred payments or fails to submit any succeeding tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than that in rate class 40; and

(ii) The social cost factor rate shall be the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(d) For all other employers not qualified to be in the array:

(i) For rate years 2005, 2006, and 2007:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, plus fifteen percent of that amount; however, the rate may not be less than one percent or more than the array calculation factor rate in rate class 40; and

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, plus fifteen percent of

that amount, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection.

(ii) Beginning with contributions assessed for rate year 2008:

(A) The array calculation factor rate shall be a rate equal to the average industry array calculation factor rate as determined by the commissioner, multiplied by the history factor, but not less than one percent or more than the array calculation factor rate in rate class 40;

(B) The social cost factor rate shall be a rate equal to the average industry social cost factor rate as determined by the commissioner, multiplied by the history factor, but not more than the social cost factor rate assigned to rate class 40 under (b)(ii) of this subsection; and

(C) The history factor shall be based on the total amounts of benefits charged and contributions paid in the three fiscal years ending prior to the computation date by employers not qualified to be in the array, other than employers in (c) of this subsection, who were first subject to contributions in the calendar year ending three years prior to the computation date. The commissioner shall calculate the history ratio by dividing the total amount of benefits charged by the total amount of contributions paid in this three-year period by these employers. The division shall be carried to the second decimal place with the remaining fraction disregarded unless it amounts to five one-hundredths or more, in which case the second decimal place shall be rounded to the next higher digit. The commissioner shall determine the history factor according to the history ratio as follows:

	History Ratio		History Factor (percent)
	At least	Less than	
(I)		.95	90
(II)	.95	1.05	100
(III)	1.05		115

(3) Assignment of employers by the commissioner to industrial classification, for purposes of this section, shall be in accordance with established classification practices found in the ((~~"Standard Industrial Classification Manual" issued by the federal office of management and budget to the third digit provided in the standard industrial classification code, or in the~~)) North American industry classification system code.

PART V - MISCELLANEOUS

NEW SECTION. **Sec. 15.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 5, 2009.

NEW SECTION. **Sec. 16.** 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. 17.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 18.** Part headings used in this act are not any part of the law.

Passed by the House February 13, 2009.
Passed by the Senate February 12, 2009.
Approved by the Governor February 16, 2009.
Filed in Office of Secretary of State February 17, 2009.

CHAPTER 4

[Engrossed Substitute House Bill 1694]

FISCAL MATTERS—OPERATING BUDGET—2007-2009

AN ACT Relating to fiscal matters for the 2007-2009 biennium; amending RCW 28A.505.220, 43.79.460, 43.79.465, 43.79.485, 49.86.170, 50.16.010, 82.14.495, and 84.52.0531; amending 2008 c 329 ss 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 224, 225, 226, 227, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 401, 402, 501, 502, 507, 511, 513, 515, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 708, 801, and 802 (uncodified); amending 2008 c 3 s 4 (uncodified); amending 2007 c 522 ss 115, 709, and 715 (uncodified); making appropriations; providing an expiration date; and declaring an emergency.

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

PART I
GENERAL GOVERNMENT

Sec. 101. 2008 c 329 s 101 (uncodified) is amended to read as follows:

FOR THE HOUSE OF REPRESENTATIVES

General Fund—State Appropriation (FY 2008) $34,807,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$36,010,000~~))
$35,053,000
Pension Funding Stabilization Account
Appropriation. $560,000
TOTAL APPROPRIATION . . . . . ((~~$71,377,000~~))
$70,420,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $56,000 of the general fund—state appropriation for fiscal year 2008 is provided solely to implement Senate Bill No. 5926 (construction industry). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(2) $52,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the implementation of Third Substitute House Bill No. 1741 (oral history). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(3) $194,000 of the general fund—state appropriation for fiscal year 2008 and $194,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the legislature to contract for an independent economic and actuarial analysis of health care reform proposals pursuant to Engrossed Substitute Senate Bill No. 6333. The results of this evaluation will be submitted to the governor, the health and fiscal policy committees of the legislature, and the work group by December 15, 2008.

Sec. 102. 2008 c 329 s 102 (uncodified) is amended to read as follows:

FOR THE SENATE

General Fund—State Appropriation (FY 2008) $26,990,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$29,434,000~~))
$28,506,000
Pension Funding Stabilization Account
Appropriation. $467,000
TOTAL APPROPRIATION . . . . . ((~~$56,891,000~~))
$55,963,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $56,000 of the general fund—state appropriation for fiscal year 2008 is provided solely to implement Senate Bill No. 5926 (construction industry). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(2) $52,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the implementation of Third Substitute House Bill No. 1741 (oral history). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(3) $194,000 of the general fund—state appropriation for fiscal year 2008 and $194,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the legislature to contract for an independent economic and actuarial analysis of health care reform proposals pursuant to Engrossed Substitute Senate Bill No. 6333. The results of this evaluation will be submitted to the governor, the health and fiscal policy committees of the legislature, and the work group by December 15, 2008.

Sec. 103. 2008 c 329 s 103 (uncodified) is amended to read as follows:

FOR THE JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

General Fund—State Appropriation (FY 2008) $3,378,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$3,355,000~~))
$2,912,000
Pension Funding Stabilization Account
Appropriation. $36,000
TOTAL APPROPRIATION . . . . . ((~~$6,769,000~~))
$6,326,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Notwithstanding the provisions in this section, the committee may adjust the due dates for projects included on the committee's 2007-09 work plan as necessary to efficiently manage workload.

(2) $100,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the joint legislative audit and review committee to conduct a review of the method used to determine lease rates for state-owned aquatic lands. The review shall include classification of current lease base and lease rates by category of use such as marinas; a review of previous studies of formulas for state-owned aquatic land leases; and identification of pros and cons of alternative approaches to calculating aquatic lands lease rates. The committee shall complete the review by June 2008.

(3) $100,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$50,000~~)) $16,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the joint legislative audit and review committee to conduct an evaluation and comparison of the cost efficiency of rental housing voucher programs versus other housing projects intended to assist low-income households, including construction and rehabilitation of housing units. The study will consider factors including administrative costs, capital costs, and other operating costs involved in operating voucher and other housing programs. The study will compare the number of households that can be served by voucher and other housing programs, given a set amount of available funds. The department of community, trade, and economic development, the housing finance commission, housing authorities, community action agencies, and local governments shall provide the joint legislative audit and review committee with information necessary for the study. The joint legislative audit and review committee shall solicit input regarding the study from interested parties, including representatives from the affordable housing advisory board, the department of community, trade, and economic development, the housing finance commission, representatives from the private rental housing industry, housing authorities, community action agencies, county and city governments, and nonprofit and for-profit housing developers. The joint legislative audit and review committee shall present the results of the study to the legislature by December 31, 2008.

(4) $100,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for a cost analysis of the programs and activities administered by the department of fish and wildlife. In conducting the study, the committee shall specifically identify the total costs that support both hunting and fishing programs as well as nongame programs, including appropriate shares of the agency's administrative and indirect costs. The committee shall compare the cost analysis to revenues that currently support the programs, including the level of support received from game licenses and fees. The committee shall base its analysis on available management information and shall provide the results of its analysis to the legislature by January 2008.

(5) $164,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the joint legislative audit and review committee to analyze gaps throughout the state in the availability and accessibility of services identified in the federal adoption and safe families act as directed by Substitute

House Bill No. 1333 (child welfare). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(6) Within the amounts appropriated in this section, the joint legislative audit and review committee shall conduct an analysis of the qualifications required to become a social worker I, II, III, or IV within the department of social and health services children's administration. The committee shall conduct an analysis of the qualifications used by other states for equivalent categories of social workers. The committee shall analyze the strengths and weaknesses of Washington's qualifications relative to the other states. The findings shall be reported to the legislature by December 1, 2007.

(7) Within amounts provided in this section, the committee shall conduct a review of the eligibility requirements and eligibility review processes that apply to any state program that offers individual health care coverage for qualified recipients.

(8) ((~~$75,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of~~)) Within the amounts appropriated in this section, the joint legislative audit and review committee shall implement Engrossed Substitute Senate Bill No. 5372 (Puget Sound partnership). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(9) $75,000 of the general fund—state appropriation for fiscal year 2008 and $25,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement Second Substitute House Bill No. 1488 (oil spill program). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(10) Within the amounts provided in this section, the committee shall review the constitutional, case law, and statutory objectives and obligations of the department of natural resources' management of state-owned aquatic lands. The review will include an assessment of the degree to which the management practices of the department and other agencies are meeting these objectives and complying with legal obligations.

(11) ((~~$38,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of~~)) Within the amounts appropriated in this section, the joint legislative audit and review committee shall implement Engrossed House Bill No. 2641 (education performance agreements). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(12) Within the amounts appropriated in this section, the joint legislative audit and review committee shall conduct a preaudit for a comprehensive review of boards and commissions. The preaudit study will inventory the existing boards/commissions, identify criteria for selecting entities for further review, propose the scope and objectives of those reviews, and identify resource and schedule options for the committee to consider before proceeding.

(13) The joint legislative audit and review committee shall develop a framework for future efforts to quantify and analyze health care spending across all sectors of the state. This effort would focus on identifying the relevant types of spending in the public and private sectors, the availability of information on each of those types of spending, and the extent to which that available information could be tracked over time. In conducting this work, the committee

shall work with the legislative evaluation and accountability program committee and the University of Washington's institute for health metrics and evaluation, as appropriate. The committee shall provide a report by January 2009.

Sec. 104. 2008 c 329 s 104 (uncodified) is amended to read as follows:

FOR THE LEGISLATIVE EVALUATION AND ACCOUNTABILITY PROGRAM COMMITTEE

General Fund—State Appropriation (FY 2008) $1,843,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$2,038,000~~))
$1,590,000
Pension Funding Stabilization Account
Appropriation. $41,000
TOTAL APPROPRIATION . . . . . ((~~$3,922,000~~))
$3,474,000

Sec. 105. 2008 c 329 s 105 (uncodified) is amended to read as follows:

FOR THE OFFICE OF THE STATE ACTUARY

General Fund—State Appropriation (FY 2009) $25,000
Department of Retirement Systems Expense Account—
State Appropriation . . . . . ((~~$3,491,000~~))
$3,310,000
TOTAL APPROPRIATION . . . . . ((~~$3,516,000~~))
$3,335,000

The appropriations in this section are subject to the following conditions and limitations: $25,000 of the general fund—state appropriation for 2009 is provided solely for the purchase of actuarial services to assist in the evaluation of the fiscal impact of health benefit proposals.

Sec. 106. 2008 c 329 s 106 (uncodified) is amended to read as follows:

FOR THE JOINT LEGISLATIVE SYSTEMS COMMITTEE

General Fund—State Appropriation (FY 2008) $9,057,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$9,151,000~~))
$8,432,000
Pension Funding Stabilization Account
Appropriation. $92,000
TOTAL APPROPRIATION . . . . . ((~~$18,300,000~~))
$17,581,000

Sec. 107. 2008 c 329 s 107 (uncodified) is amended to read as follows:

FOR THE STATUTE LAW COMMITTEE

General Fund—State Appropriation (FY 2008) $4,811,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$5,220,000~~))
$5,066,000
Pension Funding Stabilization Account
Appropriation. $75,000
TOTAL APPROPRIATION . . . . . ((~~$10,106,000~~))
$9,952,000

Sec. 108. 2008 c 329 s 108 (uncodified) is amended to read as follows:

FOR THE SUPREME COURT

General Fund—State Appropriation (FY 2008) $7,392,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$7,598,000~~))
$7,420,000
TOTAL APPROPRIATION . . . . . ((~~$14,990,000~~))
$14,812,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $150,000 of the general fund—state appropriation for fiscal year 2008 and $55,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement the task force on domestic violence as requested by section 306 of Second Substitute Senate Bill No. 5470 (dissolution proceedings). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(2) In addition to other reductions, the reduced appropriations in this section reflect an additional $122,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 109. 2008 c 329 s 109 (uncodified) is amended to read as follows:

FOR THE LAW LIBRARY

General Fund—State Appropriation (FY 2008) $2,268,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$2,269,000~~))
$2,168,000
TOTAL APPROPRIATION . . . . . ((~~$4,537,000~~))
$4,436,000

Sec. 110. 2008 c 329 s 110 (uncodified) is amended to read as follows:

FOR THE COURT OF APPEALS

General Fund—State Appropriation (FY 2008) $16,092,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$17,145,000~~))
$16,765,000
TOTAL APPROPRIATION . . . . . ((~~$33,237,000~~))
$32,857,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $100,000 of the general fund—state appropriation for fiscal year 2008 and $100,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for chapter 34, Laws of 2007 (Senate Bill No. 5351, court of appeals judges' travel).

(2) In addition to other reductions, the reduced appropriations in this section reflect an additional $376,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 111. 2008 c 329 s 111 (uncodified) is amended to read as follows:

FOR THE COMMISSION ON JUDICIAL CONDUCT

General Fund—State Appropriation (FY 2008) $1,117,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$1,134,000~~))
$1,105,000
TOTAL APPROPRIATION . . . . . ((~~$2,251,000~~))
$2,222,000

The appropriations in this section are subject to the following conditions and limitations: In addition to other reductions, the reduced appropriations in this section reflect an additional $28,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 112. 2008 c 329 s 112 (uncodified) is amended to read as follows:

FOR THE ADMINISTRATOR FOR THE COURTS

General Fund—State Appropriation (FY 2008) $30,659,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$33,447,000~~))
$33,239,000
Public Safety and Education Account—State
Appropriation (FY 2008). $22,558,000
Public Safety and Education Account—State
Appropriation (FY 2009). . . . . ((~~$24,199,000~~))
$23,694,000
Equal Justice Subaccount of the Public Safety and
Education Account—State Appropriation (FY 2008) $3,175,000
Equal Justice Subaccount of the Public Safety and
Education Account—State Appropriation (FY 2009) $3,175,000
Judicial Information Systems Account—State
Appropriation. $40,923,000
TOTAL APPROPRIATION . . . . . ((~~$158,136,000~~))
$157,423,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $3,900,000 of the general fund—state appropriation for fiscal year 2008 and $3,900,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for court-appointed special advocates in dependency matters. The administrator for the courts, after consulting with the association of juvenile court administrators and the association of court-appointed special advocate/guardian ad litem programs, shall distribute the funds to volunteer court-appointed special advocate/guardian ad litem programs. The distribution of funding shall be based on the number of children who need volunteer court-appointed special advocate representation and shall be equally accessible to all volunteer court-appointed special advocate/guardian ad litem programs. The administrator for the courts shall not retain more than six percent of total funding to cover administrative or any other agency costs. Funding distributed in this

subsection shall not be used to supplant existing local funding for the court-appointed special advocates program.

(2) $300,000 of the general fund—state appropriation for fiscal year 2008, $300,000 of the general fund—state appropriation for fiscal year 2009, $1,500,000 of the public safety and education account—state appropriation for fiscal year 2008, and $1,500,000 of the public safety and education account—state appropriation for fiscal year 2009 are provided solely for school districts for petitions to juvenile court for truant students as provided in RCW 28A.225.030 and 28A.225.035. The office of the administrator for the courts shall develop an interagency agreement with the superintendent of public instruction to allocate the funding provided in this subsection. Allocation of this money to school districts shall be based on the number of petitions filed. This funding includes amounts school districts may expend on the cost of serving petitions filed under RCW 28A.225.030 by certified mail or by personal service or for the performance of service of process for any hearing associated with RCW 28A.225.030.

(3)(a) $1,640,000 of the general fund—state appropriation for fiscal year 2008, $1,641,000 of the general fund—state appropriation for fiscal year 2009, $6,612,000 of the public safety and education account—state appropriation for fiscal year 2008, and $6,612,000 of the public safety and education account—state appropriation for fiscal year 2009 are provided solely for distribution to county juvenile court administrators to fund the costs of processing truancy, children in need of services, and at-risk youth petitions. The administrator for the courts, in conjunction with the juvenile court administrators, shall develop an equitable funding distribution formula. The formula shall neither reward counties with higher than average per-petition processing costs nor shall it penalize counties with lower than average per-petition processing costs.

(b) Each fiscal year during the 2007-09 fiscal biennium, each county shall report the number of petitions processed and the total actual costs of processing truancy, children in need of services, and at-risk youth petitions. Counties shall submit the reports to the administrator for the courts no later than 45 days after the end of the fiscal year. The administrator for the courts shall electronically transmit this information to the chairs and ranking minority members of the house of representatives appropriations committee and the senate ways and means committee no later than 60 days after a fiscal year ends. These reports are deemed informational in nature and are not for the purpose of distributing funds.

(4) The distributions made under this subsection and distributions from the county criminal justice assistance account made pursuant to section 801 of this act constitute appropriate reimbursement for costs for any new programs or increased level of service for purposes of RCW 43.135.060.

(5) $325,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the completion of the juror pay pilot and research project.

(6) $830,000 of the general fund—state appropriation for fiscal year 2008 and $1,170,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for improving interpreter services at the trial court level.

(a) Of these amounts, $170,000 for fiscal year 2008 and $170,000 for fiscal year 2009 are provided solely to assist trial courts in developing and implementing language assistance plans. The administrator of the courts, in consultation with the interpreter commission, shall adopt language assistance

plan standards consistent with chapters 2.42 and 2.43 RCW. The standards shall include guidelines on local community input, provisions on notifying court users on the right and methods to obtain an interpreter, information on training for judges and court personnel, procedures for identifying and appointing an interpreter, access to translations of commonly used forms, and processes to evaluate the development and implementation of the plan.

(b) Of these amounts, $610,000 for fiscal year 2008 and $950,000 for fiscal year 2009 are provided solely to assist trial courts with interpreter services. In order to be eligible for assistance, a trial court must have completed a language assistance plan consistent with the standards established in (a) of this subsection that is approved by the administrator of the courts and submit the amounts spent annually on interpreter services for fiscal years 2005, 2006, and 2007. The funding in this subsection (b) shall not be used to supplant existing funding and cannot be used for any purpose other than assisting trial courts with interpreter services. At the end of the fiscal year, recipients shall report to the administrator of the court the amount the trial court spent on interpreter services.

(c) $50,000 for fiscal year 2008 and $50,000 for fiscal year 2009 are provided solely to the administrator of the courts for administration of this subsection. By December 1, 2009, the administrator of the courts shall report to the appropriate policy and fiscal committees of the legislature: (i) The number of trial courts in the state that have completed a language assistance plan; (ii) the number of trial courts in the state that have not completed a language assistance plan; (iii) the number of trial courts in the state that received assistance under this subsection, the amount of the assistance, and the amount each trial court spent on interpreter services for fiscal years 2005 through 2008 and fiscal year 2009 to date.

(7) $443,000 of the general fund—state appropriation for fiscal year 2008 and $543,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of Second Substitute Senate Bill No. 5470 (dissolution proceedings). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse. Within the amounts provided:

(a) $100,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for developing training materials for the family court liaisons.

(b) $43,000 of the general fund—state appropriation for fiscal year 2008 and $43,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for reimbursement costs related to the family law handbook;

(c) $350,000 of the general fund—state appropriation for fiscal year 2008 and $350,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for distribution to counties to provide guardian ad litem services for the indigent for a reduced or waived fee;

(d) $50,000 of the general fund—state appropriation for fiscal year 2008 and $50,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for implementing the data tracking provisions specified in sections 701 and 702 of Second Substitute Senate Bill No. 5470 (dissolution).

(8)(a) $20,458,000 of the judicial information systems account—state appropriation is provided solely for the development and implementation of the core case management system. In expending the funds provided within this subsection, the following conditions must first be satisfied before any subsequent funds may be expended:

(i) Completion of feasibility studies detailing linkages between the objectives of the core case management system and the following: The technology efforts required and the impacts of the new investments on existing infrastructure and business functions, including the estimated fiscal impacts to the judicial information systems account and the near general fund accounts; the alignment of critical system requirements of varying size courts at the municipal, district, and superior court level with their respective proposed business processes resulting from business process engineering, and detail on the costs and other impacts to the courts for providing critical business requirements not addressed by new common business processes; the specific requirements and business process needs of state agencies dependent on data exchange with the judicial information system; and the results from a proof of implementation phase; and

(ii) Discussion with and presentation to the department of information systems and the information services board regarding the impact on the state agencies dependent on successful data exchange with the judicial information system and the results of the feasibility studies.

(b) The judicial information systems committee shall provide quarterly updates to the appropriate committees of the legislature and the department of information systems on the status of implementation of the core case management system.

(c) The legislature respectfully requests the judicial information systems committee invite representatives from the state agencies dependent on successful data exchange to their regular meetings for consultation as nonvoting members.

(9) $534,000 of the general fund—state appropriation for fiscal year 2008 and $949,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for Substitute Senate Bill No. 5320 (public guardianship office). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(10) $29,000 of the general fund—state appropriation for fiscal year 2008 and $102,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the twenty-third superior court judge position in Pierce county. The funds appropriated in this subsection shall be expended only if the judge is appointed and serving on the bench.

(11) $800,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to implement Second Substitute House Bill No. 2822 (family and juvenile court). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(12) $90,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to implement Second Substitute House Bill No. 2903 (access coordinator). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(13) In addition to other reductions, the reduced appropriations in this section reflect an additional $207,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 113. 2008 c 329 s 113 (uncodified) is amended to read as follows:

FOR THE OFFICE OF PUBLIC DEFENSE

General Fund—State Appropriation (FY 2008) $17,814,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$18,137,000~~))
$17,682,000
Public Safety and Education Account—State
Appropriation (FY 2008) $7,066,000
Public Safety and Education Account—State
Appropriation (FY 2009) . . . . . ((~~$7,013,000~~))
$7,012,000
Equal Justice Subaccount of the Public Safety and
Education Account—State Appropriation (FY 2008) $2,250,000
Equal Justice Subaccount of the Public Safety and
Education Account—State Appropriation (FY 2009) $2,251,000
TOTAL APPROPRIATION . . . . . ((~~$54,531,000~~))
$54,075,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The amounts provided from the public safety and education account appropriations include funding for expert and investigative services in death penalty personal restraint petitions.

(((~~(3)~~))) (2) Starting with fiscal year 2009, the office shall adjust its monthly, annual, and biennial accounting records so that the expenditures by fund, object, and subobject are attributed to the following programs: (a) Appellate indigent defense; (b) representation of indigent parents qualified for appointed counsel in dependency and termination cases; (c) trial court criminal indigent defense; (d) other grants or contracted services; and (e) costs for administering the office. The office may consult with the administrator for the courts, the office of financial management, and the legislative evaluation and accountability program committee for guidance in adjusting its accounting records.

(((~~(4)~~))) (3) $235,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to implement sections 2 and 3 of Engrossed Second Substitute House Bill No. 3205 (child long-term well-being). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(4) In addition to other reductions, the reduced appropriations in this section reflect an additional $7,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 114. 2007 c 522 s 115 (uncodified) is amended to read as follows:

FOR THE OFFICE OF CIVIL LEGAL AID

General Fund—State Appropriation (FY 2008) $5,923,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$7,009,000~~))
$6,966,000
Public Safety and Education Account—State
Appropriation (FY 2008) $2,326,000

Public Safety and Education Account—State
Appropriation (FY 2009) $2,378,000
Equal Justice Subaccount of the Public Safety and
Education Account—State Appropriation (FY 2008) $927,000
Equal Justice Subaccount of the Public Safety and
Education Account—State Appropriation (FY 2009) $927,000
Violence Reduction and Drug Enforcement Account—
State Appropriation (FY 2008) $1,494,000
Violence Reduction and Drug Enforcement Account—
State Appropriation (FY 2009) $1,493,000
TOTAL APPROPRIATION . . . . . ((~~$22,477,000~~))
$22,434,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $120,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$120,000~~)) $98,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to continue support for the existing agricultural dispute resolution system funded through the office of civil legal aid for disputes between farmers and farm workers. The office of civil legal aid shall report to the appropriate legislative committees on the effectiveness of this program by December 31, 2008.

(2) An amount not to exceed $40,000 of the general fund—state appropriation for fiscal year 2008 and an amount not to exceed $40,000 of the general fund—state appropriation for fiscal year 2009 may be used to provide telephonic legal advice and assistance to otherwise eligible persons who are sixty years of age or older on matters authorized by RCW 2.53.030(2)(a) through (k) regardless of household income or asset level.

(3) In addition to other reductions, the reduced appropriations in this section reflect an additional $21,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 115. 2008 c 329 s 114 (uncodified) is amended to read as follows:

FOR THE OFFICE OF THE GOVERNOR

General Fund—State Appropriation (FY 2008) $6,615,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$6,959,000~~))
$6,349,000
Economic Development Strategic Reserve Account—State
Appropriation $6,000,000
Oil Spill Prevention Account—State Appropriation $715,000
TOTAL APPROPRIATION . . . . . ((~~$20,289,000~~))
$19,679,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $250,000 of the general fund—state appropriation for fiscal year 2008 and $250,000 of the general fund—state appropriation for fiscal year 2009 are

provided solely for the implementation of Substitute Senate Bill No. 5224 (salmon office). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(((~~(3)~~))) (2) $2,000,000 of the economic development and strategic reserve account—state appropriation for fiscal year 2009 is provided solely to provide support and assistance to victims of the December 2007 storms and floods in Chehalis and Centralia.

Sec. 116. 2008 c 329 s 115 (uncodified) is amended to read as follows:

FOR THE LIEUTENANT GOVERNOR

General Fund—State Appropriation (FY 2008) $798,000
General Fund—State Appropriation (FY 2009) . . . . . (((~~$821,000~~)))
$793,000
General Fund—Private/Local Appropriation $90,000
TOTAL APPROPRIATION . . . . . (((~~$1,709,000~~)))
$1,681,000

Sec. 117. 2008 c 329 s 116 (uncodified) is amended to read as follows:

FOR THE PUBLIC DISCLOSURE COMMISSION

General Fund—State Appropriation (FY 2008) $2,546,000
General Fund—State Appropriation (FY 2009) . . . . . (((~~$2,448,000~~)))
$2,360,000
TOTAL APPROPRIATION . . . . . (((~~$4,994,000~~)))
$4,906,000

The appropriations in this section are subject to the following conditions and limitations: $100,000 of the general fund—state appropriation for fiscal year 2008 is for a feasibility study to determine the cost of designing, developing, implementing, and maintaining: (a) Software or other applications to accommodate electronic filing by lobbyists reporting under RCW 42.17.150 and 42.17.170, by lobbyist employers reporting under RCW 42.17.180, and by public agencies reporting under RCW 42.17.190; (b) a database and query system that results in data that is readily available to the public for review and analysis and that is compatible with current computer architecture, technology, and operating systems, including but not limited to Windows and Apple operating systems. The commission shall contract for the feasibility study and consult with the department of information services. The study may include other elements, as determined by the commission, that promote public access to information about lobbying activity reportable under chapter 42.17 RCW. The study shall be provided to the legislature by January 2008.

Sec. 118. 2008 c 329 s 117 (uncodified) is amended to read as follows:

FOR THE SECRETARY OF STATE

General Fund—State Appropriation (FY 2008) $33,863,000
General Fund—State Appropriation (FY 2009) . . . . . (((~~$21,816,000~~)))
$20,782,000
General Fund—Federal Appropriation $7,279,000
General Fund—Private/Local Appropriation $132,000
Archives and Records Management Account—State
Appropriation. . . . . (((~~$8,339,000~~)))
$8,337,000

Department of Personnel Service Account—State
Appropriation. $760,000
Local Government Archives Account—State
Appropriation. . . . . ((~~$15,344,000~~))
$15,342,000
Election Account—Federal Appropriation. $31,511,000
Charitable Organization Education Account—State
Appropriation. $122,000
TOTAL APPROPRIATION . . . . . ((~~$119,166,000~~))
$118,128,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $13,290,000 of the general fund—state appropriation for fiscal year 2008 is provided solely to reimburse counties for the state's share of primary and general election costs and the costs of conducting mandatory recounts on state measures. Counties shall be reimbursed only for those odd-year election costs that the secretary of state validates as eligible for reimbursement.

(2) $2,556,000 of the general fund—state appropriation for fiscal year 2008 and $3,965,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the verification of initiative and referendum petitions, maintenance of related voter registration records, and the publication and distribution of the voters and candidates pamphlet.

(3) $125,000 of the general fund—state appropriation for fiscal year 2008 and $118,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for legal advertising of state measures under RCW 29A.52.330.

(4)(a) $2,465,000 of the general fund—state appropriation for fiscal year 2008 and $2,501,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for contracting with a nonprofit organization to produce gavel-to-gavel television coverage of state government deliberations and other events of statewide significance during the 2007-09 biennium. The funding level for each year of the contract shall be based on the amount provided in this subsection. The nonprofit organization shall be required to raise contributions or commitments to make contributions, in cash or in kind, in an amount equal to forty percent of the state contribution. The office of the secretary of state may make full or partial payment once all criteria in this subsection have been satisfactorily documented.

(b) The legislature finds that the commitment of on-going funding is necessary to ensure continuous, autonomous, and independent coverage of public affairs. For that purpose, the secretary of state shall enter into a contract with the nonprofit organization to provide public affairs coverage.

(c) The nonprofit organization shall prepare an annual independent audit, an annual financial statement, and an annual report, including benchmarks that measure the success of the nonprofit organization in meeting the intent of the program.

(d) No portion of any amounts disbursed pursuant to this subsection may be used, directly or indirectly, for any of the following purposes:

(i) Attempting to influence the passage or defeat of any legislation by the legislature of the state of Washington, by any county, city, town, or other

political subdivision of the state of Washington, or by the congress, or the adoption or rejection of any rule, standard, rate, or other legislative enactment of any state agency;

(ii) Making contributions reportable under chapter 42.17 RCW; or

(iii) Providing any: (A) Gift; (B) honoraria; or (C) travel, lodging, meals, or entertainment to a public officer or employee.

(5) $45,000 of the general fund—state appropriation for fiscal year 2008 and $45,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for humanities Washington's "we the people" community conversations program.

(6) ((~~$122,000 of the charitable organization education account—state appropriation is provided solely for implementation of Substitute House Bill No. 1777 (charitable organizations). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.~~

~~(7)~~)) $575,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for settlement costs and attorney fees resulting from the resolution of *Washington Association of Churches, et al. v. Reed,* United States District Court Western District of Washington at Seattle, Case No. CV06-0726RSM.

Sec. 119. 2008 c 329 s 118 (uncodified) is amended to read as follows:

FOR THE GOVERNOR'S OFFICE OF INDIAN AFFAIRS

General Fund—State Appropriation (FY 2008) $348,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$463,000~~)) $437,000
TOTAL APPROPRIATION . . . . . ((~~$811,000~~)) $785,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The office shall assist the department of personnel on providing the government-to-government training sessions for federal, state, local, and tribal government employees. The training sessions shall cover tribal historical perspectives, legal issues, tribal sovereignty, and tribal governments. Costs of the training sessions shall be recouped through a fee charged to the participants of each session. The department of personnel shall be responsible for all of the administrative aspects of the training, including the billing and collection of the fees for the training.

(2) $150,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the office to engage a contractor to conduct a detailed analysis of the achievement gap for Native American students; analyze the progress in developing effective government-to-government relations and identification and adoption of curriculum regarding tribal history, culture, and government as provided under RCW 28A.345.070; recommend a comprehensive plan for closing the achievement gap pursuant to goals under the federal no child left behind act for all groups of students to meet academic standards by 2014; and identify performance measures to monitor adequate yearly progress. The contractor shall conduct the analysis starting with the call to action paper by the multi-ethnic think tank and as guided by the tribal leader congress on education, the Washington state school directors association, and

other appropriate groups. The contractor shall submit a study update by September 15, 2008, and submit a final report by December 30, 2008, to the governor, the superintendent of public instruction, the state board of education, the P-20 council, the basic education finance task force, and the education committees of the legislature.

Sec. 120. 2008 c 329 s 119 (uncodified) is amended to read as follows:

FOR THE COMMISSION ON ASIAN PACIFIC AMERICAN AFFAIRS

General Fund—State Appropriation (FY 2008) $257,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$548,000~~)) $543,000

TOTAL APPROPRIATION . . . . . ((~~$805,000~~)) $800,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $150,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the commission to engage a contractor to conduct a detailed analysis of the achievement gap for Asian American students; recommend a comprehensive plan for closing the achievement gap pursuant to goals under the federal no child left behind act for all groups of students to meet academic standards by 2014; and identify performance measures to monitor adequate yearly progress. The contractor shall conduct the analysis starting with the call to action paper by the multi-ethnic think tank and as guided by the former members of the Asian Pacific Islander American think tank and other appropriate groups. The contractor shall submit a study update by September 15, 2008, and submit a final report by December 30, 2008, to the governor, the superintendent of public instruction, the state board of education, the P-20 council, the basic education finance task force, and the education committees of the legislature.

(2) $150,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the commission to engage a contractor to conduct a detailed analysis of the achievement gap for Pacific Islander American students; recommend a comprehensive plan for closing the achievement gap pursuant to goals under the federal no child left behind act for all groups of students to meet academic standards by 2014; and identify performance measures to monitor adequate yearly progress. The contractor shall conduct the analysis starting with the call to action paper by the multi-ethnic think tank and as guided by the former members of the Asian Pacific Islander American think tank and other appropriate groups. The contractor shall submit a study update by September 15, 2008, and submit a final report by December 30, 2008, to the governor, the superintendent of public instruction, the state board of education, the P-20 council, the basic education finance task force, and the education committees of the legislature.

Sec. 121. 2008 c 329 s 120 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER

State Treasurer's Service Account—State Appropriation. . . . . ((~~$15,539,000~~)) $15,538,000

The appropriation in this section is subject to the following conditions and limitations: $183,000 of the state treasurer's service account—state appropriation is provided solely for implementation of Engrossed Substitute House Bill No. 1512 (linked deposit program). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

Sec. 122. 2008 c 329 s 121 (uncodified) is amended to read as follows:

FOR THE STATE AUDITOR

General Fund—State Appropriation (FY 2008) $794,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$806,000~~)) $738,000
State Auditing Services Revolving Account—State Appropriation. . . . . ((~~$15,312,000~~)) $15,303,000
TOTAL APPROPRIATION . . . . . ((~~$16,912,000~~)) $16,835,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Audits of school districts by the division of municipal corporations shall include findings regarding the accuracy of: (a) Student enrollment data; and (b) the experience and education of the district's certified instructional staff, as reported to the superintendent of public instruction for allocation of state funding.

(2) $752,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$762,000~~)) $698,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for staff and related costs to verify the accuracy of reported school district data submitted for state funding purposes; conduct school district program audits of state funded public school programs; establish the specific amount of state funding adjustments whenever audit exceptions occur and the amount is not firmly established in the course of regular public school audits; and to assist the state special education safety net committee when requested.

(3) $1,000 of the appropriation from the auditing services revolving account—state is provided solely for an adjustment to the agency lease rate for space occupied and parking in the Tacoma Rhodes Center. The department of general administration shall increase lease rates to meet the cash gain/loss break-even point for the Tacoma Rhodes Center effective July 1, 2007.

(4) $313,000 of the auditing services revolving account—state appropriation is provided solely for implementation of Engrossed Substitute Senate Bill No. 6776 (whistleblower protections). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

Sec. 123. 2008 c 329 s 122 (uncodified) is amended to read as follows:

FOR THE CITIZENS' COMMISSION ON SALARIES FOR ELECTED OFFICIALS

General Fund—State Appropriation (FY 2008) $159,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$225,000~~)) $222,000

TOTAL APPROPRIATION . . . . . ((~~$384,000~~)) $381,000

Sec. 124. 2008 c 329 s 123 (uncodified) is amended to read as follows:

FOR THE ATTORNEY GENERAL

General Fund—State Appropriation (FY 2008) $6,262,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$6,973,000~~)) $5,541,000
General Fund—Federal Appropriation $3,960,000
Public Safety and Education Account—State Appropriation (FY 2008) $1,143,000
Public Safety and Education Account—State Appropriation (FY 2009) $1,228,000
New Motor Vehicle Arbitration Account—State Appropriation $1,312,000
Legal Services Revolving Account—State Appropriation . . . . . ((~~$229,849,000~~)) $229,579,000
Tobacco Prevention and Control Account—State Appropriation $270,000
TOTAL APPROPRIATION . . . . . ((~~$250,997,000~~)) $249,295,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The attorney general shall report each fiscal year on actual legal services expenditures and actual attorney staffing levels for each agency receiving legal services. The report shall be submitted to the office of financial management and the fiscal committees of the senate and house of representatives no later than ninety days after the end of each fiscal year.

(2) Prior to entering into any negotiated settlement of a claim against the state that exceeds five million dollars, the attorney general shall notify the director of financial management and the chairs of the senate committee on ways and means and the house of representatives committee on appropriations.

(3) $9,446,000 of the legal services revolving account—state appropriation is provided solely for increases in salaries and benefits of assistant attorneys general effective July 1, 2007. This funding is provided solely for increases to address critical recruitment and retention problems, and shall not be used for the performance management program or to fund general administration. The attorney general shall report to the office of financial management and the fiscal committees of the senate and house of representatives by October 1, 2008, and provide detailed demographic information regarding assistant attorneys general who received increased salaries and benefits as a result of the appropriation. The report shall include at a minimum information regarding the years of service, division assignment within the attorney general's office, and client agencies represented by assistant attorneys general receiving increased salaries and benefits as a result of the amount provided in this subsection. The report shall include a proposed salary schedule for all assistant attorneys general using the same factors used to determine increased salaries under this section. The report

shall also provide initial findings regarding the effect of the increases on recruitment and retention of assistant attorneys general.

(4) $69,000 of the legal services revolving fund—state appropriation is provided solely for Engrossed Substitute Senate Bill No. 6001 (climate change). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(5) $44,000 of the legal services revolving fund—state appropriation is provided solely for Substitute Senate Bill No. 5972 (surface mining reclamation). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(((~~(7)~~))) (6) $110,000 of the legal services revolving account—state appropriation is provided solely for implementation of Second Substitute House Bill No. 3274 (port district contracting). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(8)~~))) (7) $346,000 of the legal services revolving account—state appropriation is provided solely for implementation of sections 2 and 3 of Engrossed Second Substitute House Bill No. 3205 (child long-term well-being). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(9)~~))) (8) $492,000 of the legal services revolving account—state appropriation is provided solely for implementation of Second Substitute Senate Bill No. 6732 (construction industry). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(10)~~))) (9) The agency shall submit a staffing model that supports the need for increased resources due to casework associated with the sexually violent predator population to the office of financial management and the fiscal committees of the legislature by October 31, 2008.

(((~~(11)~~))) (10) The attorney general shall deposit to the health services account at least $680,000 from the *cy pres* monetary portion of the consent decree in settlement of the consumer protection act litigation against Caremark Rx, LLC (King county superior court cause no. 08-2-06098-5). These moneys shall be expended pursuant to legislative appropriation consistent with the terms of the consent decree.

Sec. 125. 2008 c 329 s 124 (uncodified) is amended to read as follows:

FOR THE CASELOAD FORECAST COUNCIL

General Fund—State Appropriation (FY 2008) $815,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$793,000~~)) $768,000

TOTAL APPROPRIATION . . . . . ((~~$1,608,000~~)) $1,583,000

Sec. 126. 2008 c 329 s 125 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

General Fund—State Appropriation (FY 2008) . . . . . ((~~$63,420,000~~)) $63,399,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$73,998,000~~)) $69,135,000

General Fund—Federal Appropriation . . . . . ((~~$252,994,000~~))
$252,991,000
General Fund—Private/Local Appropriation $14,657,000
Public Safety and Education Account—State
Appropriation (FY 2008). $2,775,000
Public Safety and Education Account—State
Appropriation (FY 2009). $3,750,000
Public Works Assistance Account—State
Appropriation. $2,956,000
Tourism Promotion and Development Account—State
Appropriation. $1,000,000
Drinking Water Assistance Administrative Account—
State Appropriation $405,000
Lead Paint Account—State Appropriation $18,000
Building Code Council Account—State Appropriation $1,211,000
Low-Income Weatherization Assistance Account—State
Appropriation. $8,381,000
Violence Reduction and Drug Enforcement Account—
State Appropriation (FY 2008) $3,644,000
Violence Reduction and Drug Enforcement Account—
State Appropriation (FY 2009) $3,650,000
Community and Economic Development Fee Account—State
Appropriation. $1,837,000
Washington Housing Trust Account—State
Appropriation. . . . . ((~~$26,777,000~~))
$26,776,000
Public Facility Construction Loan Revolving
Account—State Appropriation $630,000
Affordable Housing Account—State Appropriation $14,650,000
Community Preservation and Development Authority
Account—State Appropriation $350,000
Home Security Fund Account—State Appropriation $16,700,000
Independent Youth Housing Account—State Appropriation $1,000,000
Administrative Contingency Account—State Appropriation $1,800,000
Manufacturing Innovation and Modernization Account—
State Appropriation $306,000
TOTAL APPROPRIATION . . . . . ((~~$496,909,000~~))
$492,021,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $2,838,000 of the general fund—state appropriation for fiscal year 2008 and $2,838,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a contract with the Washington technology center for work essential to the mission of the Washington technology center and conducted in partnership with universities. The center shall not pay any increased indirect rate nor increases in other indirect charges above the absolute amount paid during the 1995-97 fiscal biennium.

(2) $1,658,000 of the general fund—state appropriation for fiscal year 2008 and $1,658,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for multijurisdictional drug task forces.

(3) $1,500,000 of the general fund—state appropriation for fiscal year 2008 and $1,500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to fund domestic violence legal advocacy.

(4) Repayments of outstanding loans granted under RCW 43.63A.600, the mortgage and rental assistance program, shall be remitted to the department, including any current revolving account balances. The department shall collect payments on outstanding loans, and deposit them into the state general fund. Repayments of funds owed under the program shall be remitted to the department according to the terms included in the original loan agreements.

(5) $145,000 of the general fund—state appropriation for fiscal year 2008 and $144,000 of the general fund—state appropriation for fiscal year 2009 are provided to support a task force on human trafficking.

(6) $2,500,000 of the general fund—state appropriation for fiscal year 2008 and $2,500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for Second Substitute Senate Bill No. 5092 (associate development organizations). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(7) $1,500,000 of the general fund—state appropriation for fiscal year 2008 and $1,500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the community services block grant program.

(8) $70,000 of the general fund—state appropriation for fiscal year 2008 and $65,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to the department to implement the innovation partnership zone program.

(a) The director shall designate innovation partnership zones on the basis of the following criteria:

(i) Innovation partnership zones must have three types of institutions operating within their boundaries, or show evidence of planning and local partnerships that will lead to dense concentrations of these institutions:

(A) Research capacity in the form of a university or community college fostering commercially valuable research, nonprofit institutions creating commercially applicable innovations, or a national laboratory;

(B) Dense proximity of globally competitive firms in a research-based industry or industries or of individual firms with innovation strategies linked to (a)(i) of this subsection. A globally competitive firm may be signified through international organization for standardization 9000 or 1400 certification, or other recognized evidence of international success; and

(C) Training capacity either within the zone or readily accessible to the zone. The training capacity requirement may be met by the same institution as the research capacity requirement, to the extent both are associated with an educational institution in the proposed zone;

(ii) The support of a local jurisdiction, a research institution, an educational institution, an industry or cluster association, a workforce development council, and an associate development organization, port, or chamber of commerce;

(iii) Identifiable boundaries for the zone within which the applicant will concentrate efforts to connect innovative researchers, entrepreneurs, investors,

industry associations or clusters, and training providers. The geographic area defined should lend itself to a distinct identity and have the capacity to accommodate firm growth;

(iv) The innovation partnership zone shall designate a zone administrator, which must be an economic development council, port, workforce development council, city, or county.

(b) By October 1, 2007, and October 1, 2008, the director shall designate innovation partnership zones on the basis of applications that meet the criteria in this subsection, estimated economic impact of the zone, and evidence of forward planning for the zone.

(c) If the innovation partnership zone meets the other requirements of the fund sources, then the innovation partnership zone is encouraged to use the local infrastructure financing tool program, the sales and use tax for public facilities in rural counties, the job skills program and other state and local resources to promote zone development.

(d) The department shall convene at least one information sharing event for innovation partnership zone administrators and other interested parties.

(e) An innovation partnership zone shall provide performance measures as required by the director, including but not limited to private investment measures, job creation measures, and measures of innovation such as licensing of ideas in research institutions, patents, or other recognized measures of innovation.

(9) $430,000 of the general fund—state appropriation for fiscal year 2008 and $2,200,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the economic development commission to work with the higher education coordinating board and research institutions to: (a) Develop a plan for recruitment of ten significant entrepreneurial researchers over the next ten years to lead innovation research teams, which plan shall be implemented by the higher education coordinating board; and (b) develop comprehensive entrepreneurial programs at research institutions to accelerate the commercialization process.

(10) $500,000 of the general fund—state appropriation for fiscal year 2008 and $500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a grant to the cascade land conservancy to develop and demonstrate one or more transfer of development rights programs. These programs shall involve the purchase or lease of development rights or conservation easements from family forest landowners facing pressure to convert their lands and who desire to keep their land in active forest management. The grant shall require the conservancy to work in collaboration with family forest landowners and affected local governments, and to submit an interim written progress report to the department by September 15, 2008, and a final report by June 30, 2009. The department shall transmit the reports to the governor and the appropriate committees of the legislature.

(11) $155,000 of the general fund—state appropriation for fiscal year 2008 and $150,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for Engrossed Second Substitute House Bill No. 1422 (addressing children and families of incarcerated parents). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(12) $180,000 of the general fund—state appropriation for fiscal year 2008 and $430,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for KCTS public television to support programming in the Spanish language. These funds are intended to support the addition of a bilingual outreach coordinator to serve Latino adults, families and children in western and central Washington; multimedia promotion on Spanish-language media and website integration; the production of targeted public affairs programs that seek to improve education and the quality of life for Latinos; and to establish partnerships with city and county library systems to provide alternative access to the v-me Spanish language channel via the internet.

(13) $1,000,000 of the tourism and promotion account—state appropriation is provided for Substitute House Bill No. 1276 (creating a public/private tourism partnership). Of this amount, $280,000 is for the department of fish and wildlife's nature tourism infrastructure program; $450,000 is for marketing the 2010 Olympic games; and $50,000 is for the Washington state games.

(14) $50,000 of the general fund—state appropriation for fiscal year 2008 and $50,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the African chamber of commerce of the Pacific Northwest to support the formation of trade alliances between Washington businesses and African businesses and governments.

(15) $750,000 of the general fund—state appropriation for fiscal year 2008 and $750,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the emergency food assistance program.

(16) $80,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the energy facility site evaluation council to contract for a review of the status of pipeline utility corridor capacity and distribution for natural gas, petroleum and biofuels in southwest Washington. The council shall submit its findings and recommendations to the legislature by December 1, 2007.

(17) $513,000 of the general fund—state appropriation for fiscal year 2008 and (($~~$2,463,000~~$)) $2,443,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a pilot program to provide transitional housing assistance to offenders who are reentering the community and are in need of housing as generally described in Engrossed Substitute Senate Bill No. 6157 (offender recidivism). The department shall operate the program through grants to eligible organizations as described in RCW 43.185.060. A minimum of two programs shall be established in two counties in which community justice centers are located. The pilot programs shall be selected through a request for proposal process in consultation with the department of corrections. The department shall select the pilot sites by January 1, 2008.

(a) The pilot program shall:

(i) Be operated in collaboration with the community justice center existing in the location of the pilot site;

(ii) Offer transitional supportive housing that includes individual support and mentoring available on an ongoing basis, life skills training, and close working relationships with community justice centers and community corrections officers. Supportive housing services can be provided directly by the housing operator, or in partnership with community-based organizations;

(iii) In providing assistance, give priority to offenders who are designated as high risk or high needs as well as those determined not to have a viable release plan by the department of corrections; and

(iv) Provide housing assistance for a period of up to twelve months for a participating offender.

(b) The department may also use up to twenty percent of the funds in this subsection to support the development of additional supportive housing resources for offenders who are reentering the community.

(c) The department shall collaborate with the department of corrections in the design of the program and development of criteria to determine who will qualify for housing assistance, and shall report to the legislature by November 1, 2008, on the number of offenders seeking housing, the number of offenders eligible for housing, the number of offenders who receive the housing, and the number of offenders who commit new crimes while residing in the housing.

(18) $288,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for community transition coordination networks and county service inventories as generally described in Engrossed Substitute Senate Bill No. 6157 (offender recidivism). Funds are provided for: (a) Grants to counties to inventory services and resources available to assist offenders reentering the community; (b) a grant to the Washington institute for public policy to develop criteria for conducting the inventory; and (c) the department of community, trade, and economic development to assist with the inventory and implement a community transition coordination network pilot program.

(19) $150,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for a grant to the center for advanced manufacturing to assist domestic businesses to compete globally.

(20) $250,000 of the general fund—state appropriation for fiscal year 2008 and $250,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a grant to the developmental disabilities council to contract for legal services for individuals with developmental disabilities entering or currently residing in the department of social and health services division of developmental disabilities community protection program.

(21) $50,000 of the general fund—state appropriation for fiscal year 2008 and $50,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a grant to Safe Havens to provide supervised visitation for families affected by domestic violence and abuse.

(22) $408,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$623,000~~)) $423,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for grants to county juvenile courts to expand the number of participants in juvenile drug courts consistent with the conclusions of the Washington state institute for public policy evaluation of effective programs to reduce future prison populations.

(23) $250,000 of the general fund—state appropriation for fiscal year 2008 and $250,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement Second Substitute Senate Bill No. 5652 (microenterprise development), including grants to microenterprise organizations for organizational capacity building and provision of training and technical assistance. If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(24) $250,000 of the general fund—state appropriation for fiscal year 2008 and $250,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement Second Substitute Senate Bill No. 5995 (economic development commission).

(25) $150,000 of the general fund—state appropriation for fiscal year 2008 and $150,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to support international trade fairs.

(26) $50,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for a study to survey best practices for smart meters/smart grid/ smart appliance technology and the range of applications for smart meters around the country. The survey shall include, but is not limited to, utilities using smart meters to: (a) Meter responses to time-of-use pricing, (b) meter savings from direct load control programs, (c) manage operations costs, (d) identify power outages, (e) meter voluntary interruptible power programs, (f) facilitate pay-as-you-go programs, and (g) enhance billing operations. The study will compare the survey results with Washington's electric utility power system including considerations of electricity price variations between peak and off-peak prices, seasonal price variations, forecast demand, conservation goals, seasonal or daily distribution or transmission constraints, etc., to identify the applications where smart meters may provide particular value to either individual consumers, individual Washington electric utility power systems, or the overall electric power grid in Washington, and to meeting state conservation and energy goals. The department shall complete the study and provide a report to the governor and the legislature by December 1, 2007.

(27) (((~~(a) $500,000~~)) $18,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the implementation of Second Substitute House Bill No. 1273 (financial fraud). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(28) $125,000 of the general fund—state appropriation for fiscal year 2008 and $125,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a grant to Grays Harbor county for activities associated with southwest Washington coastal erosion investigations and demonstrations.

(29) $112,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$113,000~~)) $58,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a grant to the retired senior volunteer program.

(30) $200,000 of the general fund—state appropriation for fiscal year 2008 and $200,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a grant to the Benton and Franklin county juvenile and drug courts. The grant is contingent upon the counties providing equivalent matching funds.

(31) $50,000 of the general fund—state appropriation for fiscal year 2008 and $50,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a grant to the Seattle aquarium for a scholarship program for transportation and admission costs for classrooms with lower incomes, English as second language or special needs.

(32) $256,000 of the general fund—state appropriation for fiscal year 2008 and $256,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the long-term care ombudsman program.

(33) $425,000 of the general fund—state appropriation for fiscal year 2008 and $425,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to the Washington state association of counties for the county training program.

(34) $495,000 of the general fund—state appropriation for fiscal year 2008 and $495,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to the northwest agriculture business center. The department shall continue to fund these services and funding shall not be reduced.

(35) $40,000 of the general fund appropriation for fiscal year 2008 and $160,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a program to build capacity and promote the development of nonprofit community land trust organizations in the state. Funds shall be granted through a competitive process to community land trusts with assets under one million dollars, and these funds shall be used for operating costs, technical assistance, and other eligible capacity building expenses to be determined by the department.

(36) $100,000 of the general fund—state appropriation for fiscal year 2008 and $100,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to centro latino to provide adult basic education that includes but is not limited to: English as a second language, Spanish literacy training, work-readiness training, citizenship classes, programs to promote school readiness, community education, and entrepreneurial services.

(37) $500,000 of the general fund—state appropriation for fiscal year 2008 and $800,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to resolution Washington to build statewide capacity for alternative dispute resolution centers and dispute resolution programs that guarantee that all citizens have access to a low-cost resolution process as an alternative to litigation. Of the fiscal year 2009 funding, $300,000 is to assist the centers in providing mediation services for parties with parenting plan disputes who either (a) are currently involved in dissolution proceedings or (b) completed a dissolution within the past year. The funding provided by this subsection does not constitute state funding to counties for the purposes of RCW 26.09.015(2)(b).

(38) $2,000,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$2,000,000~~)) $1,945,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for implementation of Second Substitute House Bill No. 1303 (cleaner energy). Of these amounts, $487,000 of the general fund—state appropriation for fiscal year 2008 is provided solely as pass-through funding to the department of ecology to conduct the climate advisory team stakeholder process and related staffing, analysis, and public outreach costs. The department shall retain $1,013,000 for expenditures related to the operations of the energy freedom authority, and the support of the vehicle workgroup and the carbon market stakeholder workgroup and any other activities required of the department by the bill. The department shall enter into interagency agreements with other agencies to implement the bill in the following amounts: (a) $1,500,000 shall be provided to the climate impacts group at the University of Washington for climate assessments; (b) ((~~$200,000~~)) $175,000 shall be provided to the University of Washington college of forest resources for identification of barriers to using the state's forest resources for

fuel production; and (c) ((~~$800,000~~)) $770,000 shall be provided to the Washington State University for analyzing options for market incentives to encourage biofuels production. If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(39) $347,000 of the general fund—state appropriation for fiscal year 2008 and $348,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to Western Washington University to support small business development centers and underserved economic development councils with secondary research services. Of the amounts in this subsection, $500,000 is intended for research services and shall be divided evenly between 25-50 small business development centers and underserved economic development councils and $195,000 shall be used to develop infrastructure, training programs, and marketing materials.

(40) $100,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for a study on improving the effectiveness of the growth management act. Topics may include but are not limited to: How best to meet and finance infrastructure and service needs of growing communities; how to provide incentives to accommodate projected growth and protect resource lands and critical areas; and how local governments are prepared to address land use changes associated with climate change.

(41) $75,000 of the general fund—state appropriation for fiscal year 2008 and $75,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to the Poulsbo marine science center.

(42) $1,625,000 of the general fund—state appropriation for fiscal year 2008 and $1,625,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for operating and capital equipment and facility grants to the following public television and radio stations: KPBX/KSFC, $863,525; KPLU, $733,525; KVTI, $108,550; KDNA, $29,205; KSER, $338,325; KNHC, $146,620; KSPS, $568,750; and KBTC, $461,500. The department shall contract with all the organizations listed in this subsection in the specified amounts.

(43) $200,000 of the general fund—state appropriation for fiscal year 2008 and $200,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the safe and drug free schools and communities program.

(44) $102,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$103,000~~)) $53,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the University of Washington's college of forest resources center for international trade in forest products.

(45) $471,000 of the general fund—state appropriation for fiscal year 2008 and $471,000 of the general fund—state appropriation for fiscal year 2009 are provided solely as pass-through funding to Walla Walla community college for its water and environmental center.

(46) $65,000 of the general fund—state appropriation for fiscal year 2008 and $65,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a contract with a food distribution program for communities in the southwestern portion of the state and for workers impacted by timber and salmon fishing closures and reductions. The department may not charge administrative overhead or expenses to the funds provided in this subsection.

(47)(a) $200,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for a study to examine the fiscal health of counties. The study shall address spending and revenues, as well as the demographic, geographic, social, economic, and other factors contributing to or causing financial distress. The study shall also examine the financial efficiencies, cost savings, and improved levels of service that may be gained by authorizing noncharter counties greater flexibility in altering their forms of governance, including consolidating or merging constitutional or statutory functions or structures.

(b) The department of community, trade, and economic development may contract or consult with any agency, organization, or other public or private entity as it deems necessary in order to complete the study required under this section. The study may contain options and actions for consideration by the governor and the legislature, but at minimum shall recommend the changes to constitutional and statutory law necessary to provide counties with the legal authority required to implement the changes in governmental structures and functions needed to promote optimum financial efficiency and improved services. The study shall be transmitted to the appropriate committees of the legislature and the governor by December 1, 2007.

(48) $2,136,000 of the general fund—state appropriation for fiscal year 2008 and $2,136,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the operation and expense of the "closing the achievement gap-flight program" of the Seattle public schools during the 2007-09 biennium. The funds will be used in support of a collaboration model between the Seattle public schools and the community. The primary intent for this program is to close the academic achievement gap for students of color and students in poverty by promoting parent and family involvement and enhancing the social-emotional and the academic support for students. By June 30, 2009, the Seattle public schools will provide and evaluation of the impact of the activities funded on class size, graduation rates, student attendance, student achievement, and closing the achievement gap.

(49) $1,000,000 of the general fund—state appropriation for fiscal year 2008, $1,000,000 of the general fund—state appropriation for fiscal year 2009, and $200,000 of the public safety and education account—state appropriation for fiscal year 2009 are provided solely for crime victim service centers. The department shall contract with the centers for provision of these services.

(50) $41,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$36,000~~)) $11,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for House Bill No. 1038 (electric transmission lines). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(51) $1,000,000 of the independent youth housing account is provided for Second Substitute House Bill No. 1922 (youth housing program). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(52) $227,000 of the general fund—state appropriation for fiscal year 2008 and $127,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for Second Substitute House Bill No. 1636 (development rights). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(53) $35,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for Substitute House Bill No. 1037 (electrical transmission). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(54) $131,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for Engrossed Second Substitute House Bill No. 1705 (health sciences and services).

(55) $881,000 of the general fund—state appropriation for fiscal year 2008 and $882,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the department to: (a) Work with a statewide asset building coalition to design, implement, and fund a public education and outreach campaign; and (b) initiate, expand, and strengthen community-based asset building coalitions by providing them with technical assistance and grants. The department shall conduct an application process and select at least twelve sites by October 31, 2007. Of the amounts provided in this subsection, no more than 10 percent may be used by the department to administer the technical assistance and grant program. The department shall report to the appropriate committees of the legislature on the status of the grant and technical assistance program by December 1, 2008.

(56) $15,200,000 of the affordable housing account—state appropriation and $16,200,000 of the home security fund account—state appropriation are provided solely for Engrossed Second Substitute House Bill No. 1359 (affordable housing). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(57) $350,000 of the community preservation and development authority account—state appropriation is provided solely for Substitute Senate Bill No. 6156 (development authorities). If this bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(58) $600,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for distribution to community sexual assault programs by the office of crime victims advocacy for the purpose of enhancing services provided to child victims of sexual abuse and their families. Enhanced services may include expanded hours of medical and legal advocacy, expanded hours of therapy for the child victim, increased support to nonoffending family members, and the development of a standardized child-centered approach to service delivery.

(59) $750,000 of the public safety and education account—state appropriation for fiscal year 2009 is provided solely to the office of crime victims advocacy. These funds shall be contracted with the 39 county prosecuting attorneys' offices to support victim-witness services. The funds must be prioritized to ensure a full-time victim-witness coordinator in each county. The office may retain only the amount currently allocated for this activity for administrative costs.

(60) $75,000 of the public safety and education account appropriation for fiscal year 2009 is provided solely for the update of statewide sexual assault victim assistance protocols through a coordinated effort led by the Washington coalition of sexual assault programs.

(61) $2,500,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the transitional housing operating and rent program.

The department shall continue to fund these services and funding shall not be reduced.

(((~~(63)~~))) (62) $344,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the Washington New Americans program to provide naturalization assistance for legal permanent residents who are eligible to become citizens. The department shall conduct a competitive process to contract with an entity to provide this assistance, which shall include, but is not limited to: Curriculum design, counseling, outreach to immigrant communities, application processing and legal screening, and citizenship preparation services. The state funding is contingent upon receipt, by the contractor(s) of at least a twenty-five percent match of nonstate funding. The department and the contractor(s) shall develop performance measures for the program and within sixty days of the close of each fiscal year for which state funding is provided, shall report to the governor and the legislature on the outcome of the program and the performance measures. The department may retain up to five percent of the funds provided in this subsection to administer the competitive process and the contract. It is the intent of the legislature that $2,000,000 be provided in the 2009-11 fiscal biennium to conclude this program.

(((~~(64)~~))) (63) $40,000 of the general fund—state appropriation for fiscal year 2008 and $40,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for distribution to the Island county associate development organization and is contingent upon the enactment of, and provides specific funding for, Substitute Senate Bill No. 6195 (definition of rural county for economic development purposes). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

(((~~(65) $150,000~~))) (64) $40,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of sections 1 through 7 of Engrossed Second Substitute Senate Bill No. 6111 (tidal and wave energy). If these sections of this bill are not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(66)~~))) (65) $41,000 of the building code council account—state appropriation is provided solely for implementation of Substitute House Bill No. 2575 (fire sprinkler systems). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(67) $100,000~~))) (66) $37,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Engrossed Second Substitute House Bill No. 2712 (criminal street gangs). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(68)~~))) (67) $207,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Engrossed Second Substitute House Bill No. 2815 (greenhouse gas emissions). The amount provided in this subsection includes $50,000 for the analysis under section 9(3)(b) of the bill. If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(69) $50,000~~))) (68) $25,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for Substitute House Bill No. 3120 (construction tax incentive). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

((~~(70)~~)) (69) $350,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for Second Substitute Senate Bill No. 6483 (local farms and healthy kids). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

((~~(71)~~)) (70) $134,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for Engrossed Second Substitute House Bill No. 2844 (urban forestry). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

((~~(72)~~)) (71) $250,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for a grant to the Lucy Lopez center for "the good citizen" bilingual radio programming pilot project.

((~~(73)~~)) (72) $400,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for a grant to the pacific science center to support the "Lucy of Laetoli" exhibit.

((~~(74)~~)) (73) $100,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for a grant to the local organizing committee of 2008 Skate America to support the international skating union grand prix series at the Everett events center in October, 2008.

((~~(75)~~)) (74) $225,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for development of the Lewis county watershed planning and economic development demonstration project. The purpose of the project is to identify lands and resources suitable for economic development within Lewis county and outside of the floodplains of Chehalis and Cowlitz river watersheds. It is the intent of the legislature that $725,000 to complete this project will be provided in the 2009-11 fiscal biennium.

(a) Of this amount, the department shall provide $75,000 each to the department of fish and wildlife and the department of ecology to develop a watershed characterization and to conduct a local habitat assessment, develop recommendations, and provide technical assistance in support of a demonstration watershed planning and economic development project in Lewis county.

(b) $75,000 of the amount provided in this subsection is provided solely for a grant to Lewis county to fund development of a subarea plan, consistent with the provisions of chapter 36.70A RCW, for rural economic development that is based on the watershed characterization and local habitat assessment funded in (a) of this subsection. The department may retain no more than thirty percent for grant administration and technical assistance.

(c) The subarea plan to be funded shall be developed by a broad-based local stakeholder group with state agency technical assistance, and shall include the following:

(i) Defined area or areas for future economic development outside the 100-year floodplain. Areas planned for economic development requiring urban levels of service must be designated on the land use map as an urban growth area consistent with RCW 36.70A.110;

(ii) Defined area or areas of designated agricultural, forestry, wildlife habitat, and other critical area lands;

(iii) Mechanisms to achieve long-term conservation of important aquatic and terrestrial resources in the subarea;

(iv) Defined mitigation and restoration areas;

(v) Identification of capital facility improvements needed to implement the plan, and a plan to finance such capital facilities within projected funding capacities;

(vi) Discussion of the relationship between the plan and other existing, adopted plans and regulations including but not limited to county and city comprehensive plans, as appropriate, critical areas and shoreline regulations, transportation, salmon recovery, watershed, and water resource inventory area plans;

(vii) A plan for monitoring and adaptive management; and

(viii) Adoption by the local government affected as an amendment to its comprehensive plan pursuant to chapter 36.70A RCW, after review and recommendations on the plan by a broad-based local stakeholder group.

((~~(77)~~)) (75) $306,000 of the manufacturing innovation and modernization account—state appropriation is provided solely to implement Substitute Senate Bill No. 6510 (manufacturing extension services). $75,000 of this amount shall be to develop a rural manufacturer export outreach program in collaboration with the small business export finance assistance center and to contract with the center to provide outreach services to rural manufacturing businesses in Washington to inform them of the importance of, and opportunities in, international trade and to inform them of the export assistance programs available to assist these businesses to become exporters. If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

((~~(79) $200,000~~)) (76) $150,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for a grant to HistoryLink to develop Alaska-Yukon-Pacific exposition commemoration exhibits and programs.

((~~(80) $126,000~~)) (77) $76,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Engrossed House Bill No. 3142 (rapid response loan program). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

((~~(81)~~)) (78) $100,000 of the prostitution prevention and intervention account—nonappropriated is for distribution as grants by the office of crime victims advocacy. The grants shall be prioritized to law enforcement training including law enforcement training regarding the availability of services for minors under chapter 13.32A RCW, community outreach and education and treatment and services to address the problems of minors who have a history of engaging in sexual conduct for a fee or who are victims of commercial sexual abuse of a minor or both, including but not limited to mental health and chemical dependency services, parenting services, housing assistance, education and vocational training, or intensive case management services.

((~~(82)~~)) (79) $5,000 of the general fund—state appropriation for fiscal year 2008 and $20,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a grant for tourism promotion in Keystone.

((~~(83)~~)) (80) $5,000 of the general fund—state appropriation for fiscal year 2008 and $20,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a grant for tourism promotion in Port Townsend.

((~~(85)~~)) (81) $317,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to implement Engrossed Substitute Senate Bill No. 6580 (climate change), including sections 2 and 3 of the bill. If the bill and

sections 2 and 3 are not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(82) In addition to other reductions, the reduced appropriations in this section reflect an additional $556,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 127. 2008 c 329 s 126 (uncodified) is amended to read as follows:

FOR THE ECONOMIC AND REVENUE FORECAST COUNCIL

General Fund—State Appropriation (FY 2008) $726,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$827,000~~))
$805,000
TOTAL APPROPRIATION . . . . . ((~~$1,553,000~~))
$1,531,000

The appropriations in this section are subject to the following conditions and limitations: The economic and revenue forecast council, in its quarterly revenue forecasts, shall forecast the total revenue for the state general fund and near general fund, as those funds are determined by the legislative evaluation and accountability program committee.

Sec. 128. 2008 c 329 s 127 (uncodified) is amended to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT

General Fund—State Appropriation (FY 2008) $24,110,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$35,290,000~~))
$33,485,000
General Fund—Federal Appropriation $23,934,000
General Fund—Private/Local Appropriation $1,269,000
State Auditing Services Revolving Account—State
Appropriation. $25,000
Violence Reduction and Drug Enforcement Account—
State Appropriation (FY 2008) $123,000
((~~Violence Reduction and Drug Enforcement Account—~~
~~State Appropriation (FY 2009)~~ . . . . . ~~$123,000~~))
Economic Development Strategic Reserve Account—
State Appropriation $175,000
TOTAL APPROPRIATION . . . . . ((~~$85,049,000~~))
$83,121,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $33,000 of the general fund—state appropriation for fiscal year 2008 and $58,000 of the general fund—state appropriation for fiscal year 2009 are provided for a contract with the Ruckelshaus center to continue the agricultural pilot programs that identify projects to enhance farm income and improve natural resource protection. Specific work will include project outreach and refinement, stakeholder support, staffing the oversight committee, seeking federal and private match funding, and further refining the list of projects to be recommended for funding.

(2) $155,000 of the general fund—state appropriation for fiscal year 2008 and $254,000 of the general fund—state appropriation for fiscal year 2009 are provided for a contract with the Ruckelshaus center to fund "proof-of-concept" model and projects recommended by the oversight committee, as provided in subsection (1) of this section.

(3) $580,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$580,000~~)) $505,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to the association of Washington cities and the Washington state association of counties for improving project permitting and mitigation processes.

(4) $320,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$320,000~~)) $270,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the office of regulatory assistance to develop statewide multiagency permits for transportation infrastructure and other projects that integrate local, state, and federal permit requirements and mitigation standards.

(5) $1,050,000 of the general fund—state appropriation for fiscal year 2008 and $1,050,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement Second Substitute Senate Bill No. 5122 (regulatory assistance programs). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(6) $190,000 of the general fund—state appropriation for fiscal year 2008 and $90,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement chapter 139, Laws of 2007 (student transportation funding) which requires development of two options for a new K-12 pupil transportation funding formula.

(7) $175,000 of the general fund—state appropriation for fiscal year 2008 ((~~and $175,000 of the general fund—state appropriation for fiscal year 2009 are~~)) is provided solely for financial assistance to local government agencies in counties representing populations of fewer than 350,000 residents for the acquisition and development of streamlined permitting technology infrastructure through an integrated business portal approach. Grant awards may not exceed $100,000 per local government agency per fiscal year. The funding must be used to acquire and implement permit tracking systems that can support and are compatible with a multijurisdictional, integrated approach. Prior to granting funds, the office of regulatory assistance shall ensure that the proposed systems and technology are based on open-industry standards, allow for future integration of processes and sharing of data, and are extendable.

(8) $474,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$831,000~~)) $331,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of sections 50 through 57 (health resources strategy) of Engrossed Second Substitute Senate Bill No. 5930 (blue ribbon commission on health care). If the bill is not enacted by June 2007, the amounts provided in this subsection shall lapse.

(9) $300,000 of the general fund—state appropriation for fiscal year 2008 ((~~and $54,000 of the general fund—state appropriation for fiscal year 2009 are~~)) is provided solely to implement section 3 of Substitute Senate Bill No. 5248 (preserving the viability of agricultural lands). Funds are provided for a contract with the Ruckelshaus center to examine conflicts between agriculture activities

and critical areas ordinances. If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(10) The education data center within the office of financial management may convene a work group to assess the feasibility, costs, and benefits of a higher education data system that uses privacy-protected student-level data.

(((~~(13)~~))) (11) $250,000 of the general fund—state appropriation for fiscal year 2008 ((~~and $250,000 of the general fund—state appropriation for fiscal year 2009 are~~)) is provided solely for the office of financial management to establish and provide staff support for the Washington citizens' work group on health care reform, pursuant to Engrossed Substitute Senate Bill No. 6333.

(((~~(14)~~))) (12) $11,372,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the development and implementation of the Washington assessment of student learning (WASL) and related activities and is in addition to the funding amounts provided in section 511 of this act. The funding provided in this subsection is subject to the following conditions and limitations: The office of financial management shall develop an interagency agreement with the office of the superintendent of public instruction for the expenditure of these funds based on a quarterly allotment schedule. Before releasing funds to the office of the superintendent of public instruction each quarter, the office of financial management shall ensure compliance with this subsection. Effective with the 2009 administration of the Washington assessment of student learning, while maintaining the reliability and validity of the assessment, the office of the superintendent of public instruction shall redesign the assessment in the content areas of reading, mathematics, and science in all grades except high school by shortening test administration, reducing the number of short answer and extended response questions, and potentially decreasing the number of items utilized in the assessment, particularly in grades tested under the requirements of the federal no child left behind act. In selecting and developing the new contractual obligations for the assessment contractor beginning in fiscal year 2009, the office of the superintendent of public instruction shall preserve legislative authority to set the student learning assessment policy and potentially make minor or significant changes to that policy in the future with the least amount of adverse fiscal and other impacts to the state as possible. In doing this, the office of the superintendent of public instruction shall advise and consult with the appropriate policy and fiscal committees of the legislature and the Washington assessment of student learning work group created in this subsection. Within the amounts appropriated in this subsection, a legislative work group on the Washington assessment of student learning is established. The work group will consist of a maximum of nine members. Legislative members shall be appointed by the president of the senate and the speaker of the house of representatives and shall represent the two largest caucuses of both the senate and the house of representatives. The purpose of this work group is to review and evaluate the current assessment system by January 1, 2009, and potentially make recommendations to improve it. Of the amount provided in this section, $150,000 is provided solely for costs associated with hiring independent technical experts to advise the Washington assessment of student learning work group created in this subsection.

(((~~(15)~~))) (13) Through prior legislation, many state activities that protect the general public by safeguarding health, safety, employees, and consumers are supported by fees assessed on items such as licensing, registration, certification, and inspections. Moreover, higher education, workforce training, and a number of other government services are supported at least in part by fees assessed on those who participate in these programs. Therefore, the office of financial management shall conduct a review and analysis of all fees for which the legislature has delegated to state agencies and institutions of higher education the ability to establish and determine the amount, either upon initial establishment or subsequent increases. Fees, as used in this subsection, has the same meaning as used in RCW 43.135.055. The objective of the review and analysis is to document the level of fees paid over the past five years, the cost of those programs over that same time period, and, to the extent available, the effectiveness of the activity in meeting its performance targets. The review and analysis shall include the following information:

(a) Information about the program, including the statutory authority for the program, date enacted, and the parties that benefit from the program; and

(b) Information about the program fees, including name and description of the fees, the parties that bear the cost of the fees, the methodology for determining the fees, and whether the fees directly fund the program; and

(c) Financial related information, including an assessment of the program's fee amount assessed over the past five years, the scope of the program and related costs over the past 5 years, and whether the program's expenditures are subject to appropriation or allotment procedures under chapter 43.88 RCW; and

(d) To the extent available, information on the program activities and related performance measures that may assist in assessing the effectiveness of the program in achieving its goals.

The office of financial management shall report its findings to the governor and the fiscal committees of the legislature by October 1, 2008.

(14) In addition to other reductions, the reduced appropriations in this section reflect an additional $305,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 129. 2008 c 329 s 128 (uncodified) is amended to read as follows:

FOR THE OFFICE OF ADMINISTRATIVE HEARINGS

Administrative Hearings Revolving Account—State Appropriation. . . . . ((~~$32,703,000~~)) $32,702,000

Sec. 130. 2008 c 329 s 129 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF PERSONNEL

General Fund—State Appropriation (FY 2008) $96,000

Department of Personnel Service Account—State Appropriation. . . . . ((~~$23,618,000~~)) $23,587,000

Higher Education Personnel Services Account—State
Appropriation. . . . . ((~~$1,780,000~~))
$1,776,000
TOTAL APPROPRIATION . . . . . ((~~$25,494,000~~))
$25,459,000

The appropriations in this section are subject to the following conditions and limitations: The department shall coordinate with the governor's office of Indian affairs on providing the government-to-government training sessions for federal, state, local, and tribal government employees. The training sessions shall cover tribal historical perspectives, legal issues, tribal sovereignty, and tribal governments. Costs of the training sessions shall be recouped through a fee charged to the participants of each session. The department shall be responsible for all of the administrative aspects of the training, including the billing and collection of the fees for the training.

Sec. 131. 2008 c 329 s 130 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE LOTTERY
Lottery Administrative Account—State
Appropriation. . . . . ((~~$26,086,000~~))
$26,075,000

The appropriation in this section is subject to the following conditions and limitations: The appropriation in this section may not be expended by the Washington state lottery for any purpose associated with a lottery game offered through any interactive electronic device, including the internet.

Sec. 132. 2008 c 329 s 131 (uncodified) is amended to read as follows:

FOR THE COMMISSION ON HISPANIC AFFAIRS
General Fund—State Appropriation (FY 2008) $261,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$422,000~~))
$417,000
TOTAL APPROPRIATION . . . . . ((~~$683,000~~))
$678,000

The appropriations in this section are subject to the following conditions and limitations: $150,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the commission to engage a contractor to conduct a detailed analysis of the achievement gap for Hispanic students; recommend a comprehensive plan for closing the achievement gap pursuant to goals under the federal no child left behind act for all groups of students to meet academic standards by 2014; and identify performance measures to monitor adequate yearly progress. The contractor shall conduct the analysis starting with the call to action paper by the multi-ethnic think tank and as guided by the Latino/a educational achievement project and other appropriate groups. The contractor shall submit a study update by September 15, 2008, and submit a final report by December 30, 2008, to the governor, the superintendent of public instruction, the state board of education, the P-20 council, the basic education finance task force, and the education committees of the legislature.

Sec. 133. 2008 c 329 s 132 (uncodified) is amended to read as follows:

FOR THE COMMISSION ON AFRICAN-AMERICAN AFFAIRS

General Fund—State Appropriation (FY 2008) $257,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$262,000~~))
$257,000
TOTAL APPROPRIATION . . . . . ((~~$519,000~~))
$514,000

Sec. 134. 2008 c 329 s 133 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF RETIREMENT SYSTEMS—OPERATIONS

General Fund—State Appropriation (FY 2008) $200,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$250,000~~))
$103,000
Dependent Care Administrative Account—State Appropriation $237,000
Department of Retirement Systems Expense Account—State Appropriation . . . . . ((~~$48,556,000~~))
$48,419,000
TOTAL APPROPRIATION . . . . . ((~~$49,243,000~~))
$48,959,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $15,000 of the department of retirement systems expense account appropriation is provided solely to implement Substitute House Bill No. 1261 (duty disability service credit). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(2) $43,000 of the department of retirement systems expense account appropriation is provided solely to implement House Bill No. 1680 (emergency medical technician service credit). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(3) $72,000 of the department of retirement systems expense account appropriation is provided solely to implement Engrossed Substitute House Bill No. 1649 (judges' past service credit purchases). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(4) $33,000 of the department of retirement systems expense account appropriation is provided solely to implement Substitute House Bill No. 1262 (plan 1 post retirement employment). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(5) $315,000 of the department of retirement systems expense account appropriation is provided solely to implement Engrossed House Bill No. 2391 (gainsharing revisions). If neither bill is enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(6) $12,000 of the department of retirement systems expense account—state appropriation is provided solely to implement Senate Bill No. 5014 (contribution rates). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(7) $17,000 of the department of retirement systems expense account—state appropriation is provided solely to implement Senate Bill No. 5175 (retirement

annual increases). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(8) $200,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$250,000~~)) $126,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to design a plan for the operation of a universal voluntary retirement accounts program, and then seek approval from the federal internal revenue service to offer the plan to workers and employers in Washington on a tax qualified basis. Features of Washington voluntary retirement accounts plan include a defined contribution plan with a limited pre-selected menu of investment options, administration by the department of retirement systems, investment oversight by the state investment board, tax-deferred payroll deductions, retirement account portability between jobs, and a two-tier system with workplace based individual retirement accounts open to all workers, and a deferred compensation 401(k)-type program or SIMPLE IRA-type program open to all employers who choose to participate for their employees. As part of this process, the director shall consult with the department of financial institutions, the state investment board, private sector retirement plan administrators and providers and other relevant sectors of the financial services industry, organizations promoting increased economic opportunities for individuals, employers, workers, and any other individuals or entities that the director determines relevant to the development of an effective and efficient method for implementing and operating the program. As part of this process, the director shall evaluate the most efficient methods for providing this service and ways to avoid competition with existing private sector vehicles. The director shall undertake the legal and development work to determine how to implement a universal voluntary retirement accounts program, managed through the department of retirement systems directly or by contract. By December 1, 2008, the director shall report to the legislature on the program's design and any required changes to state law that are necessary to implement the program.

(9) $81,000 of the department of retirement systems expense account—state appropriation is provided solely for implementation of Engrossed House Bill No. 2887 (judges' service credit purchases). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(10) $51,000 of the department of retirement systems expense account—state appropriation is provided solely for implementation of House Bill No. 3019 (partial year service credit for school district employees). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(11) $40,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to contract with a skilled facilitator to mediate discussions to identify and document all outstanding issues related to the funding of retiree medical benefits in the law enforcement officers' and fire fighters' retirement system plan 1 and for staff resources to be used to conduct research in support of this effort. The stakeholder group shall include representatives of retired members of the law enforcement officers' and fire fighters' retirement system plan 1, local government employers, the department of retirement systems, and other groups as deemed necessary by the director of the department of retirement systems.

(12) In addition to other reductions, the reduced appropriations in this section reflect an additional $23,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 135. 2008 c 329 s 134 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF REVENUE

General Fund—State Appropriation (FY 2008) $98,150,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$105,951,000~~))
$103,003,000
Timber Tax Distribution Account—State Appropriation $5,788,000
Waste Reduction/Recycling/Litter Control—State Appropriation $128,000
Waste Tire Removal Account—State Appropriation $2,000
Real Estate Excise Tax Grant Account—State Appropriation . . . . . ((~~$3,900,000~~))
$3,000,000
State Toxics Control Account—State Appropriation $87,000
Oil Spill Prevention Account—State Appropriation $16,000
Pension Funding Stabilization Account Appropriation $2,370,000
TOTAL APPROPRIATION . . . . . ((~~$216,392,000~~))
$212,544,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $95,000 of the general fund—state appropriation for fiscal year 2008 and $71,000 of the general fund—state appropriation for fiscal year 2009 are for the implementation of Substitute House Bill No. 1002 (taxation of vessels). If the bill is not enacted by June 30, 2007, the amounts in this subsection shall lapse.

(2) $31,000 of the general fund—state appropriation for fiscal year 2008 is for the implementation of Substitute House Bill No. 1891 (prescription drugs). If the bill is not enacted by June 30, 2007, the amount in this subsection shall lapse.

(3)(a) $50,000 of the general fund—state appropriation for fiscal year 2008 and $25,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to conduct a study of the taxation of electronically delivered products. The legislature recognizes that chapter . . . (Engrossed Substitute House Bill No. 1981), Laws of 2007, relates to specific types of electronically delivered products and does not address the taxation of numerous other types of electronically delivered products. Therefore, a policy question remains concerning the sales and use taxation of other electronically delivered products.

(b)(i) To perform the study, the department of revenue shall be assisted by a committee. The committee shall include four legislative members appointed as follows:

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

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

(ii) The department of revenue shall appoint additional members with balanced representation from different segments of government and industry, and shall consider representation from the following areas: Small and large businesses that generate, deliver, or use electronically delivered products; financial institutions; insurers; persons with expertise in tax law in an academic or private sector setting; and persons experienced in working with computers and electronically delivered products. The department of revenue shall appoint additional members from the department with expertise in the excise taxation of electronically delivered products.

(iii) The committee shall choose its chair from among its membership.

(iv) The department and committee shall review the following issues: The provision of explicit statutory definitions for electronically delivered products; the current excise tax treatment of electronically delivered products in the state of Washington and other states as well as the tax treatment of these products under the streamlined sales and use tax agreement; the administration, costs, and potential recipients of the tax exemptions provided in chapter . . . (Engrossed Substitute House Bill No. 1981), Laws of 2007; and alternatives to the excise taxation of electronically delivered products.

(v) Legislative members of the committee are reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members of the committee, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(c) The department shall report its preliminary findings and recommendations to the appropriate fiscal committees of the legislature by November 30, 2007. The department shall provide the final report of its findings and recommendations to the appropriate fiscal committees of the legislature by September 1, 2008.

(4) ((~~$1,250,000~~)) $250,000 of the general fund—state appropriation for fiscal year 2009 is for the implementation of Engrossed Substitute Senate Bill No. 6809 (working families tax exemption). If the bill is not enacted by June 30, 2008, the amounts in this subsection shall lapse. This subsection does not constitute approval of the exemption under section 2, chapter . . . (ESSB 6809), Laws of 2008 or authorize payments of remittances.

(5) $22,000 of the general fund—state appropriation for fiscal year 2009 is for the implementation of Second Substitute House Bill No. 3104 (domestic partnerships). If the bill is not enacted by June 30, 2008, the amounts in this subsection shall lapse.

(6) In addition to other reductions, the reduced appropriations in this section reflect an additional $214,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 136. 2008 c 329 s 135 (uncodified) is amended to read as follows:

FOR THE STATE INVESTMENT BOARD

State Investment Board Expense Account—State Appropriation. . . . . ((~~$24,333,000~~)) $24,332,000

The appropriation in this section is subject to the following conditions and limitations:

(1) $2,500,000 of the state investment board expense account—state appropriation is provided solely for development of an investment data warehouse. This funding is intended to replace existing funding from nonbudgeted funds, with the intent that further expenditures for this project be made only by appropriation.

(2) $1,791,000 of the state investment board expense account is for compensation and incentives for investment officers. Of this amount, $852,000 is provided solely for implementation of Substitute House Bill No. 3149 (state investment board personnel compensation). The state investment board shall include funding for any future salary increases authorized under RCW 43.33A.100 in the agency's budget request submitted in accordance with chapter 43.88 RCW in advance of granting related salary increases. The biennial salary survey required under RCW 43.33A.100 shall also be provided to the office of financial management and to the fiscal committees of the legislature as part of the state investment board's biennial budget submittal.

Sec. 137. 2008 c 329 s 136 (uncodified) is amended to read as follows:

FOR THE BOARD OF TAX APPEALS

General Fund—State Appropriation (FY 2008) $1,502,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$1,354,000~~)) $1,343,000
TOTAL APPROPRIATION . . . . . ((~~$2,856,000~~)) $2,845,000

Sec. 138. 2008 c 329 s 137 (uncodified) is amended to read as follows:

FOR THE MUNICIPAL RESEARCH COUNCIL

County Research Services Account—State Appropriation $847,000
City and Town Research Services—State Appropriation. . . . . ((~~$4,458,000~~)) $4,457,000
General Fund—State Appropriation (FY 2008) $200,000
General Fund—State Appropriation (FY 2009) $225,000
TOTAL APPROPRIATION . . . . . ((~~$5,730,000~~)) $5,729,000

The appropriations in this section are subject to the following conditions and limitations: $25,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Substitute House Bill No. 3274 (port district contracting). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

Sec. 139. 2008 c 329 s 138 (uncodified) is amended to read as follows:

FOR THE OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

OMWBE Enterprises Account—State Appropriation . . . . . ((~~$3,615,000~~)) $3,614,000

The appropriation((~~s~~)) in this section ((~~are~~)) is subject to the following conditions and limitations: $19,000 of the OMWBE enterprise account—state appropriation is provided solely to implement Engrossed Substitute House Bill No. 1512 (linked deposit program).

Sec. 140. 2008 c 329 s 139 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF GENERAL ADMINISTRATION

General Fund—State Appropriation (FY 2008) $591,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$590,000~~)) $557,000
General Fund—Federal Appropriation $3,651,000
General Administration Service Account—State Appropriation. . . . . ((~~$36,929,000~~)) $36,893,000
TOTAL APPROPRIATION . . . . . ((~~$41,761,000~~)) $41,692,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $100,000 of the general fund—state appropriation for fiscal year 2008 and $100,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the temporary emergency food assistance program.

(2) Within the appropriations in this section, specific funding is provided to implement Second Substitute House Bill No. 1332 (affordable housing).

(3) $391,000 of the general administration services account—state appropriation for fiscal year 2009 is provided solely for implementation of costs associated with the planning of agency moves out of the general administration building.

(4) The department shall work with the office of financial management to develop a plan that balances revenues and expenditures for each line of business within the general administration services account. State agency rates developed for the 2009-2011 biennium must equitably and reasonably reflect the actual cost of services provided to state agencies including the appropriate allocation of agency overhead costs. By August 31, 2008, the department shall submit to the office of financial management and the fiscal committees of the legislature financial statements for each line of business that shall inform the basis for agency rate development for the forthcoming biennium.

(5) The department shall submit a report to the office of financial management and the fiscal committees of the legislature that responds to each of the state auditor's motor pool audit recommendations by August 31, 2008. This report shall consist of recommendations that have been adopted by the department, progress made towards achieving those recommendations not yet completed, and justification for why the department is unable to fulfill any of the recommendations in the report.

Sec. 141. 2008 c 329 s 140 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF INFORMATION SERVICES

General Fund—State Appropriation (FY 2008) $2,762,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$4,623,000~~))
$3,416,000
General Fund—Federal Appropriation $1,920,000
Public Safety and Education Account—State
Appropriation (FY 2008) $695,000
Public Safety and Education Account—State
Appropriation (FY 2009) $698,000
Data Processing Revolving Account—State
Appropriation $6,377,000
TOTAL APPROPRIATION . . . . . ((~~$17,075,000~~))
$15,868,000

The appropriations in this section are subject to the following conditions and limitations:

(1) ((~~$2,340,000~~)) $1,500,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to connect eastern state hospital to the integrated hospital information system, which is intended to improve operations and allow greater interactions between the hospital and community clinics, including electronic transmission of inpatient data to outpatient clinics that will provide care following discharge. Connection to this network will allow consultation with specialists and provide access to training for staff. Prior to any purchase of goods or services, a feasibility plan must be approved by the information services board.

(2) ((~~$1,250,000~~)) $1,151,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to support the operations of the digital learning commons.

(3) $1,012,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$338,000~~)) $200,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for an evaluation of the information technology infrastructure capacity for institutions operated by the department of social and health services, department of veterans affairs, and department of corrections. The evaluation will detail the status of the participating institutions' infrastructure and recommend an improvement strategy that includes the use of electronic medical records. The department shall report back to the appropriate committees of the legislature on its findings by January 1, 2009.

(4) $250,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$250,000~~)) $120,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for deposit into the data processing revolving account.

(5) $195,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Engrossed Second Substitute Senate Bill No. 6438 (internet deployment/adoption), including sections 1 through 5 of the bill. If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

Sec. 142. 2008 c 329 s 141 (uncodified) is amended to read as follows:

FOR THE INSURANCE COMMISSIONER

General Fund—Federal Appropriation $1,564,000

Insurance Commissioners Regulatory Account—State Appropriation. . . . . ((~~$45,442,000~~)) $45,404,000

TOTAL APPROPRIATION . . . . . ((~~$47,006,000~~)) $46,968,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $464,000 of the insurance commissioners regulatory account—state appropriation is provided solely for implementation of Engrossed Substitute Senate Bill No. 5717 (market conduct oversight). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(2) $71,000 of the insurance commissioners regulatory account—state appropriation is provided solely for the implementation of section 17 (reduce health care administrative costs) in accordance with Senate Bill No. 5930 (blue ribbon commission on health care). If the section is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(3) $286,000 of the insurance commissioner's regulatory account—state appropriation for fiscal year 2009 is provided solely for the insurance commissioner to convene a work group of health care providers, carriers, and payers, to identify and develop strategies to achieve savings through streamlining administrative requirements and procedures, as recommended in the report submitted pursuant to section 17, chapter 259, Laws of 2007. By December 1, 2008, the commissioner shall submit a report to the governor and the legislature that identifies the five highest priority goals for achieving significant efficiencies and reducing health care administrative costs, and a plan to accomplish these goals.

Sec. 143. 2008 c 329 s 142 (uncodified) is amended to read as follows:

FOR THE BOARD OF ACCOUNTANCY

Certified Public Accountants' Account—State Appropriation. . . . . ((~~$2,575,000~~)) $2,574,000

Sec. 144. 2008 c 329 s 143 (uncodified) is amended to read as follows:

FOR THE HORSE RACING COMMISSION

Horse Racing Commission Operating Account—State Appropriation. . . . . ((~~$5,441,000~~)) $5,387,000

The appropriation in this section is subject to the following conditions and limitations: During the 2007-2009 fiscal biennium, the commission may increase license fees in excess of the fiscal growth factor as provided in RCW 43.135.055.

Sec. 145. 2008 c 329 s 144 (uncodified) is amended to read as follows:

FOR THE LIQUOR CONTROL BOARD

General Fund—State Appropriation (FY 2008) $1,910,000

((~~General Fund—State Appropriation (FY 2009)~~. . . . . ~~$1,912,000~~))
Liquor Control Board Construction and Maintenance
Account—State Appropriation $13,430,000
Liquor Revolving Account—State Appropriation . . . . . ((~~$194,799,000~~))
$194,556,000
TOTAL APPROPRIATION . . . . . ((~~$212,051,000~~))
$209,896,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $91,000 of the liquor revolving account—state appropriation is provided solely for the implementation of Engrossed Second Substitute Senate Bill No. 5859 (retail liquor licenses). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(2) $2,070,000 of the liquor revolving account—state appropriation is provided solely for the liquor control board to operate an additional 29 state stores on Sundays by September 1, 2007. The board shall determine the impacts on sales as a result of operating the additional stores on Sunday. In doing so, the liquor control board shall also examine the sales of state and contract liquor stores in proximity to those stores opened on Sundays to determine whether Sunday openings have reduced the sales of other state and contract liquor stores that are not open on Sundays. The board shall present this information to the appropriate policy and fiscal committees of the legislature by January 31, 2009.

Sec. 146. 2008 c 329 s 145 (uncodified) is amended to read as follows:

FOR THE BOARD FOR VOLUNTEER FIREFIGHTERS
Volunteer Firefighters' and Reserve Officers'
Administrative Account—State Appropriation . . . . . ((~~$1,042,000~~))
$1,041,000

The appropriation in this section is subject to the following conditions and limitations: $9,000 of the volunteer firefighters' and reserve officers' administrative account appropriation is provided solely to implement House Bill No. 1475 (additional board members). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

Sec. 147. 2008 c 329 s 146 (uncodified) is amended to read as follows:

FOR THE UTILITIES AND TRANSPORTATION COMMISSION
General Fund—State Appropriation (FY 2008) $160,000
Public Service Revolving Account—State
Appropriation . . . . . ((~~$31,118,000~~))
$31,071,000
Pipeline Safety Account—State Appropriation . . . . . ((~~$3,167,000~~))
$3,163,000
Pipeline Safety Account—Federal Appropriation . . . . . ((~~$1,535,000~~))
$1,533,000
TOTAL APPROPRIATION . . . . . ((~~$35,980,000~~))
$35,927,000

The appropriations in this section are subject to the following conditions and limitations:

(1) In accordance with RCW 81.66.030, it is the policy of the state of Washington that the costs of regulating the companies transporting persons with special needs shall be borne by those companies. For each company or class of companies covered by RCW 81.66.030, the commission shall set fees at levels sufficient to fully cover the cost of supervising and regulating the companies or classes of companies. Pursuant to RCW 43.135.055, during the 2007-2009 fiscal biennium, the commission may increase fees in excess of the fiscal growth factor if the increases are necessary to fully fund the cost of supervision and regulation.

(2) In accordance with RCW 81.70.350, it is the policy of the state of Washington that the cost of regulating charter party carrier and excursion service carriers shall be borne by those entities. For each charter party carrier and excursion service carrier covered by RCW 81.70.350, the commission shall set fees at levels sufficient to fully cover the cost of supervising and regulating such carriers. Pursuant to RCW 43.135.055, during the 2007-2009 fiscal biennium, the commission may increase fees in excess of the fiscal growth factor if the increases are necessary to fully fund the cost of the program's supervision and regulation.

(3) The general fund—state appropriation for fiscal year 2008 is provided solely to conduct a survey to identify factors preventing the widespread availability and use of broadband technologies. The survey must collect and interpret reliable geographic, demographic, cultural, and telecommunications technology information to identify broadband disparities in the state. The commission shall consult appropriate stakeholders in designing the survey. The names and identification data of any person, household, or business participating in the survey are exempt from public disclosure under chapter 42.56 RCW. The commission shall report its finding to the appropriate legislative committees by December 31, 2007.

Sec. 148. 2008 c 329 s 147 (uncodified) is amended to read as follows:

FOR THE MILITARY DEPARTMENT

General Fund—State Appropriation (FY 2008) $12,430,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$13,195,000~~))
$11,353,000
General Fund—Federal Appropriation . . . . . ((~~$129,336,000~~))
$129,334,000
General Fund—Private/Local Appropriation $2,000
Enhanced 911 Account—State Appropriation $42,293,000
Disaster Response Account—State Appropriation $24,454,000
Disaster Response Account—Federal Appropriation $86,757,000
Military Department Rent and Lease Account—State Appropriation $814,000
Worker and Community Right-to-Know Account—State Appropriation $337,000
Nisqually Earthquake Account—State Appropriation $556,000
Nisqually Earthquake Account—Federal Appropriation $1,269,000
TOTAL APPROPRIATION . . . . . ((~~$311,443,000~~))
$309,599,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $24,454,000 of the disaster response account—state appropriation and $86,757,000 of the disaster response account—federal appropriation may be spent only on disasters declared by the governor and with the approval of the office of financial management. The military department shall submit a report quarterly to the office of financial management and the legislative fiscal committees detailing information on the disaster response account, including: (a) The amount and type of deposits into the account; (b) the current available fund balance as of the reporting date; and (c) the projected fund balance at the end of the 2007-2009 biennium based on current revenue and expenditure patterns.

(2) $556,000 of the Nisqually earthquake account—state appropriation and $1,269,000 of the Nisqually earthquake account—federal appropriation are provided solely for response and recovery costs associated with the February 28, 2001, earthquake. The military department shall submit a report quarterly to the office of financial management and the legislative fiscal committees detailing earthquake recovery costs, including: (a) Estimates of total costs; (b) incremental changes from the previous estimate; (c) actual expenditures; (d) estimates of total remaining costs to be paid; and (e) estimates of future payments by biennium. This information shall be displayed by fund, by type of assistance, and by amount paid on behalf of state agencies or local organizations. The military department shall also submit a report quarterly to the office of financial management and the legislative fiscal committees detailing information on the Nisqually earthquake account, including: (a) The amount and type of deposits into the account; (b) the current available fund balance as of the reporting date; and (c) the projected fund balance at the end of the 2007-2009 biennium based on current revenue and expenditure patterns.

(3) $61,000,000 of the general fund—federal appropriation is provided solely for homeland security, subject to the following conditions:

(a) Any communications equipment purchased by local jurisdictions or state agencies shall be consistent with standards set by the Washington state interoperability executive committee;

(b) This amount shall not be allotted until a spending plan is reviewed by the governor's domestic security advisory group and approved by the office of financial management;

(c) The department shall submit a quarterly report to the office of financial management and the legislative fiscal committees detailing the governor's domestic security advisory group recommendations; homeland security revenues and expenditures, including estimates of total federal funding for the state; incremental changes from the previous estimate, planned and actual homeland security expenditures by the state and local governments with this federal funding; and matching or accompanying state or local expenditures; and

(d) The department shall submit a report by December 1st of each year to the office of financial management and the legislative fiscal committees detailing homeland security revenues and expenditures for the previous fiscal year by county and legislative district.

(4) Within the funds appropriated in this section, the department shall implement Substitute House Bill No. 1507 (uniformed service shared leave).

(5) $1,000,000 of the general fund—state appropriation for fiscal year 2008 and $1,000,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the military department to contract with the Washington information network 2-1-1 to operate a statewide 2-1-1 system. The department shall provide the entire amount for 2-1-1 and shall not take any of the funds for administrative purposes.

(6) $200,000 of the enhanced 911 account—state appropriation is provided solely for the department to recommend an appropriate funding mechanism for the implementation of next generation 911. The department shall consult with the utilities and transportation commission, the department of revenue, local governments, and representatives from companies providing telecommunications services in order to complete the report required under this subsection. The department may also consult with other public safety and medical associations in order to complete the study. The department shall submit the report to the finance committee and the technology, energy, and communications committee of the house of representatives, and the ways and means committee and the water, energy, and telecommunications committee of the senate, by December 1, 2008.

Sec. 149. 2008 c 329 s 148 (uncodified) is amended to read as follows:

FOR THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

General Fund—State Appropriation (FY 2008) $3,247,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$3,296,000~~))
$3,180,000
Department of Personnel Service Account—State
Appropriation. $3,287,000
TOTAL APPROPRIATION . . . . . ((~~$9,830,000~~))
$9,714,000

The appropriations in this section are subject to the following conditions and limitations: $112,000 of the general fund—state appropriation for fiscal year 2008 and $107,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for implementation of Substitute House Bill No. 2361 (higher education exempt employees). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

Sec. 150. 2008 c 329 s 149 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION

General Fund—State Appropriation (FY 2008) $1,114,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$1,755,000~~))
$1,541,000
General Fund—Federal Appropriation. $1,641,000
General Fund—Private/Local Appropriation $14,000
TOTAL APPROPRIATION . . . . . ((~~$4,524,000~~))
$4,310,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $30,000 of the general fund—state appropriation for fiscal year 2008 and $30,000 of the general fund—state appropriation for fiscal year 2009 are

provided solely to implement Substitute House Bill No. 2115 (heritage barn preservation). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(2) ((~~$571,000~~)) $368,000 of the general fund—state appropriation for fiscal year 2009 and $500,000 of the nonappropriated skeletal human remains assistance account are provided solely for implementation of Engrossed Second Substitute House Bill No. 2624 (human remains). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

(3) $150,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to conduct a preliminary assessment to determine the feasibility of seeking federal heritage area designation for Washington state's maritime regions. The department shall establish an advisory committee for the study. The department shall submit a report of the preliminary assessment findings to the appropriate policy and fiscal committees of the legislature and to the governor by January 1, 2010.

Sec. 151. 2008 c 329 s 150 (uncodified) is amended to read as follows:

FOR THE GROWTH MANAGEMENT HEARINGS BOARD

General Fund—State Appropriation (FY 2008) $1,893,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$1,928,000~~)) $1,878,000
TOTAL APPROPRIATION . . . . . ((~~$3,821,000~~)) $3,771,000

PART II
HUMAN SERVICES

Sec. 201. 2008 c 329 s 202 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—CHILDREN AND FAMILY SERVICES PROGRAM

General Fund—State Appropriation (FY 2008) $316,353,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$345,840,000~~)) $338,838,000
General Fund—Federal Appropriation . . . . . ((~~$489,938,000~~)) $490,314,000
General Fund—Private/Local Appropriation $2,187,000
Domestic Violence Prevention Account—State Appropriation $1,000,000
Public Safety and Education Account—State Appropriation (FY 2008) $3,251,000
Public Safety and Education Account—State Appropriation (FY 2009) $3,254,000
Violence Reduction and Drug Enforcement Account—State Appropriation (FY 2008) $2,934,000
Violence Reduction and Drug Enforcement Account—State Appropriation (FY 2009) $2,934,000
Pension Funding Stabilization Account—State Appropriation $2,298,000

TOTAL APPROPRIATION . . . . . ((~~$1,169,989,000~~))
$1,163,363,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $3,063,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$3,063,000~~)) $2,993,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the category of services titled "intensive family preservation services."

(2) $945,000 of the general fund—state appropriation for fiscal year 2008 and $993,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to contract for the operation of one pediatric interim care facility. The facility shall provide residential care for up to seventeen children through two years of age. Seventy-five percent of the children served by the facility must be in need of special care as a result of substance abuse by their mothers. The facility shall also provide on-site training to biological, adoptive, or foster parents. The facility shall provide at least three months of consultation and support to parents accepting placement of children from the facility. The facility may recruit new and current foster and adoptive parents for infants served by the facility. The department shall not require case management as a condition of the contract.

(3) $375,000 of the general fund—state appropriation for fiscal year 2008, $375,000 of the general fund—state appropriation for fiscal year 2009, and $322,000 of the general fund—federal appropriation are provided solely for up to three nonfacility-based programs for the training, consultation, support, and recruitment of biological, foster, and adoptive parents of children through age three in need of special care as a result of substance abuse by their mothers, except that each program may serve up to three medically fragile nonsubstance-abuse-affected children. In selecting nonfacility-based programs, preference shall be given to programs whose federal or private funding sources have expired or that have successfully performed under the existing pediatric interim care program.

(4) $125,000 of the general fund—state appropriation for fiscal year 2008 and $125,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a foster parent retention program. This program is directed at foster parents caring for children who act out sexually.

(5) The providers for the 31 HOPE beds shall be paid a $1,020 base payment per bed per month, and reimbursed for the remainder of the bed cost only when the beds are occupied.

(6) Within amounts provided for the foster care and adoption support programs, the department shall control reimbursement decisions for foster care and adoption support cases such that the aggregate average cost per case for foster care and for adoption support does not exceed the amounts assumed in the projected caseload expenditures.

(7) Within amounts appropriated in this section, priority shall be given to proven intervention models, including evidence-based prevention and early intervention programs identified by the Washington state institute for public policy and the department. The department shall include information on the

number, type, and outcomes of the evidence-based programs being implemented in its reports on child welfare reform efforts.

(8) $500,000 of the general fund—state appropriation for fiscal year 2008, $500,000 of the general fund—state appropriation for fiscal year 2009, and $429,000 of the general fund—federal appropriation are provided solely to increase services provided through children's advocacy centers.

(9) $50,000 of the general fund—state appropriation for fiscal year 2008 and $50,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a street youth program in Spokane.

(10) $41,000 of the general fund—state appropriation for fiscal year 2008, $37,000 of the general fund—state appropriation for fiscal year 2009, and $34,000 of the general fund—federal appropriation are provided solely for the implementation of Substitute House Bill No. 1472 (child welfare).

(11) $858,000 of the general fund—state appropriation for fiscal year 2008, $809,000 of the general fund—state appropriation for fiscal year 2009, and $715,000 of the general fund—federal appropriation are provided solely to implement Engrossed Substitute Senate Bill No. 5774 (background checks), including sections 6 and 7. If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(12) $4,962,000 of the general fund—state appropriation for fiscal year 2008, $4,586,000 of the general fund—state appropriation for fiscal year 2009, and $9,548,000 of the general fund—federal appropriation are provided solely for development and implementation of a statewide automated child welfare information system.

(13) $126,000 of the general fund—state appropriation for fiscal year 2009 and $55,000 of the general fund—federal appropriation are provided solely to implement Substitute Senate Bill No. 5321 (child welfare). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(14) $707,000 of the general fund—state appropriation for fiscal year 2008, $680,000 of the general fund—state appropriation for fiscal year 2009, and $594,000 of the general fund—federal appropriation are provided solely for the implementation of Second Substitute House Bill No. 1334 (child welfare proceedings). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(15) $2,237,000 of the general fund—state appropriation for fiscal year 2008, $2,238,000 of the general fund—state appropriation for fiscal year 2009, and $1,918,000 of the general fund—federal appropriation are provided solely for the implementation of Substitute House Bill No. 1333 (child welfare). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(16) $137,000 of the general fund—state appropriation for fiscal year 2008, $137,000 of the general fund—state appropriation for fiscal year 2009, and $118,000 of the general fund—federal appropriation are provided solely for implementation of Substitute House Bill No. 1287 (foster children). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(17) $50,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the department to contract with the Washington state institute for public policy to study evidence-based, cost-effective programs and policies

to reduce the likelihood of children entering and remaining in the child welfare system, including both prevention and intervention programs. If the department does not receive $100,000 in matching funds from a private organization for the purpose of conducting this study, the amount provided in this subsection shall lapse. The study shall be completed by April 30, 2008. The department shall cooperate with the institute in facilitating access to data in their administrative systems. The board of the Washington state institute for public policy may adjust the due date for this project as necessary to efficiently manage workload.

(18) $103,000 of the general fund—state appropriation for fiscal year 2008, $407,000 of the general fund—state appropriation for fiscal year 2009, and $48,000 of the general fund—federal appropriation are provided solely for implementation of Engrossed Substitute House Bill No. 1131 (passport to college). This includes funding to develop, implement, and administer a program of educational transition planning for youth in foster care as specified in the bill. If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(19) The department shall continue spending levels for continuum of care in region one at the same level allotted during the 2005-2007 biennium.

(20) Within the amounts provided, the department shall develop and implement a two-tiered reimbursement rate schedule for children from birth through twenty-four months of age and children twenty-five months of age through age five served by the medicaid treatment child care program. The department shall work in collaboration with contracted providers of the program to develop the rate schedule, taking into consideration such factors as higher staff level and small group size requirements for each age group. The department shall implement the rate schedule no later than January 1, 2008, and neither reimbursement rate in the two-tiered schedule shall be lower than the reimbursement rate level from the 2007 fiscal year.

(21) $60,000 of the general fund—state appropriation for fiscal year 2008, $20,000 of the general fund—state appropriation for fiscal year 2009, and $35,000 of the general fund—federal appropriation are provided solely for implementation of Engrossed Substitute House Bill No. 1624 (child welfare). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(22) $49,000 of the general fund—state appropriation for fiscal year 2008, $24,000 of the general fund—state appropriation for fiscal year 2009, and $35,000 of the general fund—federal appropriation are provided solely for the implementation of chapter 384, Laws of 2007.

(23) The department shall work with the exclusive bargaining representative for the children's administration social workers to prioritize social worker tasks and devise methods by which to alleviate from the social workers' workload lower priority tasks. Discussions on methods shall include the use of contracting services and home support specialists. The department and the bargaining representative shall jointly report their efforts to the appropriate committees of the legislature by submitting a progress report no later than July 1, 2008, and a final report by November 15, 2008.

(24) $10,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the department to contract with the largest nonprofit

organization in the state conducting education and outreach on RCW 13.34.360, the safety of newborn children law.

(25) $616,000 of the general fund—state appropriation for fiscal year 2009 and $184,000 of the general fund—federal appropriation are provided solely to contract with medical professionals for comprehensive safety assessments of high-risk families. The safety assessments will use validated assessment tools to guide intervention decisions through the identification of additional safety and risk factors. $400,000 of this amount is for comprehensive safety assessments for families receiving in-home child protective services or family voluntary services. $400,000 of this amount is for comprehensive safety assessments of families with an infant age birth to fifteen days where the infant was, at birth, diagnosed as substance exposed and the department received an intake referral related to the infant due to the substance exposure.

((~~(28)~~)) (26) $42,000 of the general fund—state appropriation for fiscal year 2009 and $29,000 of the general fund—federal appropriation are provided solely for the department to implement Second Substitute Senate Bill No. 6206 (child fatality). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

((~~(29)~~)) (27) $857,000 of the general fund—state appropriation for fiscal year 2009 and $140,000 of the general fund—federal appropriation are provided solely for implementation of Engrossed Second Substitute House Bill No. 3145 (foster parent licensing). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

((~~(30)~~)) (28) $415,000 of the general fund—state appropriation for fiscal year 2008, $469,000 of the general fund—state appropriation for fiscal year 2009, and $264,000 of the general fund—federal appropriation are provided solely for the hiring of staff to expedite the phase-in of the state's policy of a private and individual face-to-face visit each month with children in out-of-home care and in-home dependencies and their caregivers.

((~~(31)~~)) (29) $109,000 of the general fund—state appropriation for fiscal year 2009 and $35,000 of the general fund—federal appropriation are provided solely to implement sections 2 and 3 of Engrossed Second Substitute House Bill No. 3205 (child long-term well-being). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

((~~(32)~~)) (30) The appropriations in this section provide specific funds to implement Engrossed Substitute Senate Bill No. 6792 (dependency matters).

((~~(35)~~)) (31) $812,000 of the general fund—state appropriation for fiscal year 2009 and $256,000 of the general fund—federal appropriation are provided solely for the department to hire additional staff to perform child health education and tracking screens.

((~~(37)~~)) (32) $1,829,000 of the general fund—state appropriation for fiscal year 2009 and $578,000 of the general fund—federal appropriation are provided solely for the department to contract with nonprofit organizations to facilitate twice-monthly visits between siblings living apart from each other in out-of-home care.

(33) The department shall not close any secure crisis residential center facilities. The total number of statewide secure crisis residential center beds is reduced from 63 to 44.

Sec. 202. 2008 c 329 s 203 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—JUVENILE REHABILITATION PROGRAM

General Fund—State Appropriation (FY 2008) $87,822,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$88,715,000~~))
$84,716,000
General Fund—Federal Appropriation $5,662,000
General Fund—Private/Local Appropriation $1,898,000
Reinvesting in Youth—State Appropriation $1,414,000
Washington Auto Theft Prevention Authority Account—State Appropriation $171,000
Violence Reduction and Drug Enforcement Account—State Appropriation (FY 2008) $21,975,000
Violence Reduction and Drug Enforcement Account—State Appropriation (FY 2009) $22,078,000
Juvenile Accountability Incentive Account—Federal Appropriation $2,510,000
Pension Funding Stabilization Account—State Appropriation $2,200,000
TOTAL APPROPRIATION . . . . . ((~~$234,445,000~~))
$230,446,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $353,000 of the violence reduction and drug enforcement account appropriation for fiscal year 2008 and $353,000 of the violence reduction and drug enforcement account appropriation for fiscal year 2009 are provided solely for deposit in the county criminal justice assistance account for costs to the criminal justice system associated with the implementation of chapter 338, Laws of 1997 (juvenile code revisions). The amounts provided in this subsection are intended to provide funding for county adult court costs associated with the implementation of chapter 338, Laws of 1997 and shall be distributed in accordance with RCW 82.14.310.

(2) $3,078,000 of the violence reduction and drug enforcement account appropriation and $500,000 of the general fund—state appropriation for fiscal year 2008 and $3,078,000 of the violence reduction and drug enforcement account appropriation and $500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of chapter 338, Laws of 1997 (juvenile code revisions). The amounts provided in this subsection are intended to provide funding for county impacts associated with the implementation of chapter 338, Laws of 1997 and shall be distributed to counties as prescribed in the current consolidated juvenile services (CJS) formula.

(3) $1,030,000 of the general fund—state appropriation and $2,686,000 of the violence reduction and drug enforcement account appropriation for fiscal year 2008 and $1,030,000 of the general fund—state appropriation and $2,686,000 of the violence reduction and drug enforcement account appropriation for fiscal year 2009 are provided solely to implement community juvenile accountability grants pursuant to chapter 338, Laws of 1997 (juvenile code revisions). Funds provided in this subsection may be used solely for

community juvenile accountability grants, administration of the grants, and evaluations of programs funded by the grants.

(4) $1,506,000 of the violence reduction and drug enforcement account appropriation for fiscal year 2008 and $1,506,000 of the violence reduction and drug enforcement account appropriation for fiscal year 2009 are provided solely to implement alcohol and substance abuse treatment programs for locally committed offenders. The juvenile rehabilitation administration shall award these moneys on a competitive basis to counties that submitted a plan for the provision of services approved by the division of alcohol and substance abuse. The juvenile rehabilitation administration shall develop criteria for evaluation of plans submitted and a timeline for awarding funding and shall assist counties in creating and submitting plans for evaluation.

(5) $2,669,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$3,066,000~~)) $2,947,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for grants to county juvenile courts for the following programs identified by the Washington state institute for public policy (institute) in its October 2006 report: "Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs and Crime Rates": Functional family therapy, multi-systemic therapy, aggression replacement training and interagency coordination programs or other programs with a positive benefit-cost finding in the institute's report. County juvenile courts shall apply to the juvenile rehabilitation administration for funding for program-specific participation and the administration shall provide grants to the courts consistent with the per-participant treatment costs identified by the institute.

(6) $1,287,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$1,287,000~~)) $787,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for expansion of the following treatments and therapies in juvenile rehabilitation administration programs identified by the Washington state institute for public policy in its October 2006 report: "Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs and Crime Rates": Multidimensional treatment foster care, family integrated transitions and aggression replacement training. The administration may concentrate delivery of these treatments and therapies at a limited number of programs to deliver the treatments in a cost-effective manner.

(7) The juvenile rehabilitation administration shall provide a block grant, rather than categorical funding, of consolidated juvenile services funds, community juvenile accountability act grants, the chemically dependent disposition alternative, and the special sex offender disposition to county juvenile courts, or groups of courts, including the Pierce county juvenile court. The juvenile rehabilitation administration and the family policy council shall jointly write criteria for awarding and administering block grants to county juvenile courts. In developing the criteria, the juvenile rehabilitation administration and the family policy council shall seek the advice of the Washington state institute for public policy. The criteria shall address, but not be limited to:

(a) The selection of courts for participation in the block grant;

(b) The types of evidence-based programs and practices to which the funds will be applied. The evidence-based programs and practices shall either be consistent with those cost-beneficial options identified by the Washington state

institute for public policy in its October 2006 report: "Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs and Crime Rates," or be new approaches that have the potential to demonstrate positive returns for the taxpayer; and

(c) The protocols for participating courts to collect information on the effectiveness of programs funded under the block grant, including: (i) Developing intermediate client outcomes based on the risk assessment tool currently used by juvenile courts and in coordination with the juvenile rehabilitation administration; (ii) reporting treatment outcomes including a process evaluation to the juvenile rehabilitation administration and the family policy council by June 20, 2008, and an outcome evaluation of recidivism and benefit-cost results submitted within eighteen months of the initiation of the treatment, when follow-up data are available. The courts shall develop these evaluations in consultation with the juvenile rehabilitation administration, the family policy council, and the Washington state institute for public policy; and (iii) documenting the process for managing block grant funds on a quarterly basis and provide this report to the juvenile rehabilitation administration and the family policy council.

(8) $73,000 of the Washington auto theft prevention authority account—state appropriation for fiscal year 2008 and $98,000 of the Washington auto theft prevention authority account—state appropriation for fiscal year 2009 are provided solely for the implementation of Engrossed Third Substitute House Bill No. 1001 (auto theft). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

Sec. 203. 2008 c 329 s 204 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—MENTAL HEALTH PROGRAM

(1) COMMUNITY SERVICES/REGIONAL SUPPORT NETWORKS

General Fund—State Appropriation (FY 2008) . . . . . ((~~$305,747,000~~)) $305,732,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$328,783,000~~)) $308,382,000

General Fund—Federal Appropriation . . . . . ((~~$382,032,000~~)) $396,996,000

General Fund—Private/Local Appropriation $16,157,000

TOTAL APPROPRIATION . . . . . ((~~$1,032,719,000~~)) $1,027,267,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) $103,989,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$104,080,000~~)) $122,119,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for persons and services not covered by the medicaid program. ((~~These funds~~)) Reductions to fiscal year 2009 allocations shall be distributed proportionally to each regional support network's percentage of the total state population. To the extent possible, levels of regional support network spending shall be maintained in the following priority order: (i) Crisis and commitment services; (ii) community inpatient

services; and (iii) residential care services, including personal care and emergency housing assistance.

(b) $16,900,000 of the general fund—state appropriation for fiscal year 2008 and $16,900,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the department and regional support networks to contract for development and initial implementation of high-intensity program for active community treatment (PACT) teams, and other proven program approaches that the department concurs will enable the regional support network to achieve significant reductions during fiscal year 2008 and thereafter in the number of beds the regional support network would otherwise need to use at the state hospitals.

(c) The number of nonforensic beds allocated for use by regional support networks at eastern state hospital shall be 222 per day throughout fiscal year 2008. Beginning January 1, 2009, the number of nonforensic beds allocated for use by regional support networks at eastern state hospital shall be 192 per day. The number of nonforensic beds allocated for use by regional support networks at western state hospital shall be 777 per day during the first and second quarters of fiscal year 2008, and 677 per day from January 2008 through August 2008. Beginning September 2008, the number of nonforensic beds allocated for use by regional support networks at western state hospital shall be 647 per day until May 2009, at which time the bed allocation shall be 617 beds per day. Beginning January 2008, beds in the program for adaptive living skills (PALS) are not included in the preceding bed allocations. Beginning that month, the department shall separately charge regional support networks for persons served in the PALS program.

(d) From the general fund—state appropriations in this subsection, the secretary of social and health services shall assure that regional support networks reimburse the aging and disability services administration for the general fund—state cost of medicaid personal care services that enrolled regional support network consumers use because of their psychiatric disability.

(e) At least $902,000 of the federal block grant funding appropriated in this subsection shall be used for the continued operation of the mentally ill offender pilot program.

(f) $5,000,000 of the general fund—state appropriation for fiscal year 2008 and $5,000,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for mental health services for mentally ill offenders while confined in a county or city jail and for facilitating access to programs that offer mental health services upon release from confinement. The department is authorized to transfer up to $418,000 of these amounts each fiscal year to the economic services program for purposes of facilitating prompt access after their release from confinement to medical and income assistance services for which defendants and offenders may be eligible.

(g) $1,500,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$1,500,000~~)) $1,091,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for grants for innovative mental health service delivery projects. Such projects may include, but are not limited to, clubhouse programs and projects for integrated health care and behavioral health services for general assistance recipients. These amounts shall supplement, and not supplant, local or other funding currently being used for activities funded under

the projects authorized in this subsection. The department shall not terminate early any grant that was contracted under this subsection prior to January 1, 2009, for the use of funds during fiscal year 2009.

(h) The department is authorized to continue to expend federal block grant funds and special purpose federal grants through direct contracts, rather than through contracts with regional support networks, and to allocate such funds through such formulas as it shall adopt.

(i) The department is authorized to continue to contract directly, rather than through contracts with regional support networks, for children's long-term inpatient facility services.

(j) $2,250,000 of the general fund—state appropriation for fiscal year 2008, $2,250,000 of the general fund—state appropriation for fiscal year 2009, and $4,500,000 of the general fund—federal appropriation are provided solely for the continued operation of community residential and support services for persons who are older adults or who have co-occurring medical and behavioral disorders and who have been discharged or diverted from a state psychiatric hospital. These funds shall be used to serve individuals whose treatment needs constitute substantial barriers to community placement, who no longer require active psychiatric treatment at an inpatient hospital level of care, and who no longer meet the criteria for inpatient involuntary commitment. Coordination of these services will be done in partnership between the mental health program and the aging and disability services administration.

(k) $750,000 of the general fund—state appropriation for fiscal year 2008 and $750,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to continue performance-based incentive contracts to provide appropriate community support services for individuals with severe mental illness who were discharged from the state hospitals as part of the expanding community services initiative. These funds will be used to enhance community residential and support services provided by regional support networks through other state and federal funding.

~~((l) $2,981,000 of the general fund—state appropriation for fiscal year 2008, $3,248,000 of the general fund—state appropriation for fiscal year 2009, and $2,016,000 of the general fund—federal appropriation are provided solely to modify the department's proposed new payment rates for medicaid inpatient psychiatric services. Under the department's proposed rate system, effective August 1, 2007, each hospital's inpatient psychiatric payment rate would have been set at a percentage of that hospital's estimated per diem cost for psychiatric inpatient care during the most recent rebasing year. Within the amount provided in this subsection (1)(m), beginning August 1, 2007, each hospital's inpatient psychiatric payment rate shall instead be set at the greater of a percentage of: (i) The hospital's estimated per diem cost for psychiatric inpatient care during the most recent rebasing year; or (ii) the statewide average per diem cost for psychiatric inpatient care during the most recent rebasing year, adjusted for regional wage differences and for differences in medical education costs. At least thirty days prior to implementing adjustments to regional support network medicaid capitation rates and nonmedicaid allocations to account for changes in psychiatric inpatient payment rates, the department shall report on the proposed adjustments to the appropriations committee of the house of representatives and the ways and means committee of the senate.~~

(m) $6,267,000 of the general fund -- state appropriation for fiscal year 2008 and $6,462,000 of the general fund -- state appropriation for fiscal year 2009 are provided solely to increase nonmedicaid psychiatric inpatient payment rates over fiscal year 2005 levels. It is expected that nonmedicaid rates will be set at approximately 85 percent of each hospital's medicaid psychiatric inpatient rate. At least thirty days prior to implementing adjustments to regional support network medicaid capitation rates and nonmedicaid allocations to account for changes in psychiatric inpatient payment rates, the department shall report on the proposed adjustments to the appropriations committee of the house of representatives and the ways and means committee of the senate.

(n) $7,396,000 of the general fund -- state appropriation for fiscal year 2008, $15,146,000 of the general fund -- state appropriation for fiscal year 2009, and $13,927,000 of the general fund -- federal appropriation are provided solely to increase regional support network medicaid capitation rates, or fee-for-service rates paid instead of those capitation rates, and nonmedicaid allocations by 3.0 percent effective July 1, 2007, and by an additional 3.0 percent effective July 1, 2008. The federal portion of these rate increases is contingent upon federal approval. (i) The legislature intends and expects that regional support networks and community mental health agencies will use at least 67 percent of the amounts provided in this subsection (1)(o) to increase compensation for direct care personnel above and beyond usual and customary wage increases. To this end, regional support networks shall report to the department by October 15, 2007, on planned uses of the rate increases within their network area. The report shall describe the direct care job classifications to which increases are to be provided; the number of full-time equivalent personnel employed in each classification; the annualized dollar and percentage increases to be provided each classification; the annualized dollar value of the direct care compensation increases provided, in total and as a percentage of the total rate increase; and the number of personnel in each job classification covered by a collective bargaining agreement. The department shall summarize and analyze the regional plans, and report findings, options, and recommendations to the legislature by December 1, 2007. (ii) Regional support networks shall maintain documentation of how the rate increases have been applied. Such documentation shall be subject to audit by the department. (iii) For purposes of this subsection (1)(o), "direct care staff" means persons employed by community mental health agencies whose primary responsibility is providing direct treatment and support to people with mental illness, or whose primary responsibility is providing direct support to such staff in areas such as client scheduling, client intake, client reception, client records-keeping, and facilities maintenance. In agencies that provide both mental health and chemical dependency services, nonmedicaid funds may also be used for compensation increases for direct care staff whose primary responsibility is direct care and treatment for people with chemical dependency problems.

(o) $2,021,000 of the general fund -- state appropriation for fiscal year 2008 and $1,683,000 of the general fund -- state appropriation for fiscal year 2009 are provided solely for the implementation of Substitute House Bill No. 1456 (mental health professionals). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse. For purposes of organizing and delivering training as required by the bill, the department may retain up to fifteen percent of the amount appropriated for fiscal year 2008, and up to ten percent of

~~the amount appropriated for fiscal year 2009. The remainders shall be distributed to regional support networks proportional to each network's percentage of the total state population.~~

~~(p)~~)) (l) $135,000 of the general fund—state appropriation for fiscal year 2008, ((~~$3,031,000~~)) $2,961,000 of the general fund—state appropriation for fiscal year 2009, and $1,289,000 of the general fund—private/local appropriation are provided solely to enable the department to contract with Pierce county human services for the provision of community mental health services to include crisis triage, evaluation and treatment, and mobile crisis services. The legislature intends this to be one-time funding while a replacement regional support network is being secured. The department is authorized to reserve $402,000 general fund—state and $201,000 general fund—local of these amounts for reasonable costs incurred by Pierce county for the provision of mental health crisis and related services that exceed reimbursement levels contracted by the department. In order to receive these funds, Pierce county must demonstrate to the department that the total cost of mental health services provided by the county in accordance with formal agreements has exceeded the revenues received from the department and third-party payers for these services. The department shall determine the documentation that is required.

(((~~(q)~~)) (m) $504,000 of the general fund—state appropriation for fiscal year 2008 and $1,529,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to reimburse Pierce and Spokane counties for the cost of conducting 180-day commitment hearings at the state psychiatric hospitals.

(((~~(r)~~)) (n) $750,000 of the general fund—state appropriation for fiscal year 2008 and $1,500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the Spokane regional support network to implement a comprehensive plan for reducing its utilization of eastern state hospital. Key elements of the plan, which shall be developed and implemented in consultation with and with the assistance of the department, may include but shall not be limited to development of additional crisis triage, crisis stabilization, and evaluation and treatment beds; provision of housing assistance for high-utilizers of hospital and jail services who are at risk of homelessness; implementation of an intensive outpatient treatment team for persons with co-occurring disorders and other special needs; and delivery of respite care to assist elderly individuals avoid or return home after hospitalization. Spokane regional support network shall receive a proportional share of the fiscal year 2009 nonmedicaid rate reduction out of its base funding distribution.

(((~~(s) $6,250,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for regional support networks to increase and improve delivery of nonmedicaid services. These funds shall be distributed to regional support networks, other than Spokane and Pierce county, proportional to each network's share of total population among those networks.~~

~~(t) $215,000 of the general fund—state appropriation for fiscal year 2008 is provided solely to assist nongovernmental mental health agencies in Pierce county with start-up and other extraordinary administrative costs required by the conversion from a capitated to a unit fee-based service delivery and billing system.~~))

(o) The department shall not reduce medicaid capitation rates below those in effect as of December 15, 2008.

(2) INSTITUTIONAL SERVICES
General Fund—State Appropriation (FY 2008) $138,340,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$131,973,000~~))
$129,272,000
General Fund—Federal Appropriation . . . . . ((~~$145,602,000~~))
$145,552,000
General Fund—Private/Local Appropriation $66,302,000
Pension Funding Stabilization Account—State
Appropriation. $7,058,000
TOTAL APPROPRIATION . . . . . ((~~$489,275,000~~))
$486,524,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) The state psychiatric hospitals may use funds appropriated in this subsection to purchase goods and supplies through hospital group purchasing organizations when it is cost-effective to do so.

(b) $45,000 of the general fund—state appropriation for fiscal year 2008 and $45,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for payment to the city of Lakewood for police services provided by the city at western state hospital and adjacent areas.

(c) $18,575,000 of the general fund—state appropriation for fiscal year 2008 and $9,675,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to operate on a temporary basis five additional adult civil commitment wards at the state psychiatric hospitals. The legislature intends for these wards to close, on a phased basis, during the 2007-09 biennium as a result of targeted investments in community services for persons who would otherwise need care in the hospitals.

(d) $125,000 of the general fund—state appropriation for fiscal year 2008 and $125,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for safety training and for protective equipment for staff at eastern and western state hospitals. Protective equipment shall include shields, helmets, gloves, and body protection.

(e) $304,000 of the general fund—state appropriation for fiscal year 2008 and $231,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a community partnership between western state hospital and the city of Lakewood to support community policing efforts in the Lakewood community surrounding western state hospital. The amounts provided in this subsection (2)(e) are for the salaries, benefits, supplies, and equipment for one full-time investigator, one full-time police officer, and one full-time community service officer at the city of Lakewood.

(f) $133,000 of the general fund—state appropriation for fiscal year 2008 and $2,145,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to pilot a direct care nurse staffing plan for two high incident wards at eastern state hospital and four high incident wards at western state hospital. The pilot provides funding to fully staff registered nurses, licensed practical nurses, and mental health technicians in accordance with the state psychiatric hospitals direct care staffing review and recommendations. The department shall have the authority to fill the positions with any mix of these

direct care nursing staff so long as a good faith effort is made to first hire and recruit positions in accordance with the direct care nurse staffing plan. The department shall monitor outcomes for improved patient and staff safety and provide a written report to the legislature by October 1, 2009.

(g) $617,000 of the general fund—state appropriation for fiscal year 2008 and $334,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to cover additional operating costs related to the October 11, 2007, laundry fire at western state hospital.

(3) SPECIAL PROJECTS

General Fund—State Appropriation (FY 2008) . . . . . ((~~$1,917,000~~)) $1,892,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$2,319,000~~)) $2,269,000

General Fund—Federal Appropriation $3,276,000

TOTAL APPROPRIATION . . . . . ((~~$7,512,000~~)) $7,437,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) $877,000 of the general fund—state appropriation for fiscal year 2008, $1,189,000 of the general fund—state appropriation for fiscal year 2009, and $140,000 of the general fund—federal appropriation are provided solely for implementation of sections 4, 7, 10, and other provisions of Second Substitute House Bill No. 1088 (children's mental health). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse. Funds are also appropriated in sections 207 and 209 of this act for implementation of 5, 8, and 11 of Second Substitute House Bill No. 1088.

((~~(c)~~)) (b) $80,000 of the general fund—state appropriation for fiscal year 2009 and $80,000 of the general fund—federal appropriation are provided solely as one-time funding to make available a mental health train the trainer first aid course consisting of twelve hours of instruction based upon a program created by the department of psychiatry, University of Melbourne in Australia. The course will provide training to members of the public related to: (i) Giving appropriate initial help and support to a person suffering from a mental disorder and responding to mental health crisis situations; and (ii) depression, anxiety disorders, psychosis, and substance use disorder, including recognizing symptoms, possible causes or risk factors, and evidenced-based treatment options. Participants in the first aid course will train others to provide the training.

(4) PROGRAM SUPPORT

General Fund—State Appropriation (FY 2008) $4,966,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$5,177,000~~)) $4,500,000

General Fund—Federal Appropriation $7,557,000

TOTAL APPROPRIATION . . . . . ((~~$17,700,000~~)) $17,023,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) $125,000 of the general fund—state appropriation for fiscal year 2008, $125,000 of the general fund—state appropriation for fiscal year 2009, and $164,000 of the general fund—federal appropriation are provided solely for the institute for public policy to continue the longitudinal analysis directed in chapter 334, Laws of 2001 (mental health performance audit), to build upon the evaluation of the impacts of chapter 214, Laws of 1999 (mentally ill offenders), and to assess program outcomes and cost effectiveness of the children's mental health pilot projects as required by chapter 372, Laws of 2006.

((~~(c)~~)) (b) $100,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the department to contract with a facilitator to coordinate a review and make recommendations on:

(i) Ward sizes at eastern and western state hospitals and patient case mix by ward;

(ii) Discharge practices for state hospitals to include the child and study treatment center; and

(iii) Community placements to include placements for adults and children.

By October 15, 2008, the department shall provide to the legislature recommendations for system improvement to include a cost/benefit analysis. The department shall include representation from regional support networks in the review and development of recommendations for discharge practices and community placements.

Sec. 204. 2008 c 329 s 205 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—DEVELOPMENTAL DISABILITIES PROGRAM

(1) COMMUNITY SERVICES

General Fund—State Appropriation (FY 2008) $348,327,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$380,811,000~~))
$362,407,000
General Fund—Federal Appropriation . . . . . ((~~$636,595,000~~))
$653,802,000
Health Services Account—State Appropriation (FY 2008) $452,000
Health Services Account—State Appropriation (FY 2009) $452,000
TOTAL APPROPRIATION . . . . . ((~~$1,366,637,000~~))
$1,365,440,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) The entire health services account appropriation, $615,000 of the general fund—state appropriation for fiscal year 2008, $892,000 of the general fund—state appropriation for fiscal year 2009, and $2,546,011 of the general fund—federal appropriation are provided solely for health care benefits for agency home care workers who are employed through state contracts for at least twenty hours a week. The state contribution to the cost of health care benefits per participating worker per month shall be no greater than $532.00 in fiscal year 2008 and $585.00 in fiscal year 2009.

(b) Individuals receiving family support or high school transition payments as supplemental security income (SSI) state supplemental payments shall not

become eligible for medical assistance under RCW 74.09.510 due solely to the receipt of SSI state supplemental payments.

(c) $4,903,000 of the general fund—state appropriation for fiscal year 2008, $9,295,000 of the general fund—state appropriation for fiscal year 2009, and $15,016,000 of the general fund—federal appropriation are provided solely for community residential and support services. Funding in this subsection shall be prioritized for (i) residents of residential habilitation centers who are able to be adequately cared for in community settings and who choose to live in those community settings; (ii) clients without residential services who are at immediate risk of institutionalization or in crisis; (iii) children who are at risk of institutionalization or who are aging out of other state services; and (iv) current home and community-based waiver program clients who have been assessed as having an immediate need for increased services. First priority shall be given to children who are at risk of institutionalization. The department shall ensure that the average cost per day for all program services other than start-up costs shall not exceed $300. In order to maximize the number of clients served and ensure the cost-effectiveness of the waiver programs, the department will strive to limit new client placement expenditures to 90 percent of the budgeted daily rate. If this can be accomplished, additional clients may be served with excess funds, provided the total projected carry-forward expenditures do not exceed the amounts estimated. The department shall electronically report to the appropriate committees of the legislature, within 45 days following each fiscal year quarter, the number of persons served with these additional community services, where they were residing, what kinds of services they were receiving prior to placement, and the actual expenditures for all community services to support these clients.

(d) $2,399,000 of the general fund—state appropriation for fiscal year 2008, $5,961,000 of the general fund—state appropriation for fiscal year 2009, and $8,849,000 of the general fund—federal appropriation are provided solely for expanded community services for persons with developmental disabilities who also have community protection issues. Funding in this subsection shall be prioritized for (i) clients being diverted or discharged from the state psychiatric hospitals; (ii) clients participating in the dangerous mentally ill offender program; (iii) clients participating in the community protection program; and (iv) mental health crisis diversion outplacements. The department shall ensure that the average cost per day for all program services other than start-up costs shall not exceed $349 in fiscal year 2008 and $356 in fiscal year 2009. In order to maximize the number of clients served and ensure the cost-effectiveness of the waiver programs, the department will strive to limit new client placement expenditures to 90 percent of the budgeted daily rate. If this can be accomplished, additional clients may be served with excess funds if the total projected carry-forward expenditures do not exceed the amounts estimated. The department shall implement the four new waiver programs such that decisions about enrollment levels and the amount, duration, and scope of services maintain expenditures within appropriations. The department shall electronically report to the appropriate committees of the legislature, within 45 days following each fiscal year quarter, the number of persons served with these additional community services, where they were residing, what kinds of services they were

receiving prior to placement, and the actual expenditures for all community services to support these clients.

(e) $13,198,000 of the general fund—state appropriation for fiscal year 2008, $16,354,000 of the general fund—state appropriation for fiscal year 2009, and $8,579,000 of the general fund—federal appropriation are provided solely for family support programs for individuals with developmental disabilities. Of the amounts provided in this subsection (e), $696,000 of the general fund—state appropriation for fiscal year 2008 and $3,852,000 of the general fund—state appropriation for fiscal year 2009 are for state-only services for individuals with developmental disabilities, as described in Second Substitute Senate Bill No. 5467 (developmental disabilities). By January 1, 2008, and by November 1, 2008, the department shall provide a status report to the appropriate policy and fiscal committees of the legislature on the individual and family services program for people with developmental disabilities, which shall include the following information: The number of applicants for funding; the total number of awards; the number and amount of both annual and one-time awards, broken down by household income levels; and the purpose of the awards.

(f) $1,692,000 of the general fund—state appropriation for fiscal year 2008, $3,645,000 of the general fund—state appropriation for fiscal year 2009, and $2,397,000 of the general fund—federal appropriation are provided solely for employment and day services. Priority consideration for this new funding shall be young adults with developmental disabilities living with their family who need employment opportunities and assistance after high school graduation. Services shall be provided for both waiver and nonwaiver clients. The legislature finds that some waiver clients are not receiving employment services that are authorized under their waivers. Within the amounts appropriated in this section, waiver clients must receive services as authorized by their waiver, such as pathway to employment, while waiting for paid employment to be developed. The department shall work with the counties to establish a consistent proposed policy for minimum direct service hours for clients, minimum hours of support, time frames for seeking paid employment, and services provided under pathway to employment while paid employment is sought. The department shall report to the office of financial management and the appropriate committees of the legislature on this proposal by November 1, 2008, including estimated fiscal impacts and an option for making the policy budget neutral for the current level of clients served. In order to maximize the number of clients served, the department may serve additional nonwaiver clients with unspent funds for waiver clients, provided the total projected carry-forward expenditures do not exceed the amounts estimated.

(g) $160,000 of the general fund—state appropriation for fiscal year 2008 and $140,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of Second Substitute Senate Bill No. 5467 (developmental disabilities). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(h)(i) Amounts appropriated in this subsection are sufficient to increase provider payment rates by 6.0 percent for boarding homes, effective July 1, 2007, including those currently receiving exceptional care rates; and by 3.2 percent, effective July 1, 2007, for adult family homes, including those currently receiving exceptional care rates.

(ii) The department shall implement phase one of full implementation of a seventeen CARE level payment system for community residential providers. Amounts appropriated in this section are sufficient to increase adult family home provider payment rates on average, effective July 1, 2008, including those currently receiving exceptional care rates, and to adjust adult family home rates for the first phase of a seventeen CARE level payment system. Effective July 1, 2008, the provider payment rate allocation for boarding homes contracted as assisted living shall be the provider's June 30, 2008, payment rate allocation, and the provider payment rate for boarding homes contracted as ARCs and EARCs shall be adjusted to reflect phase one of a seventeen CARE level payment system. This will be in effect until such time as the rates are consistent between adult family homes and boarding homes for delivery of the same patient care levels.

(iii) Amounts provided in this section and in section 206 of this act are sufficient to assist adult family home providers with the cost of paying liability insurance.

(i) $921,000 of the general fund—state appropriation for fiscal year 2009 and $963,000 of the general fund—federal appropriation are provided solely for the development and implementation of a federal home and community-based care waiver to provide intensive behavior support services to up to one hundred children with developmental disabilities who have intense behaviors, and their families.

(i) To receive services under the waiver, the child must have a developmental disability and: (A) Meet an acuity measure, as determined by the department, indicating that the child is at high risk of needing an out-of-home placement; (B) be eligible for developmental disabilities services and a home and community-based care waiver program; (C) reside in his or her family home or temporarily in an out-of-home placement with a plan to return home; and (D) have family that demonstrates the willingness to participate in the services offered through the waiver, and is not subject to a pending child protective services referral.

(ii) The department shall authorize, contract for, and evaluate the provision of intensive in-home services that support the ability of the child to remain at home with their parents or relatives. Intensive behavior support services under the waiver shall be provided directly or by contract, and may include, but are not limited to: (A) Behavior consultation and management, therapies and respite care; (B) minor home or motor vehicle modifications and transportation; (C) specialized nutrition and clothing; (D) training of families and other individuals working with the child; and (E) inclusion in community activities.

(j) $1,000,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the purpose of settling all claims in the *Washington Federation of State Employees, et. al v. State of Washington,* Thurston County Superior Court Cause No. 05-2-02422-4. The expenditure of this appropriation is contingent on the release of all claims in this case, and total settlement costs shall not exceed the appropriation in this subsection (j). If settlement is not executed by June 30, 2008, the appropriation in this subsection (j) shall lapse.

(k) Within the amounts appropriated in this section, the department shall review current infant-toddler early intervention services statewide and report to the office of financial management by November 1, 2008, and the appropriate

committees of the legislature on a recommended consistent funding approach per child for the 2009-11 biennium, recognizing the new level of funding anticipated by school district participation. The recommendations must also include a budget neutral option for the current level of clients served.

(l) $325,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for state-only employment services for young adults with developmental disabilities who need employment opportunities and assistance after high school graduation.

(m) Within the amounts appropriated in this subsection (1), the department shall implement all necessary rules to facilitate the transfer to a department home and community-based services (HCBS) waiver of all eligible individuals who (i) currently receive services under the existing state-only employment and day program, and (ii) otherwise meet the waiver eligibility requirements. The amounts appropriated are sufficient to ensure that all individuals currently receiving services under the state-only employment and day program who are not transferred to a department HCBS waiver will continue to receive services.

(n) Within the amounts appropriated in this subsection (1), the department shall define in-home personal care services to include a client's ability to manage their personal care worker as identified by characteristics in the functional assessment. Clients whose assessments demonstrate they are able to manage their own plan of care are not eligible for personal care through a home care agency. The department shall adopt rules to implement this section.

(o) The department shall not reduce and shall continue to provide adult day health services.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 2008) $80,469,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$80,668,000~~)) $69,825,000
General Fund—Federal Appropriation . . . . . ((~~$172,332,000~~)) $179,338,000
General Fund—Private/Local Appropriation . . . . . ((~~$22,203,000~~)) $21,629,000
Pension Funding Stabilization Account—State Appropriation $5,614,000
TOTAL APPROPRIATION . . . . . ((~~$361,286,000~~)) $356,875,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) The developmental disabilities program is authorized to use funds appropriated in this section to purchase goods and supplies through direct contracting with vendors when the program determines it is cost-effective to do so.

(b) $100,000 of the general fund—state appropriation for fiscal year 2008 and $100,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for services provided to community clients provided by licensed professionals at the state rehabilitation centers. The division shall submit claims for reimbursement for services provided to clients living in the community to

medical assistance or third-party health care coverage, as appropriate, and shall implement a system for billing clients without coverage.

(c) $642,000 of the general fund—state appropriation for fiscal year 2008 and $721,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the department to fulfill its contracts with the school districts under chapter 28A.190 RCW to provide transportation, building space, and other support services as are reasonably necessary to support the educational programs of students living in residential habilitation centers.

(d) The department shall not reduce and shall continue to provide subsidies to clients of residential habilitation center professional providers to support the treatment of developmentally disabled clients who do not reside in a residential habilitation center, but shall not expand eligibility for these services.

(3) PROGRAM SUPPORT

General Fund—State Appropriation (FY 2008) $2,262,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$2,328,000~~)) $1,903,000
General Fund—Federal Appropriation . . . . . ((~~$2,812,000~~)) $2,788,000
TOTAL APPROPRIATION . . . . . ((~~$7,402,000~~)) $6,953,000

The appropriations in this subsection are subject to the following conditions and limitations:

(1) As part of the needs assessment instrument, the department shall collect data on family income for minor children with developmental disabilities and all individuals who are receiving state-only funded services. The department shall ensure that this information is collected as part of the client assessment process.

(2) In addition to other reductions, the reduced appropriations in this section reflect an additional $399,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

(4) SPECIAL PROJECTS

General Fund—State Appropriation (FY 2008) $17,000
General Fund—State Appropriation (FY 2009) $15,000
General Fund—Federal Appropriation $16,809,000
TOTAL APPROPRIATION $16,841,000

Sec. 205. 2008 c 329 s 206 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—AGING AND ADULT SERVICES PROGRAM

General Fund—State Appropriation (FY 2008) $700,332,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$753,881,000~~)) $707,293,000
General Fund—Federal Appropriation . . . . . ((~~$1,534,175,000~~)) $1,569,912,000
General Fund—Private/Local Appropriation $19,525,000

Pension Funding Stabilization Account—State Appropriation. $1,448,000
Health Services Account—State Appropriation (FY 2008) $2,444,000
Health Services Account—State Appropriation (FY 2009) $2,444,000
Traumatic Brain Injury Account—State Appropriation $1,212,000
TOTAL APPROPRIATION . . . . . ((~~$3,015,461,000~~))
$3,004,610,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The entire health services account appropriation, $10,456,000 of the general fund—state appropriation for fiscal year 2008, $11,370,000 of the general fund—state appropriation for fiscal year 2009, and $26,778,000 of the general fund—federal appropriation are provided solely for health care benefits for agency home care workers who are employed through state contracts for at least twenty hours a week. The state contribution to the cost of health care benefits per eligible participating worker per month shall be no greater than $532.00 in fiscal year 2008 and $585.00 per month in fiscal year 2009.

(2) For purposes of implementing chapter 74.46 RCW, the weighted average nursing facility payment rate shall not exceed $159.34 for fiscal year 2008 and shall not exceed ((~~$165.04~~)) $163.72 for fiscal year 2009, including the rate add-on described in subsection (9) of this section. For all nursing facilities, the direct care, therapy care, support services, and operations component rates established in accordance with chapter 74.46 RCW shall be adjusted for economic trends and conditions by 3.2 percent effective July 1, 2007((~~. For all nursing facilities, adjustments for economic trends and conditions effective July 1, 2008, shall be as specified in subsection (10)(c) of this section~~)), and by 1.99 percent effective July 1, 2008.

(3) In accordance with chapter 74.46 RCW, the department shall issue certificates of capital authorization that result in up to $16,000,000 of increased asset value completed and ready for occupancy in fiscal year 2008; up to $16,000,000 of increased asset value completed and ready for occupancy in fiscal year 2009; and up to $16,000,000 of increased asset value completed and ready for occupancy in fiscal year 2010.

(4) Adult day health services shall not be considered a duplication of services for persons receiving care in long-term care settings licensed under chapter 18.20, 72.36, or 70.128 RCW. The department shall not reduce and shall continue to provide adult day health services.

(5) In accordance with chapter 74.39 RCW, the department may implement two medicaid waiver programs for persons who do not qualify for such services as categorically needy, subject to federal approval and the following conditions and limitations:

(a) One waiver program shall include coverage of care in community residential facilities. Enrollment in the waiver shall not exceed 600 persons at any time.

(b) The second waiver program shall include coverage of in-home care. Enrollment in this second waiver shall not exceed 200 persons at any time.

(c) The department shall identify the number of medically needy nursing home residents, and enrollment and expenditures on each of the two medically needy waivers, on monthly management reports.

(d) If it is necessary to establish a waiting list for either waiver because the budgeted number of enrollment opportunities has been reached, the department shall track how the long-term care needs of applicants assigned to the waiting list are met.

(6) $1,840,000 of the general fund—state appropriation for fiscal year 2008 and $1,877,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for operation of the volunteer chore services program.

(7) The department shall establish waiting lists to the extent necessary to assure that annual expenditures on the community options program entry systems (COPES) program do not exceed appropriated levels. In establishing and managing any such waiting list, the department shall assure priority access to persons with the greatest unmet needs, as determined by department assessment processes.

(8) $125,000 of the general fund—state appropriation for fiscal year 2008, $125,000 of the general fund—state appropriation for fiscal year 2009, and $250,000 of the general fund—federal appropriation are provided solely for the implementation of Engrossed Second Substitute Senate Bill No. 5930 (blue ribbon commission on health care). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(9) $3,000,000 of the general fund—state appropriation for fiscal year 2009 and $3,134,000 of the general fund—federal appropriation are provided solely to increase compensation for low-wage workers in nursing homes beginning July 1, 2008. Within the funds provided, the department shall provide an add-on per resident day per facility based on the total funding divided by the total number of fiscal year 2009 medicaid patient days as forecasted by the caseload forecast council, not to exceed $1.57. The department may reduce the level of add-on if necessary to fit within this appropriation if the caseload forecasted days increase from the February 2008 forecast. The add-on shall be used to increase wages, benefits, and/or staffing levels for certified nurse aides; or to increase wages and/or benefits for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars-per-hour wage was less than $15 in calendar year 2006, according to cost report data. The add-on may also be used to address resulting wage compression for related job classes immediately affected by wage increases to low-wage workers. The department shall implement reporting requirements and a settlement process to ensure that the funds are spent according to this subsection. The department shall adopt rules to implement the terms of this subsection.

(10) ((~~$2,115,000 of the general fund—state appropriation for fiscal year 2008, $6,640,000 of the general fund—state appropriation for fiscal year 2009, and $9,152,000 of the general fund—federal appropriation are provided solely to increase nursing facility payment rates.~~

~~(a) Of the amounts provided in this subsection, $297,000 of the general fund—state appropriation for fiscal year 2008, $364,000 of the general fund—state appropriation for fiscal year 2009, and $691,000 of the general fund—federal appropriation are provided solely to provide funding for direct care rates required by Senate Bill No. 6629 (nursing facility payment systems). If the bill~~

~~is not enacted by June 30, 2008, then the amounts provided in this subsection (10)(a) shall lapse.~~

~~(b) Of the amounts provided in this subsection, $1,818,000 of the general fund—state appropriation for fiscal year 2008, $1,552,000 of the general fund—state appropriation for fiscal year 2009, and $3,526,000 of the general fund—federal appropriation are provided solely to fund projected increases in the weighted average nursing facility payment rates for fiscal years 2008 and 2009 due to appeals, client acuity, capital projects, bed changes, and other adjustments to cost projections deemed necessary by the department.~~

~~(c) The remaining amounts provided in this subsection of $4,724,000 general fund—state for fiscal year 2009 and $4,935,000 general fund—federal are provided solely for an adjustment for economic trends and conditions of 1.99 percent for direct care, therapy care, support services, and operations effective July 1, 2008.~~

~~(11) $180,000 of the general fund—state appropriation for fiscal year 2009 and $170,000 of the general fund—federal appropriation are provided solely for a review of the costs and benefits of a fair rental system to reimburse capital expenditures. The department must report its findings to the fiscal committees of the legislature and the office of financial management by July 1, 2009.~~

~~(12)~~)) Within amounts appropriated in this section, the department is authorized to expand the number of boarding homes and adult family homes that receive exceptional care rates for persons with Alzheimer's disease and related dementias who might otherwise require nursing home care. The department may expand the number of licensed boarding home facilities that specialize in caring for such conditions by up to 100 beds. Effective July 1, 2008, the department shall be authorized to provide adult family homes that specialize in caring for such conditions with exceptional care rates for up to 50 beds. The department will develop standards for adult family homes to qualify for such exceptional care rates in order to enhance consumer choice.

(((~~(13) $500,000 of the general fund—state appropriation for fiscal year 2008, $500,000 of the general fund—state appropriation for fiscal year 2009, and $816,000 of the general fund—federal appropriation are provided solely for the implementation of Engrossed Substitute House Bill No. 2111 (adult family homes). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.~~

~~(14)~~)) (11) $1,212,000 of the traumatic brain injury account—state appropriation is provided solely for the implementation of Second Substitute House Bill No. 2055 (traumatic brain injury). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(((~~(15) Within amounts appropriated in this section and in section 205 of this act, the department of social and health services shall:~~

~~(a) Determine how geographic differences in community residential provider payments affect provider and workforce turnover;~~

~~(b) Examine alternative community residential provider payment systems that account for differences in direct care labor costs in various areas of the state, including alternative peer groupings in its payment systems that take such factors into account; and~~

~~(c) Submit a report of its findings and recommendations to the office of financial management and to the appropriate fiscal committees of the legislature by June 30, 2008.~~

~~(16)~~))) (12)(a) Amounts appropriated in this section are sufficient to increase provider payment rates by 6.0 percent for boarding homes, effective July 1, 2007, including those currently receiving exceptional care rates; and by 3.2 percent, effective July 1, 2007, for adult family homes, including those currently receiving exceptional care rates.

(b) The department shall implement phase one of full implementation of a seventeen CARE level payment system for community residential providers. Amounts appropriated in this section are sufficient to increase adult family home provider payment rates on average, effective July 1, 2008, including those currently receiving exceptional care rates, and to adjust adult family home rates for the first phase of a seventeen CARE level payment system. Effective July 1, 2008, the provider payment rate allocation for boarding homes contracted as assisted living shall be the provider's June 30, 2008, payment rate allocation, and the provider payment rate for boarding homes contracted as ARCs and EARCs shall be adjusted to reflect phase one of a seventeen CARE level payment system. This will be in effect until such time as the rates are consistent between adult family homes and boarding homes for delivery of the same patient care levels.

(c) Amounts provided in this section and in section 205 of this act are sufficient to assist adult family home providers with the cost of paying liability insurance.

(((~~(17) $100,000 of the general fund—state appropriation for fiscal year 2008 and $100,000 of the general fund—federal appropriation are provided solely for the department contract for an evaluation of training requirements for long-term care workers as generally described in Second Substitute House Bill No. 2284 (training of care providers).~~

~~(18)~~))) (13) The department shall contract for housing with service models, such as cluster care, to create efficiencies in service delivery and responsiveness to unscheduled personal care needs by clustering hours for clients that live in close proximity to each other.

(((~~(19)~~))) (14) $2,463,000 of the general fund—state appropriation for fiscal year 2009 and $1,002,000 of the general fund—federal appropriation are provided solely to implement sections 4 and 8 of Engrossed Second Substitute House Bill No. 2668 (long-term care programs). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

(((~~(20)~~))) (15) $40,000 of the general fund—state appropriation for fiscal year 2009 and $40,000 of the general fund—federal appropriation are provided solely to implement Second Substitute Senate Bill No. 6220 (nurse delegation) or sections 11 and 12 of Engrossed Second Substitute House Bill No. 2668 (long-term care programs). If neither bill is enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

(((~~(22)~~))) (16) Within the funds appropriated in the section, the department shall establish one statewide hourly rate to reimburse home care agencies for the costs related to state clients for hours worked by direct care workers in receiving mandatory training. The statewide hourly rate shall be based on the hourly wage

paid to individual providers plus mandatory taxes plus an adjustment based on the formula created under RCW 74.39A.310.

(17) Within the amounts appropriated in this section, the department shall define in-home personal care services to include a client's ability to manage their personal care worker as identified by characteristics in the functional assessment. Clients whose assessments demonstrate they are able to manage their own plan of care are not eligible for personal care through a home care agency. The department shall adopt rules to implement this section.

(18) In addition to other reductions, the reduced appropriations in this section reflect an additional $1,002,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 206. 2008 c 329 s 207 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—ECONOMIC SERVICES PROGRAM

General Fund—State Appropriation (FY 2008) $586,369,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$619,066,000~~))
$464,586,000
General Fund—Federal Appropriation . . . . . ((~~$1,037,038,000~~))
$1,168,223,000
General Fund—Private/Local Appropriation . . . . . ((~~$30,833,000~~))
$33,233,000
Pension Funding Stabilization Account—State
Appropriation $4,592,000
TOTAL APPROPRIATION . . . . . ((~~$2,277,898,000~~))
$2,257,003,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $344,694,000 of the general fund—state appropriation for fiscal year 2008, ((~~$363,284,000~~)) $362,304,000 of the general fund—state appropriation for fiscal year 2009, and $733,276,000 of the general fund—federal appropriation are provided solely for all components of the WorkFirst program. Within the amounts provided for the WorkFirst program, the department may provide assistance using state-only funds for families eligible for temporary assistance for needy families. Within the amounts provided for the WorkFirst program, the department shall:

(a) Establish a career services work transition program;

(b) Continue to implement WorkFirst program improvements that are designed to achieve progress against outcome measures specified in RCW 74.08A.410. Outcome data regarding job retention and wage progression shall be reported quarterly to appropriate fiscal and policy committees of the legislature for families who leave assistance, measured after 12 months, 24 months, and 36 months. The department shall also report the percentage of families who have returned to temporary assistance for needy families after 12 months, 24 months, and 36 months;

(c) Submit a report by October 1, 2007, to the fiscal committees of the legislature containing a spending plan for the WorkFirst program. The plan shall identify how spending levels in the 2007-2009 biennium will be adjusted to stay within available federal grant levels and the appropriated state-fund levels;

(d) Provide quarterly fiscal reports to the office of financial management and the legislative fiscal committees detailing information on the amount expended from general fund—state and general fund—federal by activity;

(e) For fiscal year 2009, increase the temporary assistance for needy families grant standard by three percent to account for increased housing costs.

(2) Up to $250,000 of the general fund—state appropriation for fiscal year 2008 and $250,000 of the general fund—state appropriation for fiscal year 2009 of the amounts in subsection (1) of this section are for the WorkFirst pathway to engagement program. The department shall collaborate with community partners and represented staff to identify additional services needed for WorkFirst clients in sanction status. The department shall contract with qualified community-based organizations to deliver such services, provided that such services are complimentary to the work of the department and are not intended to supplant existing staff or services. The department shall also contract with community-based organizations for the provision of services for WorkFirst clients who have been terminated after six months of sanction. Contracts established pursuant to this subsection shall have a performance-based component and shall include both presanction termination and postsanction termination services. Clients shall be able to choose whether or not to accept the services. The department shall develop outcome measures for the program related to outreach and reengagement, reduction of barriers to employment, and client feedback and satisfaction. Nothing in this subsection is intended to modify a collective bargaining agreement under chapter 41.80 RCW or to change the state's responsibility under chapter 41.80 RCW. The department shall report to the appropriate policy and fiscal committees of the legislature by December 1, 2007, on program implementation and outcomes. The department also shall report on implementation of specialized caseloads for clients in sanction status, including average caseload size, referral process and criteria, and expected outcomes for specialized caseloads.

(3) $210,000 of the general fund—state appropriation for fiscal year 2008, $187,000 of the general fund—state appropriation for fiscal year 2009, and $396,000 of the general fund—federal appropriation are provided solely for implementation of section 8 of Second Substitute House Bill No. 1088 (children's mental health). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(4) $152,000 of the general fund—state appropriation for fiscal year 2008, $96,000 of the general fund—state appropriation for fiscal year 2009, and $482,000 of the general fund—federal appropriation are provided solely for implementation of Second Substitute House Bill No. 1009 (child support schedule). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(5) $750,000 of the general fund—state appropriation for fiscal year 2008 and $750,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to increase naturalization services. These amounts shall

supplement and not supplant state and federal resources currently provided by the department for this purpose.

(6) $1,500,000 of the general fund—state appropriation for fiscal year 2008 and $1,500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to increase limited English proficiency pathway services. These amounts shall supplement and not supplant state and federal resources currently provided by the department for this purpose.

(7) $250,000 of the general fund—state appropriation for fiscal year 2008, $5,782,000 of the general fund—state appropriation for fiscal year 2009, and $6,431,000 of the general fund—federal appropriation are provided solely for implementation of Substitute Senate Bill No. 5244 (deficit reduction act). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(8) Within amounts appropriated in this section, the department shall: (a) Increase the state supplemental payment by $1.77 per month beginning July 1, 2007, and by an additional $1.83 per month beginning July 1, 2008, for SSI clients who reside in nursing facilities, residential habilitation centers, or state hospitals and who receive a personal needs allowance; and (b) decrease other state supplemental payments.

(9) $100,000 of the general fund—state appropriation for fiscal year 2008 and $100,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to the department for the data tracking provisions specified in sections 701 and 702 of Second Substitute Senate Bill No. 5470 (dissolution proceedings). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(10) $1,552,000 of the general fund—state appropriation for fiscal year 2008 and $1,552,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for implementation of Second Substitute Senate Bill No. 6016 (workfirst program). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(11) $50,000 of the general fund—state appropriation for fiscal year 2008 and $50,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to the department to award grants to small mutual assistance associations or small community-based organizations that contract with the department for immigrant and refugee assistance services. The funds shall be awarded to demonstrate the impact of providing funding for a case worker in the community organization on the refugees' economic self-sufficiency through the effective use of social services, and financial and medical assistance.

(12) $50,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Second Substitute Senate Bill No. 6483 (local food production). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(13) $1,100,000 of the general fund—state appropriation for fiscal year 2009 and $850,000 of the general fund—federal appropriation are provided solely to increase the gross income limits for eligibility for programs authorized under RCW 74.04.500 and 74.08A.120 to 200 percent of the federal poverty level. The department shall adjust its rules and information technology systems to make the eligibility change effective October 1, 2008.

(14) The department, in conjunction with the House Bill No. 1290 work group, shall identify and analyze barriers preventing city, county, and state referrals of persons potentially eligible for expedited application processing authorized under RCW 74.09.555. The department, in conjunction with the House Bill No. 1290 work group, shall report its findings and recommendations to the appropriate committees of the legislature no later than November 15, 2008.

(15) $656,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to the department to increase immigration and naturalization services. These funds shall not supplant state and federal resources currently provided by the department for this purpose.

(16) The department shall not increase the child care copayment for families above 82 percent of the federal poverty level.

(17) In addition to other reductions, the reduced appropriations in this section reflect an additional $516,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 207. 2008 c 329 s 208 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—ALCOHOL AND SUBSTANCE ABUSE PROGRAM

General Fund—State Appropriation (FY 2008) $69,252,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$74,467,000~~))
$54,049,000
General Fund—Federal Appropriation . . . . . ((~~$149,196,000~~))
$168,949,000
General Fund—Private/Local Appropriation $6,083,000
Criminal Justice Treatment Account—State Appropriation $18,555,000
Violence Reduction and Drug Enforcement Account—State Appropriation (FY 2008) $22,186,000
Violence Reduction and Drug Enforcement Account—State Appropriation (FY 2009) $22,186,000
Problem Gambling Account—State Appropriation $1,464,000
Public Safety and Education Account—State Appropriation (FY 2008) $3,396,000
Public Safety and Education Account—State Appropriation (FY 2009) $3,395,000
Pension Funding Stabilization Account—State Appropriation $146,000
TOTAL APPROPRIATION . . . . . ((~~$370,326,000~~))
$369,661,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $2,786,000 of the general fund—state appropriation for fiscal year 2008 and $2,785,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the parent child assistance program. The department shall

contract with the University of Washington and community-based providers for the provision of this program. For all contractors, indirect charges for administering the program shall not exceed ten percent of the total contract amount.

(2) $11,113,000 of the general fund—state appropriation for fiscal year 2008, $14,490,000 of the general fund—state appropriation for fiscal year 2009, and $14,269,000 of the general fund—federal appropriation are provided solely for the expansion of chemical dependency treatment services for adult medicaid eligible and general assistance-unemployable patients authorized under the 2005-07 biennial appropriations act. By September 30, 2007, the department shall submit an expenditure and program report relating to the patients receiving treatment and other services pursuant to the funding provided in this subsection (2), as well as to other patients receiving treatment funded by the department. The report shall be submitted to the office of financial management and the appropriate policy and fiscal committees of the legislature. Subsequent updates to this report shall be provided by January 31 and July 31 of each fiscal year of the 2007-09 biennium. The reports shall include, but not necessarily be limited to, the following information: (a) The number and demographics (including categories) of patients served; (b) geographic distribution; (c) modality of treatment services provided (i.e. residential or out-patient); (d) treatment completion rates; (e) funds spent; and (f) where applicable, the estimated cost offsets in medical assistance on a total and per patient basis.

(3) $698,000 of the general fund—state appropriation for fiscal year 2008, $1,060,000 of the general fund—state appropriation for fiscal year 2009, and $154,000 of the general fund—federal appropriation are provided solely for the expansion authorized under the 2005-07 biennial appropriations act of chemical dependency treatment services for minors who are under 200 percent of the federal poverty level. The department shall monitor the number and type of clients entering treatment, for purposes of determining potential cost offsets.

(4) $250,000 of the general fund—state appropriation for fiscal year 2008 and $145,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the department to contract for the following: (a) To continue an existing pilot program in Pierce county limited to individuals who began chemical dependency treatment using the prometa protocol prior to March 11, 2008; and (b) to contract with an independent evaluator who will, to the extent possible, evaluate the Pierce county pilot, as well as summarize other research on the efficacy of the prometa protocol.

(5) $4,449,000 of the general fund—state appropriation for fiscal year 2009 and $1,000,000 of the criminal justice treatment account appropriation are provided solely to implement Engrossed Substitute Senate Bill No. 6665 (crisis response), to continue existing pilot programs and to expand the intensive crisis response pilot to Spokane county. The continuation and expansion of the pilot programs expires June 30, 2009. If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

(6) The department shall not reduce and shall continue to provide adult care and low-income treatment and detoxification services.

(7) The department shall not reduce and shall continue to support the families in recovery program.

(8) The department shall not reduce and shall continue the student employment program.

(9) The department shall not reduce and shall continue to provide funding for living allowances to clients in treatment under RCW 74.50.050.

(10) The department shall not reduce and shall continue to provide funding to drug courts for treatment.

(11) In addition to other reductions, the reduced appropriations in this section reflect an additional $76,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

(12) The department shall not reduce and shall continue to secure and provide for evaluation training for assessing children with fetal alcohol spectrum disorders (FASD).

Sec. 208. 2008 c 329 s 209 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—MEDICAL ASSISTANCE PROGRAM

General Fund—State Appropriation (FY 2008) $1,602,827,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$1,669,581,000~~))
$1,533,431,000
General Fund—Federal Appropriation . . . . . ((~~$4,344,748,000~~))
$4,439,060,000
General Fund—Private/Local Appropriation $2,000,000
Emergency Medical Services and Trauma Care Systems
Trust Account—State Appropriation $15,076,000
Health Services Account—State Appropriation (FY 2008) $388,946,000
Health Services Account—State
Appropriation (FY 2009) . . . . . ((~~$421,762,000~~))
$392,857,000
Tobacco Prevention and Control Account—State
Appropriation $1,883,000
Pension Funding Stabilization Account—State
Appropriation $646,000
TOTAL APPROPRIATION . . . . . ((~~$8,447,469,000~~))
$8,376,726,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Based on quarterly expenditure reports and caseload forecasts, if the department estimates that expenditures for the medical assistance program will exceed the appropriations, the department shall take steps including but not limited to reduction of rates or elimination of optional services to reduce expenditures so that total program costs do not exceed the annual appropriation authority.

(2) In determining financial eligibility for medicaid-funded services, the department is authorized to disregard recoveries by Holocaust survivors of insurance proceeds or other assets, as defined in RCW 48.104.030.

(3) Sufficient amounts are appropriated in this section for the department to continue podiatry services for medicaid-eligible adults.

(4) Sufficient amounts are appropriated in this section for the department to provide an adult dental benefit that is at least equivalent to the benefit provided in the 2003-05 biennium.

(5) In accordance with RCW 74.46.625, $6,000,000 of the general fund—federal appropriation is provided solely for supplemental payments to nursing homes operated by public hospital districts. The public hospital district shall be responsible for providing the required nonfederal match for the supplemental payment, and the payments shall not exceed the maximum allowable under federal rules. It is the legislature's intent that the payments shall be supplemental to and shall not in any way offset or reduce the payments calculated and provided in accordance with part E of chapter 74.46 RCW. It is the legislature's further intent that costs otherwise allowable for rate-setting and settlement against payments under chapter 74.46 RCW shall not be disallowed solely because such costs have been paid by revenues retained by the nursing home from these supplemental payments. The supplemental payments are subject to retrospective interim and final cost settlements based on the nursing homes' as-filed and final medicare cost reports. The timing of the interim and final cost settlements shall be at the department's discretion. During either the interim cost settlement or the final cost settlement, the department shall recoup from the public hospital districts the supplemental payments that exceed the medicaid cost limit and/or the medicare upper payment limit. The department shall apply federal rules for identifying the eligible incurred medicaid costs and the medicare upper payment limit.

(6) $1,111,000 of the health services account appropriation for fiscal year 2008, $1,110,000 of the health services account appropriation for fiscal year 2009, $5,402,000 of the general fund—federal appropriation, $1,590,000 of the general fund—state appropriation for fiscal year 2008, and $1,591,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for grants to rural hospitals. The department shall distribute the funds under a formula that provides a relatively larger share of the available funding to hospitals that (a) serve a disproportionate share of low-income and medically indigent patients and (b) have relatively smaller net financial margins, to the extent allowed by the federal medicaid program.

(7) $10,546,000 of the health services account appropriation for fiscal year 2008, $10,546,000 of the health services account—state appropriation for fiscal year 2009, and $19,725,000 of the general fund—federal appropriation are provided solely for grants to nonrural hospitals. The department shall distribute the funds under a formula that provides a relatively larger share of the available funding to hospitals that (a) serve a disproportionate share of low-income and medically indigent patients and (b) have relatively smaller net financial margins, to the extent allowed by the federal medicaid program.

(8) The department shall continue the inpatient hospital certified public expenditures program for the 2007-2009 biennium. The program shall apply to all public hospitals, including those owned or operated by the state, except those classified as critical access hospitals or state psychiatric institutions. The department shall submit reports to the governor and legislature by November 1, 2007, and by November 1, 2008, that evaluate whether savings continue to

exceed costs for this program. If the certified public expenditures (CPE) program in its current form is no longer cost-effective to maintain, the department shall submit a report to the governor and legislature detailing cost-effective alternative uses of local, state, and federal resources as a replacement for this program. During fiscal year 2008 and fiscal year 2009, hospitals in the program shall be paid and shall retain (a) one hundred percent of the federal portion of the allowable hospital cost for each medicaid inpatient fee-for-service claim payable by medical assistance; and (b) one hundred percent of the federal portion of the maximum disproportionate share hospital payment allowable under federal regulations. Inpatient medicaid payments shall be established using an allowable methodology that approximates the cost of claims submitted by the hospitals. Payments made to each hospital in the program in each fiscal year of the biennium shall be compared to a baseline amount. The baseline amount will be determined by the total of (a) the inpatient claim payment amounts that would have been paid during the fiscal year had the hospital not been in the CPE program, and (b) disproportionate share hospital payment amounts paid to and retained by each hospital during fiscal year 2005 that pertain to fiscal year 2005. If payments during the fiscal year exceed the hospital's baseline amount, no additional payments will be made to the hospital except the federal portion of allowable disproportionate share hospital payments for which the hospital can certify allowable match. If payments during the fiscal year are less than the baseline amount, the hospital will be paid a state grant equal to the difference between payments during the fiscal year and the applicable baseline amount. Payment of the state grant shall be made in the applicable fiscal year and distributed in monthly payments. The grants will be recalculated and redistributed as the baseline is updated during the fiscal year. The grant payments are subject to an interim settlement within eleven months after the end of the fiscal year. A final settlement shall be performed within two years after the end of the related fiscal year. To the extent that either settlement determines that a hospital has received funds in excess of what it would have received as described in this subsection, the hospital must repay the excess amounts to the state when requested. $61,728,000 of the general fund—state appropriation for fiscal year 2008, of which $6,570,000 is appropriated in section 204(1) of this act and the balance in this section, and ((~~$57,894,000~~)) $47,745,000 of the general fund—state appropriation for fiscal year 2009, of which $6,570,000 is appropriated in section 204(1) of this act and the balance in this section, are provided solely for state grants for the participating hospitals.

(9) $4,399,000 of the general fund—state appropriation for fiscal year 2008, $6,391,000 of the general fund—state appropriation for fiscal year 2009, and $55,384,000 of the general fund—federal appropriation are provided solely for development and implementation of a replacement system for the existing medicaid management information system. The amounts are conditioned on the department satisfying the requirements of section 902 of this act.

(10) When a person is ineligible for medicaid solely by reason of residence in an institution for mental diseases, the department shall provide the person with the same benefits as he or she would receive if eligible for medicaid, using state-only funds to the extent necessary.

(11) The department is authorized to use funds appropriated in this section to purchase goods and supplies through direct contracting with vendors when the department determines it is cost-effective to do so.

(12) The legislature affirms that it is in the state's interest for Harborview medical center to remain an economically viable component of the state's health care system.

(13) The department shall, within available resources, continue operation of the medical care services care management pilot project for clients receiving general assistance benefits in King and Pierce counties. The project may use a full or partial capitation model that includes a mechanism for shared savings.

(14) $1,688,000 of the general fund—state appropriation for fiscal year 2008 and $1,689,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to incorporate a mental health service component to the pilot project established pursuant to subsection (13) of this section. Addition of the mental health service component authorized in this subsection is contingent upon the managed care contractor or the participating counties providing, alone or in combination, matching funds in cash or in kind, in an amount equal to one-ninth of the amounts appropriated in this subsection. The mental health service component may include care coordination, mental health services, and integrated medical and mental health service delivery for general assistance clients with mental health disorders, as well as primary care provider training and education. The department shall provide a report to the appropriate committees of the legislature by January 1, 2009, on costs, savings, and any outcomes or quality measures associated with the pilot projects during calendar year 2007 and 2008. To the extent possible, the report shall address any impact that the mental health services component has had upon clients' use of medical services, including but not limited to primary care physician's visits, emergency room utilization, and prescription drug utilization.

(15) $341,000 of the health services account appropriation for fiscal year 2008, $1,054,000 of the health services account appropriation for fiscal year 2009, and $1,461,000 of the general fund—federal appropriation are provided solely to implement Second Substitute House Bill No. 1201 (foster care youth medical). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(16) $6,728,000 of the general fund—state appropriation for fiscal year 2008 and $8,563,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to provide full benefit dual eligible beneficiaries with medicare part D prescription drug copayment coverage in accordance with chapter 3, Laws of 2007 (part D copayment drug program).

(17) The department shall conduct a study to determine the financial impact associated with continuing to cover brand name medications versus the same medication in its generic form. The study shall account for all rebates paid to the state on each product studied up until the point where the generic form is less expensive, net of federally required rebates. The department shall submit its report to the legislative fiscal committees by December 1, 2007.

(18) $198,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$268,000~~)) $134,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the first two years of a four-year project by the Seattle-King county health department to improve management of symptoms

and reduce complications related to asthma among medicaid eligible children. The department shall contract with the Seattle-King county health department to have trained community health workers visit medicaid eligible children in their homes to identify and reduce exposure to asthma triggers, improve clients' self-management skills, and coordinate clients' care with their primary care and specialty providers. The contract shall include an evaluation of the impact of the services provided under the contract on urgent physician's visits, emergency room utilization, and inpatient hospitalization.

(19) $1,529,000 of the general fund—state appropriation for fiscal year 2008 and (($~~$2,871,000~~$)) $1,624,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for development and implementation of an outreach program as provided in chapter 5, Laws of 2007 (Second Substitute Senate Bill No. 5093, health services for children).

(a) By December 15, 2007, the department shall provide a report to the appropriate committees of the legislature on the progress of implementing the following activities:

(i) Feasibility study and implementation plan to develop online application capability that is integrated with the department's automated client eligibility system;

(ii) Development of data linkages with the office of superintendent of public instruction for free and reduced-price lunch enrollment information and the department of early learning for child care subsidy program enrollment information;

(iii) Informing insurers and providers when their enrollees' eligibility is going to expire so insurers and providers can help families reenroll;

(iv) Outreach contracts with local governmental entities, community based organizations, and tribes;

(v) Results of data sharing with outreach contractors, and other contracted entities such as local governments, community-based organizations, tribes, health care providers, and insurers to engage, enroll, and reenroll identified children;

(vi) Results of efforts to maximize federal matching funds, wherever possible; and

(vii) Plans for sustaining outreach programs proven to be successful.

(b)(i) Within the amounts provided under this subsection (19), sufficient funding is provided to the department to develop and implement in conjunction with the employment security department a plan that would:

(A) Allow applicants and recipients of unemployment insurance to request assistance with obtaining health coverage for household members; and

(B) Authorize the exchange of information between the employment security department and the department of social and health services to more efficiently determine eligibility for health coverage under chapter 74.09 RCW.

(ii) The plan developed in (b)(i) of this subsection should address permissible uses of federal employment security funding and infrastructure, identification of any necessary statutory changes, and cost information. The department shall submit the plan in a report to the governor and the appropriate committees of the legislature by November 15, 2008.

(20) $640,000 of the general fund—state appropriation for fiscal year 2008 and $616,000 of the general fund—state appropriation for fiscal year 2009 are provided solely ((~~to~~)) for a medicare advantage program. The department shall:

(a) Pay the premiums associated with enrollment in a medicare advantage plan for those full benefit dual eligible beneficiaries, as defined in RCW 74.09.010, who were enrolled on or before November 14, 2006 in a medicare advantage plan sponsored by an entity accredited by the national committee for quality assurance and for whom the department had been paying Part C premium as of November 2006; and

(b) Undertake, directly or by contract, a study to determine the cost-effectiveness of paying premiums for enrollment of full benefit dual eligible beneficiaries in medicare advantage plans in lieu of paying full benefit dual eligible beneficiaries' medicare cost-sharing. The study shall compare the cost and health outcomes experience, including rates of nursing home placement and costs for groups of full benefit dual eligible beneficiaries who are enrolled in medicare advantage plans, in medicare special needs plan or in medicare fee-for-service. The study shall compare the health status and utilization of health and long-term care services for the three groups, and the impact of access to a medical home and specialty care, over a period of two years to determine any differences in health status, health outcomes, and state expenditures that result. The department shall submit the results of the study to the governor and the legislature by June 30, 2009. The department is authorized to accept private cash and in-kind donations and grants to support the study and evaluation.

(c) Track enrollment and expenditures for this population on department monthly management reports.

(21) The department may not transition to managed care delivery any population that has been primarily served under fee-for-service delivery unless the department first conducts a cost-effectiveness evaluation of the transition, including an evaluation of historical data on utilization patterns, and finds that the transition would result in a more effective and cost-efficient form of service delivery, pursuant to RCW 74.09.470. Any such finding must be provided to the governor and the legislature no less than ninety days before the transition begins.

(22) $756,000 of the general fund—state appropriation for fiscal year 2008, $1,193,000 of the general fund—state appropriation for fiscal year 2009, $1,261,000 of the health services account—state appropriation for fiscal year 2009, and $2,448,000 of the general fund—federal appropriation are provided solely to implement sections 5, 7, 8, and 11 of Second Substitute House Bill No. 1088 (children's mental health). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(23) $288,000 of the general fund—state appropriation for fiscal year 2008, $277,000 of the general fund—state appropriation for fiscal year 2009, and $566,000 of the general fund—federal appropriation are provided solely for the implementation of Engrossed Second Substitute Senate Bill No. 5930 (blue ribbon comm/health care). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(24) $45,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the department of social and health services, in consultation with the health care authority and the employment security department, to prepare and submit a report and recommendations to the governor and the

legislature related to coverage of low-wage workers enrolled on state plans who are employed by employers with more than fifty employees. The report shall address multiple approaches, including but not limited to the proposal included in House Bill No. 2094 (taxpayer health care fairness act). The discussion of each approach included in the report should identify how the approach would further the goal of shared responsibility for coverage of low-wage workers, obstacles to implementation and options to address them, and estimated implementation costs. The report shall be submitted on or before November 15, 2007. The agencies shall establish a workgroup, which shall be closely involved and consulted in the development of the report and recommendations under this subsection. The workgroup shall include the following participants: Persons or organizations representing large employers in the retail, agricultural and grocery trades, other large employers, organizations representing employees of large employers, organizations representing low-wage employees of large employers, state and local governmental entities as employers, and organizations representing employees of state and local governmental entities. In addition, the workgroup shall include three members from each of the two largest caucuses of the house of representatives, appointed by the speaker, and three members from each of the two largest caucuses of the senate, appointed by the president of the senate.

(25) $1,883,000 of the tobacco prevention and control account—state appropriation and $1,742,000 of the general fund—federal appropriation are for the provision of smoking cessation benefits pursuant to Senate Bill No. 6421 (smoking cessation). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

(26) As part of the five-year plan on state purchasing to improve health care quality under chapter 259, Laws of 2007, the department, in collaboration with the department of health, shall provide a report to the appropriate committees of the legislature outlining a strategy to improve immunization rates for all children in the state, including but not limited to vaccine administration fee increases and pay-for-performance incentives. The department shall submit the report to the governor and the health policy and fiscal committees of the legislature by November 1, 2008.

(27) Within existing funds, the department shall evaluate the fiscal impact of the federal upper limits on medicaid reimbursement to pharmacies implemented under the federal deficit reduction act, and report its findings to the legislature by December 1, 2008.

(28)(a) $100,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for a feasibility study to examine processes and systems that would expeditiously link persons released from confinement in state and local correctional facilities and institutions for mental diseases to medical assistance benefits for which they qualify. The study shall present an analysis of the costs and benefits associated with:

(i) Suspending eligibility for persons who were receiving medical assistance at the time their confinement began, such that upon the person's release from confinement, medical assistance benefits would immediately resume without the filing of a new application. In the evaluation of eligibility suspension, the department shall examine process modifications that would allow confined

persons to recertify eligibility before or immediately after release from confinement;

(ii) Improving the efficiency and expanding the scope of the expedited medical assistance reinstatement and eligibility determination process established under RCW 74.09.555, including extending the process to persons other than those with mental disorders, both for persons who had been previously eligible before confinement and for persons who had not been eligible before confinement;

(iii) Providing medical and mental health evaluations to determine disability for purposes of the medical assistance program before the person's release from confinement; and

(iv) Notifying the department in a timely manner when a person who has been enrolled in medical assistance is confined in a state correctional institution or institution for mental diseases or is released from confinement.

(b) In conducting the study, the department shall collaborate with the Washington association of sheriffs and police chiefs, the department of corrections, the regional support networks, department field offices, institutions for mental diseases, and correctional institutions. The department shall submit the study to the governor and the legislature by November 15, 2008.

(((~~(30)~~))) (29) $50,000 of the general fund—state appropriation for fiscal year 2009 and $50,000 of the general fund—federal appropriation are provided solely for implementation of the agency's responsibilities in Engrossed Second Substitute House Bill No. 2549 (patient-centered primary care). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

(((~~(31) $50,000 of the general fund—state appropriation for fiscal year 2009 and $50,000 of the general fund—federal appropriation are provided solely for the senior dental access project pursuant to Engrossed Second Substitute House Bill No. 2668 (long term care programs). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.~~)))

(30) The department shall not reduce and shall continue to provide family planning nurses and supplies at community services offices.

(31) The department shall not eliminate and shall continue to provide a nurse hotline for foster parents.

(32) The department shall not reduce and shall provide medical assistance to children under three-hundred percent of the federal poverty level.

(33) The department shall not reduce and shall continue to provide maternity support services to pregnant and postpartum women.

(34) The department shall not reduce and shall continue to provide transportation services to patients receiving adult day health services.

(35) The department shall continue children's health coverage outreach and education efforts. These efforts shall rely on existing relationships and systems developed to implement the program under RCW 74.09.470, such as those with local public health agencies, health care providers, public schools, the women, infants, and children program, the early childhood education and assistance program, child care providers, newborn visiting nurses, and other community-based organizations. The department shall seek public-private partnerships and federal funds that may become available to provide on-going support for outreach and education efforts.

(36) The department shall reduce expenditures on pharmaceuticals and durable medical equipment.

(37) The department shall not reduce hospital rates.

(38) In addition to other reductions, the reduced appropriations in this section reflect an additional $1,062,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 209. 2008 c 329 s 210 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—VOCATIONAL REHABILITATION PROGRAM

General Fund—State Appropriation (FY 2008) $11,543,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$12,323,000~~))
$8,182,000
General Fund—Federal Appropriation . . . . . ((~~$92,975,000~~))
$95,975,000
Telecommunications Devices for the Hearing and Speech Impaired—State Appropriation $1,975,000
Pension Funding Stabilization Account—State Appropriation $116,000
TOTAL APPROPRIATION . . . . . ((~~$118,932,000~~))
$117,791,000

Sec. 210. 2008 c 329 s 211 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—SPECIAL COMMITMENT PROGRAM

General Fund—State Appropriation (FY 2008) $52,506,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$54,549,000~~))
$52,216,000
TOTAL APPROPRIATION . . . . . ((~~$107,055,000~~))
$104,722,000

Sec. 211. 2008 c 329 s 212 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—ADMINISTRATION AND SUPPORTING SERVICES PROGRAM

General Fund—State Appropriation (FY 2008) $40,502,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$41,125,000~~))
$37,873,000
General Fund—Federal Appropriation . . . . . ((~~$64,805,000~~))
$62,737,000
General Fund—Private/Local Appropriation $1,526,000
Public Safety and Education Account—State Appropriation (FY 2008) $700,000
Public Safety and Education Account—State Appropriation (FY 2009) $1,752,000
Pension Funding Stabilization Account—State Appropriation $1,408,000

Violence Reduction and Drug Enforcement Account—
State Appropriation (FY 2008) $913,000
Violence Reduction and Drug Enforcement Account—
State Appropriation (FY 2009) $917,000
TOTAL APPROPRIATION . . . . . ((~~$153,648,000~~))
$148,328,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $250,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$250,000~~)) $230,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the expansion of the Washington state mentors program, which provides technical assistance and training to mentoring programs that serve at-risk youth.

(2) $1,750,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$1,750,000~~)) $1,676,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the Washington council for prevention of child abuse and neglect to expand its home visitation program.

(3) $150,000 of the general fund—state appropriation for fiscal year 2008 and $150,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to the family policy council for distribution as grants to community networks in counties with county juvenile courts participating in decategorization of funding through the juvenile rehabilitation administration. The council shall provide grants of up to $50,000 per fiscal year to the Pierce County-Tacoma urban community network and additional community networks supporting counties or groups of counties in evaluating programs funded through a block grant by the juvenile rehabilitation administration. Funds not used for grants to community networks supporting counties or groups of counties participating in the decategorization block grants shall lapse.

(4) $500,000 of the general fund—state appropriation for fiscal year 2008 and $500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for funding of the teamchild project through the governor's juvenile justice advisory committee.

(5) $85,000 of the general fund—state appropriation for fiscal year 2008 and $85,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the continuation of the postpartum depression campaign, including the design and production of brochures in various languages, a radio public service announcement, and other outreach and training efforts.

(6) $200,000 of the general fund—state appropriation for fiscal year 2008 and $200,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to expand and enhance the juvenile detention alternatives initiative. This funding is intended to add three new program sites, support the addition of a data analyst, and to provide resources for the state to participate in annual national conferences.

(7) $95,000 of the general fund—state appropriation for fiscal year 2008, $87,000 of the general fund—state appropriation for fiscal year 2009, and $101,000 of the general fund—federal appropriation are provided solely for the implementation of Engrossed Second Substitute House Bill No. 1422

(incarcerated parents). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(8) $12,000 of the general fund—state appropriation for fiscal year 2009 and $7,000 of the general fund—federal appropriation are provided solely for the implementation of chapter 465, Laws of 2007.

(9) $196,000 of the general fund—state appropriation for fiscal year 2008, $804,000 of the general fund—state appropriation for fiscal year 2009, and $581,000 of the general fund—federal appropriation are provided solely for the development of a project plan, time line, and budget plan for a more flexible payment system for independent home care providers and others who collectively bargain for wages and benefits. The legislature finds the amounts provided are sufficient to fund the following related to a timely and expeditious transition to a more flexible provider payroll system: (a) An appropriate request for proposal; and (b) collection of the information necessary to develop the budget proposal needed to seek budget authority for the system.

(10) In addition to other reductions, the reduced appropriations in this section reflect an additional $723,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 212. 2008 c 329 s 213 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—PAYMENTS TO OTHER AGENCIES PROGRAM

General Fund—State Appropriation (FY 2008) $59,085,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$60,121,000~~))
$52,540,000
General Fund—Federal Appropriation . . . . . ((~~$57,438,000~~))
$53,302,000
TOTAL APPROPRIATION . . . . . ((~~$176,644,000~~))
$164,927,000

The appropriations in this section are subject to the following conditions and limitations: $235,000 of the general fund—state appropriation for fiscal year 2009 and $111,000 of the general fund—federal appropriation are provided solely to implement sections 2 and 3 of Engrossed Second Substitute House Bill No. 3205 (child long-term well-being). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

Sec. 213. 2008 c 329 s 214 (uncodified) is amended to read as follows:

FOR THE STATE HEALTH CARE AUTHORITY

General Fund—State Appropriation (FY 2008) $1,000,000
General Fund—Federal Appropriation . . . . . ((~~$4,937,000~~))
$4,934,000
State Health Care Authority Administrative Account—
State Appropriation . . . . . ((~~$41,543,000~~))
$41,497,000
State Health Care Authority Administrative Account—
Private/Local Appropriation $100,000

Medical Aid Account—State Appropriation $527,000
Health Services Account—State Appropriation
(FY 2008). $271,478,000
Health Services Account—State Appropriation
(FY 2009). . . . . ((~~$302,832,000~~))
$291,795,000
TOTAL APPROPRIATION . . . . . ((~~$622,417,000~~))
$611,331,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Within amounts appropriated in this section and sections 205 and 206 of this act, the health care authority shall continue to provide an enhanced basic health plan subsidy for foster parents licensed under chapter 74.15 RCW and workers in state-funded home care programs. Under this enhanced subsidy option, foster parents eligible to participate in the basic health plan as subsidized enrollees and home care workers with family incomes below 200 percent of the federal poverty level shall be allowed to enroll in the basic health plan at the minimum premium amount charged to enrollees with incomes below sixty-five percent of the federal poverty level.

(2) The health care authority shall require organizations and individuals that are paid to deliver basic health plan services and that choose to sponsor enrollment in the subsidized basic health plan to pay 133 percent of the premium amount which would otherwise be due from the sponsored enrollees.

(3) The administrator shall take at least the following actions to assure that persons participating in the basic health plan are eligible for the level of assistance they receive: (a) Require submission of (i) income tax returns, and recent pay history, from all applicants, or (ii) other verifiable evidence of earned and unearned income from those persons not required to file income tax returns; (b) check employment security payroll records at least once every twelve months on all enrollees; (c) require enrollees whose income as indicated by payroll records exceeds that upon which their subsidy is based to document their current income as a condition of continued eligibility; (d) require enrollees for whom employment security payroll records cannot be obtained to document their current income at least once every six months; (e) not reduce gross family income for self-employed persons by noncash-flow expenses such as, but not limited to, depreciation, amortization, and home office deductions, as defined by the United States internal revenue service; and (f) pursue repayment and civil penalties from persons who have received excessive subsidies, as provided in RCW 70.47.060(9).

(4) ((~~$4,062,000 of the health services account—state appropriation for fiscal year 2009 is provided solely for additional enrollment in the basic health plan. If available basic health plan slots are exceeded, the authority shall maintain a waiting list and provide for notification when slots become available.~~

~~(5)~~)) Appropriations in this act include specific funding for health records banking under section 10 of Engrossed Second Substitute Senate Bill No. 5930 (blue ribbon commission).

(((~~(6)~~))) (5) $11,934,000 of the health services account—state appropriation for fiscal year 2008 and $11,834,000 of the health services account—state

appropriation for fiscal year 2009 are provided solely for funding for health care services provided through local community clinics.

(((~~(7)~~))) (6) $784,000 of the health services account—state appropriation for fiscal year 2008, ((~~$1,676,000 of the health service account—state appropriation for fiscal year 2009,~~)) $540,000 of the general fund—federal appropriation, and $8,200,000 of the state health care authority administrative account—state appropriation are provided for the development of a new benefits administration and insurance accounting system.

(((~~(8)~~))) (7) $2,000,000 of the health services account—state appropriation for fiscal year 2009 is provided solely for the authority to provide one-time competitive grants to community health centers to increase the number of adults served on an ongoing basis. Each clinic receiving grant funding shall report annually, beginning December 2008, on key adult access indicators established by the authority, including but not limited to increases in the number of low-income adults served.

(((~~(9)~~))) (8) $1,639,000 of the health services account—state appropriation for fiscal year 2008 ((~~and $2,988,000 of the health services account—state appropriation for fiscal year 2009 are~~)) is provided solely for section 5 of Engrossed Second Substitute House Bill No. 1569 (health insurance partnership board) and related provisions of Engrossed Second Substitute Senate Bill No. 5930 (blue ribbon commission on health care). ((~~An additional $750,000 of the health services account—state appropriation for fiscal year 2009 is provided solely for premium subsidies to low-income employees of small employers participating in the health insurance partnership, as generally described in Second Substitute House Bill No. 2537 (modifications to the health insurance partnership).~~

(~~(10)~~)) (9) $664,000 of the health services account—state appropriation for fiscal year 2008 ((~~and $664,000 of the health services account—state appropriation for fiscal year 2009 are~~)) is provided solely for the implementation of the Washington quality forum, pursuant to section 9 of Engrossed Second Substitute Senate Bill No. 5930 (blue ribbon commission). If the section is not enacted by June 2007, the amounts provided in this subsection shall lapse.

(((~~(11)~~))) (10) $600,000 of the state health care authority administrative account—state appropriation is provided solely for the implementation of the state employee health pilot, pursuant to section 41 of Engrossed Second Substitute Senate Bill No. 5930 (blue ribbon commission). If the section is not enacted by June 2007, the amounts provided in this subsection shall lapse.

(((~~(12)~~))) (11) $250,000 of the health services account—state appropriation for fiscal year 2008 and $250,000 of the health services account—state appropriation for fiscal year 2009 are provided solely for continuation of the community health collaborative grant program in accordance with chapter 67, Laws of 2006 (E2SSB 6459). The applicant organizations must assure measurable improvements in health access within their service region, demonstrate active collaboration with key community partners, and provide two dollars in matching funds for each grant dollar awarded.

(((~~(13)~~))) (12) $731,000 of the health services account—state appropriation for fiscal year 2008 and $977,000 of the health services account—state appropriation for fiscal year 2009 are provided solely for the dental residency program, including maintenance of the existing residency positions and the

establishment of six additional resident positions in fiscal year 2008 (four in eastern Washington and two in the Seattle area), and five additional positions in fiscal year 2009.

(((~~(14)~~))) (13) Appropriations in this act include funding for sections 14 (reducing unnecessary emergency room use) and 40 (state employee health program) of Engrossed Second Substitute Senate Bill No. 5930 (blue ribbon commission).

(((~~(15)~~))) (14) $100,000 of the health services account—state appropriation for fiscal year 2009 is provided solely for implementation of the agency's responsibilities in Engrossed Second Substitute House Bill No. 2549 (patient-centered primary care). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

Sec. 214. 2008 c 329 s 215 (uncodified) is amended to read as follows:

FOR THE HUMAN RIGHTS COMMISSION

General Fund—State Appropriation (FY 2008) $3,377,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$3,699,000~~)) $3,580,000
General Fund—Federal Appropriation $1,523,000
TOTAL APPROPRIATION . . . . . ((~~$8,599,000~~)) $8,480,000

The appropriations in this section are subject to the following conditions and limitations: $115,000 of the general fund—state appropriation for fiscal year 2008 and $190,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for implementation of Engrossed Substitute Senate Bill No. 6776 (whistleblower protections). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

Sec. 215. 2008 c 329 s 216 (uncodified) is amended to read as follows:

FOR THE BOARD OF INDUSTRIAL INSURANCE APPEALS

Worker and Community Right-to-Know Account—State Appropriation $20,000
Accident Account—State Appropriation . . . . . ((~~$18,330,000~~)) $17,963,000
Medical Aid Account—State Appropriation . . . . . ((~~$18,331,000~~)) $17,964,000
TOTAL APPROPRIATION . . . . . ((~~$36,681,000~~)) $35,947,000

Sec. 216. 2008 c 329 s 217 (uncodified) is amended to read as follows:

FOR THE CRIMINAL JUSTICE TRAINING COMMISSION

General Fund—State Appropriation (FY 2009) $306,000
Public Safety and Education Account—State Appropriation (FY 2008) $15,680,000
Public Safety and Education Account—State Appropriation (FY 2009) . . . . . ((~~$21,464,000~~)) $21,445,000
Death Investigations Account—State Appropriation $148,000
Municipal Criminal Justice Assistance Account—State Appropriation $460,000

Washington Auto Theft Prevention Authority Account—
State Appropriation $12,322,000
TOTAL APPROPRIATION . . . . . ((~~$50,380,000~~))
$50,361,000

The appropriations in this section are subject to the following conditions and limitations:

(1) During the 2007-2009 biennium, the criminal justice training commission is authorized to raise existing fees charged for firearms certification for security guards in excess of the fiscal growth factor established pursuant to RCW 43.135.055, if necessary, to meet the actual costs of conducting the certification programs and the appropriation levels in this section.

(2) $2,390,000 of the public safety and education account—state appropriation for fiscal year 2008 and $1,809,000 of the public safety and education account—state appropriation for fiscal year 2009 are provided solely for ten additional basic law enforcement academies in fiscal year 2008 and nine additional basic law enforcement academies in fiscal year 2009.

(3) $1,044,000 of the public safety and education account—state appropriation for fiscal year 2008 and $1,191,000 of the public safety and education account—state appropriation for fiscal year 2009 are provided solely for the Washington association of sheriffs and police chiefs to continue to develop, maintain, and operate the jail booking and reporting system (JBRS) and the statewide automated victim information and notification system (SAVIN).

(4) $28,000 of the public safety and education account—state appropriation for fiscal year 2008 is provided solely for the implementation of chapter 10, Laws of 2007 (SSB 5191, missing persons).

(5) $5,400,000 of the Washington auto theft prevention authority account—state appropriation for fiscal year 2008 and $6,922,000 of the Washington auto theft prevention authority account—state appropriation for fiscal year 2009 are provided solely for the implementation of Engrossed Third Substitute House Bill No. 1001 (auto theft). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(6) $150,000 of the public safety and education account—state appropriation for fiscal year 2008 and $150,000 of the public safety and education account—state appropriation for fiscal year 2009 are provided solely to deliver multi-disciplinary team training sessions aimed at improving the coordination of, and communication between, agencies involved in the investigation of child fatality, child sexual abuse, child physical abuse, and criminal neglect cases.

(7) $25,000 of the public safety and education account—state appropriation for fiscal year 2008 is provided solely for the implementation of Substitute Senate Bill No. 5987 (gang-related offenses). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(8) $50,000 of the public safety and education account—state appropriation for fiscal year 2008 and $50,000 of the public safety and education account—state appropriation for fiscal year 2009 are provided solely for support of the coalition of small police agencies major crimes task force. The purpose of this task force is to pool its resources and to establish an efficient and cooperative approach in addressing major violent crimes.

(9) $20,000 of the public safety and education account—state appropriation for fiscal year 2008 is provided solely for the implementation of Substitute Senate Bill No. 5315 (forest fires/property access). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(10) $5,000,000 of the public safety and education account—state appropriation for fiscal year 2009 is provided to the Washington association of sheriffs and police chiefs solely to verify the address and residency of all registered sex offenders and kidnapping offenders under RCW 9A.44.130. The Washington association of sheriffs and police chiefs shall:

(a) Enter into performance-based agreements with units of local government to ensure that registered offender address and residency are verified:

(A) For level I offenders, every twelve months;

(B) For level II offenders, every six months; and

(C) For level III offenders, every three months.

For the purposes of this subsection, unclassified offenders and kidnapping offenders shall be considered at risk level I unless in the opinion of the local jurisdiction a higher classification is in the interest of public safety.

(b) Collect performance data from all participating jurisdictions sufficient to evaluate the efficiency and effectiveness of the address and residency verification program.

(c) Submit a report on the effectiveness of the address and residency verification program to the governor and the appropriate committees of the house of representatives and senate by September 1, 2009.

The Washington association of sheriffs and police chiefs may retain up to three percent of the amount provided in this subsection for the cost of administration. Any funds not disbursed for address and residency verification or retained for administration may be allocated to local prosecutors for the prosecution costs associated with failing to register offenses.

(11) $750,000 of the public safety and education fund—state appropriation for fiscal year 2009 is provided solely for implementation of Second Substitute House Bill No. 2712 (criminal street gangs). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(12) $306,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for a grant program to pay for the costs of local law enforcement agencies participating in specialized crisis intervention training.

Sec. 217. 2008 c 329 s 218 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LABOR AND INDUSTRIES

General Fund—State Appropriation (FY 2008) $8,716,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$9,314,000~~)) $8,624,000

General Fund—Federal Appropriation $100,000

Public Safety and Education Account—State Appropriation (FY 2008) $15,393,000

Public Safety and Education Account—State Appropriation (FY 2009) $16,525,000

Public Safety and Education Account—Federal Appropriation $10,000,000

Asbestos Account—State Appropriation $908,000

Electrical License Account—State Appropriation $41,104,000
Farm Labor Revolving Account—Private/Local
Appropriation. $28,000
Worker and Community Right-to-Know Account—State
Appropriation. $1,941,000
Public Works Administration Account—State
Appropriation. $3,948,000
Manufactured Home Installation Training Account—
State Appropriation $192,000
Accident Account—State Appropriation . . . . . ((~~$232,730,000~~))
$232,295,000
Accident Account—Federal Appropriation $13,622,000
Medical Aid Account—State Appropriation . . . . . ((~~$235,880,000~~))
$235,445,000
Medical Aid Account—Federal Appropriation $3,186,000
Plumbing Certificate Account—State Appropriation. . . . . ((~~$2,002,000~~))
$1,634,000
Pressure Systems Safety Account—State
Appropriation. $3,646,000
TOTAL APPROPRIATION . . . . . ((~~$599,235,000~~))
$597,307,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $2,413,000 of the medical aid account—state appropriation is provided solely for conducting utilization reviews of physical and occupational therapy cases at the 24th visit and the associated administrative costs, including those of entering data into the claimant's file. The department shall develop and report performance measures and targets for these reviews to the office of financial management. The reports are due September 30th for the prior fiscal year and must include the amount spent and the estimated savings per fiscal year.

(2) $2,247,000 of the medical aid account—state appropriation is provided solely to implement Engrossed Substitute Senate Bill No. 5920 (vocational rehabilitation). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(3) $822,000 of the medical aid account—state appropriation is provided solely for vocational services professional staff salary adjustments necessary to recruit and retain positions required for anticipated changes in work duties as a result of Engrossed Substitute Senate Bill No. 5920 (vocational rehabilitation). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse. Compensation for anticipated changes to work duties is subject to review and approval by the director of the department of personnel and is subject to collective bargaining.

(4) $8,000,000 of the medical aid account—state appropriation is provided solely to establish a program of safety and health as authorized by RCW 49.17.210 to be administered under rules adopted pursuant to chapter 34.05 RCW, provided that projects funded involve workplaces insured by the medical aid fund, and that priority is given to projects fostering accident prevention through cooperation between employers and employees or their representatives.

(5) $600,000 of the medical aid account—state appropriation is provided solely for the department to contract with one or more independent experts to evaluate and recommend improvements to the rating plan under chapter 51.18 RCW, including analyzing how risks are pooled, the effect of including worker premium contributions in adjustment calculations, incentives for accident and illness prevention, return-to-work practices, and other sound risk-management strategies that are consistent with recognized insurance principles.

(6) $181,000 of the accident account—state appropriation and $181,000 of the medical aid account—state appropriation are provided solely to implement Substitute Senate Bill No. 5443 (workers' compensation claims). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(7) $558,000 of the medical aid account—state appropriation is provided solely to implement Engrossed Substitute Senate Bill No. 5290 (workers' compensation advisory committees). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(8) $104,000 of the public safety and education account—state appropriation for fiscal year 2008, $104,000 of the public safety and education account—state appropriation for fiscal year 2009, $361,000 of the accident account—state appropriation, and $361,000 of the medical aid account—state appropriation are provided solely for implementation of Engrossed Substitute Senate Bill No. 5675 (workers' compensation benefits). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(9) $730,000 of the medical aid account—state appropriation is provided solely for implementation of Engrossed Second Substitute Senate Bill No. 5930 (blue ribbon commission). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(10) $437,000 of the accident account—state appropriation and $437,000 of the medical aid account—state appropriation are provided solely for implementation of Substitute Senate Bill No. 5053 (industrial insurance ombudsman). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(11) $74,000 of the accident account—state appropriation and $74,000 of the medical aid—state appropriation are provided solely for implementation of Engrossed Substitute Senate Bill No. 5915 (notices to employers). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(12) $605,000 of the accident account—state appropriation for fiscal year 2008 is provided solely for a study of the incidence of permanent total disability pensions in the state's workers' compensation system. To conduct the study, the department shall contract with an independent researcher that has demonstrated expertise in workers' compensation systems. When selecting the independent researcher, the department shall consult the labor and business members of the workers' compensation advisory committee and, if the labor and business members of the workers' compensation advisory committee agree on a particular independent researcher, the department shall select that independent researcher. The study must consider causes of the recent increase in permanent total disability cases, future anticipated permanent total disability trends, a comparison of Washington's permanent total disability claims experience and

injured workers with other states and jurisdictions, the impact of the standard for finding workers employable on the incidence of permanent total disability pensions, and the impact of vocational rehabilitation under RCW 51.32.095 on the incidence of permanent total disability pensions. The department shall report to the workers' compensation advisory committee, the house of representatives commerce and labor committee, and the senate labor, commerce, research and development committee on the results of the study on or before July 1, 2008.

(13) $1,089,000 of the accident account—state appropriation and $192,000 of the medical aid account—state appropriation are provided solely for implementation of chapter 27, Laws of 2007 (ESHB 2171, crane safety).

(14) $100,000 of the general fund—federal appropriation and $192,000 of the manufactured home installation training account—state appropriation are provided solely for Substitute House Bill No. 2118 (mobile/manufactured homes). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(15) $107,000 of the accident account—state appropriation and $107,000 of the medical aid account—state appropriation are provided solely to implement Senate Bill No. 6839 (workers' compensation coverage). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

(16) $224,000 of the general fund—state appropriation for fiscal year 2009, $741,000 of the accident account—state appropriation, and $741,000 of the medical aid account—state appropriation are provided solely for implementation of Second Substitute Senate Bill No. 6732 (construction industry). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(17) $408,000 of the accident account—state appropriation and $72,000 of the medical aid account—state appropriation are provided solely to implement Substitute House Bill No. 2602 (victims' employment leave). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

(18) $3,000 of the public safety and education account—state appropriation for fiscal year 2008 and $3,000 of the public safety and education account—state appropriation for fiscal year 2009 are provided solely to implement Substitute Senate Bill No. 6246 (industrial insurance claims). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

((~~(21)~~)) (19) $40,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the department to conduct a review of the need for regulation of general and specialty contractors involved in the repair, alteration, or construction of single-family homes using the public interest criteria set forth in RCW 18.118.010 and as generally described in Second Substitute House Bill No. 3349 (residential contractors). By October 1, 2008, the department and the department of licensing shall report their findings to the appropriate committees of the legislature.

((~~(22)~~)) (20) The department of labor and industries shall enter into an interagency agreement with the employment security department to expend funds from the family leave insurance account for the implementation of the family leave insurance program.

((~~(23)~~)) (21) Pursuant to RCW 43.135.055, the department is authorized to increase the following fees as necessary to meet the actual costs of conducting business and the appropriation levels in this section and by not more than 5.53 percent in fiscal year 2008: Boiler inspection permits and fees; boiler permit

fees; plumbers' continuing education; and plumbers' licensing and examination fees.

Sec. 218. 2008 c 329 s 219 (uncodified) is amended to read as follows:

FOR THE INDETERMINATE SENTENCE REVIEW BOARD

General Fund—State Appropriation (FY 2008) $1,876,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$2,012,000~~))
$1,937,000
TOTAL APPROPRIATION . . . . . ((~~$3,888,000~~))
$3,813,000

The appropriations in this subsection are subject to the following conditions and limitations: $224,000 of the general fund—state appropriation for fiscal year 2008 and $210,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of House Bill No. 1220 (sentence review board). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

Sec. 219. 2008 c 329 s 220 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF VETERANS AFFAIRS

(1) HEADQUARTERS

General Fund—State Appropriation (FY 2008) $2,124,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$2,142,000~~))
$1,926,000
Charitable, Educational, Penal, and Reformatory
Institutions Account—State Appropriation $10,000
TOTAL APPROPRIATION . . . . . ((~~$4,276,000~~))
$4,060,000

(2) FIELD SERVICES

General Fund—State Appropriation (FY 2008) $5,264,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$5,593,000~~))
$5,476,000
General Fund—Federal Appropriation $1,025,000
General Fund—Private/Local Appropriation $3,317,000
Veterans Innovations Program Account Appropriation $1,437,000
Veteran Estate Management Account—Private/Local
Appropriation $1,062,000
TOTAL APPROPRIATION . . . . . ((~~$17,698,000~~))
$17,581,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) $440,000 of the general fund—state appropriation for fiscal year 2008 and $560,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement Second Substitute Senate Bill No. 5164 (veterans' conservation corps). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(b) The department shall not reduce field service contracts.

(3) INSTITUTIONAL SERVICES
General Fund—State Appropriation (FY 2008) $7,948,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$5,984,000~~)) $5,484,000
General Fund—Federal Appropriation . . . . . ((~~$43,126,000~~)) $43,120,000
General Fund—Private/Local Appropriation . . . . . ((~~$31,574,000~~)) $31,569,000
TOTAL APPROPRIATION . . . . . ((~~$88,632,000~~)) $88,121,000

Sec. 220. 2008 c 329 s 221 (uncodified) is amended to read as follows:

FOR THE HOME CARE QUALITY AUTHORITY
General Fund—State Appropriation (FY 2008) $1,721,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$1,731,000~~)) $1,537,000
TOTAL APPROPRIATION . . . . . ((~~$3,452,000~~)) $3,258,000

Sec. 221. 2008 c 329 s 222 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF HEALTH
General Fund—State Appropriation (FY 2008) . . . . . ((~~$81,352,000~~)) $81,232,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$86,258,000~~)) $80,596,000
General Fund—Federal Appropriation . . . . . ((~~$477,072,000~~)) $477,065,000
General Fund—Private/Local Appropriation . . . . . ((~~$119,919,000~~)) $119,875,000
Hospital Commission Account—State Appropriation $144,000
Health Professions Account—State Appropriation . . . . . ((~~$68,877,000~~)) $68,726,000
Aquatic Lands Enhancement Account—State Appropriation. $600,000
Emergency Medical Services and Trauma Care Systems Trust Account—State Appropriation $12,606,000
Safe Drinking Water Account—State Appropriation $3,041,000
Public Health Services Account—State Appropriation $1,000,000
Drinking Water Assistance Account—Federal Appropriation. $19,027,000
Waterworks Operator Certification—State Appropriation. $1,513,000
Drinking Water Assistance Administrative Account—State Appropriation $326,000
Water Quality Account—State Appropriation (FY 2008). $1,975,000
Water Quality Account—State Appropriation (FY 2009). $1,983,000
State Toxics Control Account—State Appropriation $3,460,000

Medical Test Site Licensure Account—State
Appropriation. . . . . ((~~$2,057,000~~))
$2,055,000
Youth Tobacco Prevention Account—State Appropriation $1,512,000
Public Health Supplemental Account—Private/Local
Appropriation. $3,918,000
Accident Account—State Appropriation $291,000
Medical Aid Account—State Appropriation $48,000
Health Services Account—State
Appropriation (FY 2008). $42,122,000
Health Services Account—State
Appropriation (FY 2009). . . . . ((~~$51,429,000~~))
$49,729,000
Tobacco Prevention and Control Account—State
Appropriation. $52,846,000
TOTAL APPROPRIATION . . . . . ((~~$1,033,376,000~~))
$1,025,690,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The department is authorized to raise existing fees charged for its fee-supported programs in excess of the fiscal growth factor pursuant to RCW 43.135.055, if necessary, to meet the actual costs of conducting business and the appropriation levels in this section. Pursuant to RCW 43.135.055 and RCW 43.70.250, the department is further authorized to increase fees in its fee-supported programs as necessary to meet the actual costs of conducting business and the appropriation levels in this section, as specifically authorized in LEAP Document DOH-2008, as developed by the legislative evaluation and accountability program on March 11, 2008.

(2) The department of health shall not initiate any services that will require expenditure of state general fund moneys unless expressly authorized in this act or other law. The department may seek, receive, and spend, under RCW 43.79.260 through 43.79.282, federal moneys not anticipated in this act as long as the federal funding does not require expenditure of state moneys for the program in excess of amounts anticipated in this act. If the department receives unanticipated unrestricted federal moneys, those moneys shall be spent for services authorized in this act or in any other legislation that provides appropriation authority, and an equal amount of appropriated state moneys shall lapse. Upon the lapsing of any moneys under this subsection, the office of financial management shall notify the legislative fiscal committees. As used in this subsection, "unrestricted federal moneys" includes block grants and other funds that federal law does not require to be spent on specifically defined projects or matched on a formula basis by state funds.

(3) $877,000 of the health professions account appropriation is provided solely for implementation of Substitute House Bill No. 1099 (dental professions). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(4) $198,000 of the general fund—state appropriation for fiscal year 2008 and $24,000 of the general fund—state appropriation for fiscal year 2009 are

provided solely for the implementation of Substitute House Bill No. 2304 (cardiac care services). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(5) $138,000 of the general fund—state appropriation for fiscal year 2008 and $220,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for an evaluation of chronic care provider training.

(6) $51,000 of the general fund—state appropriation for fiscal year 2008 and $24,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of Engrossed Substitute Senate Bill No. 5297 (sex education). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(7) $103,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the implementation of Substitute House Bill No. 1837 (nonambulatory persons). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(8) $201,000 of the general fund—private/local appropriation is provided solely for the implementation of Substitute House Bill No. 2087 (health care facilities). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(9) $293,000 of the general fund—state appropriation for fiscal year 2008 and $287,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for public service announcements regarding childhood lead poisoning, information pamphlets, rule development, and for early identification of persons at risk of having elevated blood-lead levels, which includes systematically screening children under six years of age and other target populations identified by the department. Priority will be given to testing children and increasing the registry in the lead surveillance program.

(10) $101,000 of the general fund—state appropriation for fiscal year 2008, $81,000 of the general fund—state appropriation for fiscal year 2009, and $6,000 of the general fund—private/local appropriation are provided solely for the implementation of Engrossed Second Substitute House Bill No. 1414 (ambulatory surgical facilities). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(11) $55,000 of the health professions account appropriation is provided solely for the implementation of Substitute House Bill No. 1397 (massage therapy). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(12) $58,000 of the general fund—private/local appropriation is provided solely for the implementation of Senate Bill No. 5398 (specialty hospitals). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(13) $34,000 of the general fund—state appropriation for fiscal year 2008, $44,000 of the general fund—state appropriation for fiscal year 2009, and $224,000 of the oyster reserve land account—state appropriation are provided solely for the implementation of Engrossed Substitute Senate Bill No. 5372 (Puget Sound partnership). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(14) $571,000 of the general fund—state appropriation for fiscal year 2008 and $458,000 of the general fund—state appropriation for fiscal year 2009 are

provided solely for the implementation of Second Substitute House Bill No. 1106 (hospital acquired infections). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(15) $4,000,000 of the general fund—state appropriation for fiscal year 2008, $5,000,000 of the general fund—state appropriation for fiscal year 2009, and $1,000,000 of the public health services account—state appropriation are provided solely for department of health-funded family planning clinics to increase the capacity of the clinics to provide family planning and reproductive health services to low-income men and women who are not otherwise eligible for services through the department of social and health services medical assistance program and for clinical or other health services associated with sexually transmitted disease testing through the infertility prevention project. Funds appropriated and expended under this subsection for fiscal year 2009 shall be distributed in a manner that allocates funding to department of health-funded family planning clinics based upon the percentage of medical assistance family planning waiver clients in calendar year 2005 who received services from a provider located in the geographic area served by the department of health-funded clinic. Of these amounts, the department is authorized to expend up to $1,000,000 of its general fund—state appropriation for fiscal year 2009 for services provided in fiscal year 2008, if necessary, to offset reductions in federal funding.

(16) $1,000,000 of the general fund—state appropriation for fiscal year 2008 is for one-time funding to purchase and store antiviral medications to be used in accordance with the state pandemic influenza response plan. These drugs are to be purchased through the United States department of health and human services to take advantage of federal subsidies.

(17) $147,000 of the general fund—state appropriation for fiscal year 2008 and $32,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the department of health to provide relevant information on measures taken to facilitate expanded use of reclaimed water pursuant to Engrossed Second Substitute Senate Bill No. 6117 (reclaimed water). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(18) $550,000 of the general fund—state appropriation for fiscal year 2008 and $550,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the lifelong AIDS alliance to restore lost federal funding.

(19) $250,000 of the general fund—state appropriation for fiscal year 2008 and $250,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for medical nutritional therapy for people with HIV/AIDS and other low-income residents in King county with chronic illnesses.

(20) $645,000 of the general fund—state appropriation for fiscal year 2008 and $645,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the neurodevelopmental center system, which provides therapy and medical services for young, low-income children with developmental disabilities.

(21) $100,000 of the general fund—state appropriation for fiscal year 2008 is provided solely to continue the autism task force established by chapter 259, Laws of 2005, through June 30, 2008. The task force shall:

(a) Review and continue to refine criteria for regional autism centers throughout Washington state based on community needs in each area, and address the role of autism centers within the larger context of developmental disabilities;

(b) Prioritize its December 2006 recommendations and develop an implementation plan for the highest priorities. The plan should detail how systems will coordinate to improve service and avoid duplication between state agencies including the department of social and health services, department of health, office of superintendent of public instruction, as well as school districts, autism centers, and local partners and providers. The plan shall also estimate the costs of the highest priority recommendations and report to the legislature and governor by December 1, 2007;

(c) Compile information for and draft the "Washington Service Guidelines for Individuals with Autism - Birth Through Lifespan" book described in the task force's recommendations. Funding to print and distribute the book is expected to come from federal or private sources; and

(d) Monitor the federal combating autism act and its funding availability and make recommendations on applying for grants to assist in implementation of the 2006 task force recommendations. The department of health shall be the lead agency in providing staff for the task force. The department may seek additional staff assistance from the office of the superintendent of public instruction and the committee staff of the legislature. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses.

(22) $200,000 of the general fund—state appropriation for fiscal year 2008 and $200,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for implementation of the Washington state hepatitis C strategic plan.

(23) $142,000 of the health professions account appropriation is provided solely for the implementation of Engrossed Substitute Senate Bill No. 5403 (animal massage practitioners). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(24) $174,000 of the health professions account appropriation is provided solely for the implementation of Substitute Senate Bill No. 5503 (athletic trainers). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(25) $75,000 of the health professions account appropriation is provided solely for the implementation of Engrossed Substitute Senate Bill No. 5292 (physical therapist assistants). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(26) $94,000 of the general fund—state appropriation for fiscal year 2008 is provided solely to implement Engrossed Second Substitute Senate Bill No. 6032 (medical use of marijuana). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(27) $386,000 of the general fund—state appropriation for fiscal year 2008 and $384,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of Engrossed Substitute Senate Bill No. 5894 (large on-site sewage systems). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(28) $1,721,000 of the health professions account appropriation is provided solely for the implementation of sections 11 and 12 (medical information) of Engrossed Second Substitute Senate Bill No. 5930 (blue ribbon commission on health care). If the sections are not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(29) $10,000,000 of the health services account—state appropriation for fiscal year 2008 and $10,000,000 of the health services account—state appropriation for fiscal year 2009 are provided solely for distribution to local health jurisdictions and for the costs of administering the public health related sections of Engrossed Second Substitute Senate Bill No. 5930 (blue ribbon commission on health care), subject to the following conditions and limitations:

(a) During the month of January 2008, and January 2009, the department of health shall distribute funds appropriated in this section to local health jurisdictions, less an amount not to exceed five percent for the costs of administering the public health related sections of Engrossed Second Substitute Senate Bill No. 5930 (blue ribbon commission on health care). The amount of funding for distribution to a jurisdiction before the administrative deduction shall be the greater of: (i) One hundred thousand dollars; or (ii) (A) a base level of funding of seventy-five thousand dollars plus the per capita amount, for a jurisdiction with a population of four hundred thousand persons or fewer; or (B) a base level of funding of twenty-five thousand dollars plus the per capita amount, for a jurisdiction with a population greater than four hundred thousand persons. Amounts distributed under this subsection must be used to fund core public health functions of statewide significance as defined in Engrossed Second Substitute Senate Bill No. 5930 (blue ribbon commission on health care).

(b) For the purposes of this subsection:

(i) "Per capita amount" means an amount equal to seven million five hundred thousand dollars multiplied by the proportion of the population of the jurisdiction in the previous calendar year to the population of the state in the previous calendar year.

(ii) "Population" means the number of persons as last determined by the office of financial management. If the jurisdiction comprises a single county, "population" means the number of persons in the county. For a jurisdiction comprising two or more counties, "population" means the number of persons in all counties comprising the jurisdiction.

(iii) "Local health jurisdiction" or "jurisdiction" means a county board of health organized under chapter 70.05 RCW, a health district organized under chapter 70.46 RCW, or a combined city and county health department organized under chapter 70.08 RCW.

(c) The department may adopt rules necessary to administer this subsection.

(30) $15,000 of the general fund—state appropriation for fiscal year 2008 and $35,000 of the health professions account—state appropriation are provided solely for an evaluation of the economic benefits to the state's health care system of the midwifery licensure and regulatory program under chapter 18.50 RCW. In particular, the department shall contract with a consultant to conduct a review of existing research literature on whether these economic benefits exceed the state expenditures to subsidize the cost of the midwifery licensing and regulatory program under RCW 43.70.250. The evaluation shall include an assessment of the economic benefits to consumers who elect to have out-of-hospital births with

midwives, including any reduced use of procedures that increase the costs of childbirth. The department shall submit the report to the appropriate policy and fiscal committees of the legislature by January 1, 2008.

(31) $147,000 of the health professions account—state appropriation is provided solely for the department of health to convene a work group to develop recommendations regarding the need to regulate those individuals currently registered with the department of health as counselors. The department of health shall submit recommendations of the work group to the legislature and governor by November 15, 2007. Based on the recommendations of the work group, the department of health shall draft credentialing guidelines for all registered counselors by January 1, 2008. Guidelines shall include education in risk assessment, ethics, professional standards, and deadlines for compliance.

(32) ((~~$680,000 of the health services account—state appropriation for fiscal year 2009 is provided solely for the prescription monitoring program under chapter 70.225 RCW to monitor the prescribing and dispensing of drugs to reduce the likelihood of adverse drug effects, particularly for senior citizens taking multiple medications. The attorney general shall deposit to the health services account at least $680,000 from the *cy pres* monetary portion of the consent decree in settlement of the consumer protection act litigation against Caremark Rx, LLC (King county superior court cause no. 08-2-06098-5). The amount provided in this subsection may be expended only to the extent that the attorney general deposits these moneys to the health services account, to be expended consistent with the terms of the consent decree.~~

~~(33)~~)) $100,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the implementation of Second Substitute Senate Bill No. 6483 (local food production). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

((~~(34)~~)) (33) $400,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the senior falls prevention pilot program, pursuant to section 7 of Engrossed Second Substitute House Bill No. 2668 (long-term care programs).

((~~(35)~~)) (34) $585,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the Washington state breast and cervical health program to increase the provider reimbursement rate for digital mammographies to the medicare equivalent rate.

((~~(36)~~)) (35) $100,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the child death review program. The program shall be transferred from the community and family health division to the injury prevention division within the department.

((~~(38)~~)) (36) $100,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the northwest sickle cell collaborative program.

((~~(39)~~)) (37) $77,000 of the general fund—state appropriation for fiscal year 2008 and $154,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the restoration of maxillofacial/cleft palate teams in Yakima, Spokane, Seattle, and Tacoma.

((~~(40)~~)) (38) $17,000 of the health professions account—state appropriation is provided solely to implement Second Substitute Senate Bill No. 6220 (nurse delegation) or sections 11 and 12 of Engrossed Second Substitute House Bill No.

2668 (long-term care programs). If neither bill is enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(41)~~))) (39) $11,000 of the health professions account—state appropriation is provided solely to implement Substitute Senate Bill No. 6439 (radiologist assistants). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(42)~~))) (40) $115,000 of the general fund—state appropriation for fiscal year 2009 and $4,261,000 of the health professions account—state appropriation are provided solely for implementation of Fourth Substitute House Bill No. 1103 (health professions). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

(((~~(43)~~))) (41) $558,000 of the health professions account—state appropriation is provided solely for implementation of Second Substitute House Bill No. 2674 (counselor credentialing). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(44)~~))) (42) The department of licensing and the department of health shall jointly review and report to the appropriate policy committees of the legislature by December 1, 2008, recommendations for implementing a process of holding in abeyance for up to six months following the conclusion of active duty service the expiration of, and currency requirements for, professional licenses and certificates for individuals who have been called to active duty military service.

(((~~(45)~~))) (43) The higher education coordinating board, the department of licensing, and the department of health shall jointly review and report to appropriate policy committees of the legislature by December 1, 2008, on barriers and opportunities for increasing the extent to which veterans separating from duty are able to apply skills sets and education required while in service to certification, licensure, and degree requirements.

(((~~(47)~~))) (44) $35,000 of the general fund—state appropriation for fiscal year 2009 and $80,000 of the state toxics control account—state appropriation for fiscal year 2009 are provided solely for the implementation of Engrossed Second Substitute House Bill No. 2647 (children's safe products). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

~~(((48) $26,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for Substitute House Bill No. 2431 (cord blood banking). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.~~

~~(49)~~))) (45) $143,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for Substitute Senate Bill No. 6340 (water system program). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(50) $309,000~~))) (46) $194,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for Engrossed Second Substitute House Bill No. 2549 (patient-centered care). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(52)~~))) (47) $96,000 of the health professions account—state appropriation is provided solely for the implementation of Substitute House Bill No. 2881 (practice of dentistry). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(54)~~))) (48) $130,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the midwifery licensure and regulatory program to offset a reduction in revenue from fees. There shall be no change to the current annual fees for new or renewed licenses for the midwifery program. The department shall convene the midwifery advisory committee on a quarterly basis to address issues related to licensed midwifery.

(49) $900,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the Washington colon health program. Through the program, the department shall provide grants to participating counties to provide free colorectal screening exams to individuals fifty to sixty-four years old who are below two hundred fifty percent of the federal poverty level.

(50) In addition to other reductions, the reduced appropriations in this section reflect an additional $90,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 222. 2008 c 329 s 224 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF CORRECTIONS

(1) ADMINISTRATION AND SUPPORT SERVICES

General Fund—State Appropriation (FY 2008) $57,545,000
General Fund—State Appropriation (FY 2009) $52,652,000
Washington Auto Theft Prevention Authority Account—
State Appropriation $169,000
Violence Reduction and Drug Enforcement
Account—State Appropriation (FY 2008) $13,000
Violence Reduction and Drug Enforcement
Account—State Appropriation (FY 2009) $13,000
Public Safety and Education Account—State
Appropriation (FY 2008). $1,467,000
Public Safety and Education Account—State
Appropriation (FY 2009). $1,481,000
Pension Funding Stabilization Account—State
Appropriation. $1,280,000
TOTAL APPROPRIATION $114,620,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) $9,389,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the completion of phase three of the department's offender-based tracking system replacement project. This amount is conditioned on the department satisfying the requirements of section 902 of this act.

(b) $35,000 of the general fund—state appropriation for fiscal year 2008 and $35,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the establishment and support of a statewide council on mentally ill offenders that includes as its members representatives of community-based mental health treatment programs, current or former judicial officers, and directors and commanders of city and county jails and state prison facilities. The council will begin to investigate and promote cost-effective

approaches to meeting the long-term needs of adults and juveniles with mental disorders who have a history of offending or who are at-risk of offending, including their mental health, physiological, housing, employment, and job training needs.

(c) $169,000 of the Washington auto theft prevention authority account—state appropriation for fiscal year 2008 is provided solely for the implementation of Engrossed Third Substitute House Bill No. 1001 (auto theft). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(d) $102,000 of the general fund—state appropriation for fiscal year 2008 and $95,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of Engrossed Second Substitute House Bill No. 1422 (incarcerated parents). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(e) Within funds appropriated in this section, the department shall seek contracts for chemical dependency vendors to provide chemical dependency treatment of offenders in corrections facilities, including corrections centers and community supervision facilities, which have demonstrated effectiveness in treatment of offenders and are able to provide data to show a successful treatment rate.

(f) $314,000 of the general fund—state appropriation for fiscal year 2008 and $294,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for four additional staff to collect and analyze data for programs funded through the offender reentry initiative and collect, analyze, and disseminate information required by the GMAP process, performance audits, data requests, and quality assessments and assurances.

(g) $32,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Substitute Senate Bill No. 6244 (conversion of facilities to house violators of community supervision). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

((~~(i)~~)) (h) $150,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to implement Engrossed Second Substitute House Bill No. 2712 (criminal street gangs). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(2) CORRECTIONAL OPERATIONS

General Fund—State Appropriation (FY 2008) $601,402,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$647,718,000~~))
$647,608,000
General Fund—Federal Appropriation $4,157,000
Public Safety and Education Account—State
Appropriation (FY 2008) $1,050,000
Public Safety and Education Account—State
Appropriation (FY 2009) $1,350,000
Washington Auto Theft Prevention Authority Account—
State Appropriation $1,338,000
Violence Reduction and Drug Enforcement
Account—State Appropriation (FY 2008) $1,492,000

Violence Reduction and Drug Enforcement
Account—State Appropriation (FY 2009) $1,492,000
Pension Funding Stabilization Account—State
Appropriation. $11,800,000
TOTAL APPROPRIATION . . . . . ((~~$1,271,799,000~~))
$1,271,689,000

The appropriations in this subsection are subject to the following conditions and limitations:

(a) The department may expend funds generated by contractual agreements entered into for mitigation of severe overcrowding in local jails. Any funds generated in excess of actual costs shall be deposited in the state general fund. Expenditures shall not exceed revenue generated by such agreements and shall be treated as a recovery of costs.

(b) The department shall provide funding for the pet partnership program at the Washington corrections center for women at a level at least equal to that provided in the 1995-97 biennium.

(c) The department shall accomplish personnel reductions with the least possible impact on correctional custody staff, community custody staff, and correctional industries. For the purposes of this subsection, correctional custody staff means employees responsible for the direct supervision of offenders.

(d) During the 2007-09 biennium, when contracts are established or renewed for offender pay phone and other telephone services provided to inmates, the department shall select the contractor or contractors primarily based on the following factors: (i) The lowest rate charged to both the inmate and the person paying for the telephone call; and (ii) the lowest commission rates paid to the department, while providing reasonable compensation to cover the costs of the department to provide the telephone services to inmates and provide sufficient revenues for the activities funded from the institutional welfare betterment account.

(e) The Harborview medical center shall provide inpatient and outpatient hospital services to offenders confined in department of corrections facilities at a rate no greater than the average rate that the department has negotiated with other community hospitals in Washington state.

(f) $358,000 of the Washington auto theft prevention authority account—state appropriation for fiscal year 2008 and $980,000 of the Washington auto theft prevention authority account—state appropriation for fiscal year 2009 are provided solely for the implementation of Engrossed Third Substitute House Bill No. 1001 (auto theft). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(g) $22,000 of the general fund—state appropriation for fiscal year 2008 and $22,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of Substitute House Bill No. 1097 (vulnerable adults). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(h) $22,000 of the general fund—state appropriation for fiscal year 2008 and $22,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of Substitute House Bill No. 1319

(correctional agency employee). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(i) $87,000 of the general fund—state appropriation for fiscal year 2008 and $87,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of House Bill No. 1592 (sentence review board). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(j) $544,000 of the general fund—state appropriation for fiscal year 2008 and $496,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for development of individual reentry plans to prepare offenders for release into the community as generally described in Engrossed Substitute Senate Bill No. 6157 (offender recidivism). Individual reentry plans shall be based on an assessment of the offender using a standardized and comprehensive tool. The individual reentry plan may be one document, or may be a series of individual plans that combine to meet the requirements. The individual reentry plan shall, at a minimum, include:

(i) A plan to maintain contact with the inmate's children and family, if appropriate. The plan should determine whether parenting classes, or other services, are appropriate;

(ii) A description of the offender's education, certifications, work experience, skills, and training; and

(iii) A plan for the offender during the period of incarceration through reentry into the community that addresses the needs of the offender including education, employment, substance abuse treatment, mental health treatment, and family reunification. The individual reentry plan shall be updated as appropriate during the period of incarceration, and prior to the inmate's release to address public safety concerns, consistency with the offender risk management level assigned by the department, housing, and connecting with a community justice center in the area in which the offender will be residing, if a community justice center is located in that area.

(iv) If the appropriation in this subsection is not sufficient for this program, the department shall prioritize the use of available funds.

(3) COMMUNITY SUPERVISION

General Fund—State Appropriation (FY 2008) $133,157,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$145,956,000~~))
<u>$145,881,000</u>
General Fund—Federal Appropriation $416,000
Public Safety and Education Account—State
Appropriation (FY 2008) $9,319,000
Public Safety and Education Account—State
Appropriation (FY 2009) $9,370,000
Pension Funding Stabilization Account—State
Appropriation $2,800,000
TOTAL APPROPRIATION . . . . . ((~~$301,018,000~~))
<u>$300,943,000</u>

The appropriations in this subsection are subject to the following conditions and limitations:

(a) The department shall accomplish personnel reductions with the least possible impact on correctional custody staff, community custody staff, and correctional industries. For the purposes of this subsection, correctional custody staff means employees responsible for the direct supervision of offenders.

(b) For the acquisition of properties and facilities, the department of corrections is authorized to enter into financial contracts, paid for from operating resources, 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. This authority applies to the following: Lease-develop with the option to purchase or lease-purchase work release beds in facilities throughout the state for $8,561,000.

(c) $1,167,000 of the general fund—state appropriation for fiscal year 2008 and $2,295,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the establishment and operation of community justice centers by the department as generally described in Engrossed Substitute Senate Bill No. 6157 (offender recidivism). At a minimum, a community justice center shall include:

(i) A violator program to allow the department to utilize a range of available sanctions for offenders who violate conditions of their supervision;

(ii) An employment opportunity program to assist an offender in finding employment;

(iii) On-site services or resources for connecting offenders with services such as mental health and substance abuse treatment, transportation, training, family reunification, and community services; and

(iv) The services of a transition coordinator to facilitate connections between the former offender and the community. The transition coordinator shall provide information to former offenders regarding services available to them in the community including, but not limited to housing assistance, employment assistance, education, vocational training, parent education, financial literacy, treatment for substance abuse, mental health, anger management, and shall assist offenders in their efforts to access needed services.

(v) If the appropriation in this subsection is not sufficient for this program, the department shall prioritize the use of available funds.

(4) CORRECTIONAL INDUSTRIES

General Fund—State Appropriation (FY 2008) $1,001,000
General Fund—State Appropriation (FY 2009) $2,357,000
TOTAL APPROPRIATION $3,358,000

The appropriations in this subsection are subject to the following conditions and limitations: $124,000 of the general fund—state appropriation for fiscal year 2008 and $132,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for transfer to the jail industries board. The board shall use the amounts provided only for administrative expenses, equipment purchases, and technical assistance associated with advising cities and counties in developing, promoting, and implementing consistent, safe, and efficient offender work programs.

(5) INTERAGENCY PAYMENTS

General Fund—State Appropriation (FY 2008) $35,036,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$35,192,000~~))
$28,082,000
TOTAL APPROPRIATION . . . . . ((~~$70,228,000~~))
$63,118,000

The appropriations in this subsection are subject to the following conditions and limitations: $35,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for expenditures related to the *Farrakhan v. Locke* litigation.

Sec. 223. 2008 c 329 s 225 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SERVICES FOR THE BLIND

General Fund—State Appropriation (FY 2008) $2,566,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$2,608,000~~))
$2,375,000
General Fund—Federal Appropriation $17,584,000
General Fund—Private/Local Appropriation $20,000
TOTAL APPROPRIATION . . . . . ((~~$22,778,000~~))
$22,545,000

The appropriations in this subsection are subject to the following conditions and limitations:

(1) $4,000 of the general fund—state appropriation for fiscal year 2008 and $4,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for an adjustment to the agency lease rate for space occupied and parking in the Tacoma Rhodes center. The department of general administration shall increase lease rates to meet the cash gain/loss break-even point for the Tacoma Rhodes center effective July 1, 2007.

(2) The department shall not reduce and shall continue to provide funding for contracted services that provide employment support and help with life activities for deaf and blind individuals in King county.

Sec. 224. 2008 c 329 s 226 (uncodified) is amended to read as follows:

FOR THE SENTENCING GUIDELINES COMMISSION

General Fund—State Appropriation (FY 2008) $937,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$1,233,000~~))
$1,151,000
TOTAL APPROPRIATION . . . . . ((~~$2,170,000~~))
$2,088,000

The appropriations in this section are subject to the following conditions and limitations: $295,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Substitute Senate Bill No. 6596 (sex offender policy board). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

Sec. 225. 2008 c 329 s 227 (uncodified) is amended to read as follows:

FOR THE EMPLOYMENT SECURITY DEPARTMENT

General Fund—State Appropriation (FY 2008) $60,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$282,000~~))
$272,000

General Fund—Federal Appropriation . . . . . ((~~$265,114,000~~)) $264,967,000
General Fund—Private/Local Appropriation $33,578,000
Unemployment Compensation Administration Account—
Federal Appropriation . . . . . ((~~$252,925,000~~)) $252,907,000
Administrative Contingency Account—State
Appropriation. . . . . ((~~$26,131,000~~)) $22,802,000
Employment Service Administrative Account—State
Appropriation. $33,843,000
Family Leave Insurance Account—State Appropriation . . . . . ((~~$6,218,000~~)) $1,764,000
TOTAL APPROPRIATION . . . . . ((~~$618,151,000~~)) $610,193,000

The appropriations in this subsection are subject to the following conditions and limitations:

(1) $4,578,000 of the unemployment compensation administration account—federal appropriation is provided from funds made available to the state by section 903(d) of the social security act (Reed Act). These funds are authorized to provide direct services to unemployment insurance claimants and providing job search review.

(2) $2,300,000 of the unemployment compensation administration account—federal appropriation is provided from amounts made available to the state by section 903(d) of the social security act (Reed Act). This amount is authorized to continue implementation of chapter 4, Laws of 2003 2nd sp. sess. and for implementation costs relating to chapter 133, Laws of 2005 (unemployment insurance).

(3) $23,162,000 of the unemployment compensation administration account—federal appropriation is provided from amounts made available to the state by section 903(d) of the social security act (Reed Act). This amount is authorized to continue current unemployment insurance functions and department services to employers and job seekers.

(4) $372,000 of the administrative contingency account—state appropriation is provided solely to implement Substitute Senate Bill No. 5653 (self-employment). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(5) $12,054,000 of the unemployment compensation administration account—federal appropriation is provided from amounts made available to the state by section 903(d) of the social security act (Reed act). This amount is authorized to fund the unemployment insurance tax information system (TAXIS) technology initiative for the employment security department.

(6) $430,000 of the unemployment compensation administration account—federal appropriation is provided from amounts made available to the state by section 903(d) of the social security act (Reed act). This amount is authorized to replace high-risk servers used by the unemployment security department.

(7) $503,000 of the unemployment compensation administration account—federal appropriation is provided from amounts made available to the state by

section 903(d) of the social security act (Reed act). This amount is authorized to provide a system to track computer upgrades and changes for the unemployment security department.

(8) $183,000 of the unemployment compensation administration account—federal appropriation is provided from the amounts made available to the state by section 903(d) of the social security act (Reed Act). This amount is authorized to conduct a feasibility study to integrate job search data systems.

(9) $2,331,000 of the unemployment compensation administration account—federal appropriation is provided from amounts made available to the state by section 903(d) of the social security act (Reed Act). This amount is authorized for hardware and software to ensure the ongoing, reliable operation of the telecenters.

(10) $488,000 of the unemployment compensation administration account—federal appropriation is provided from amounts made available to the state by section 903(d) of the social security act (Reed Act). This amount is authorized for the relocation of the WorkSource office in Lakewood.

(11) ((~~$6,218,000~~)) $1,764,000 of the family leave insurance account—state appropriation is provided solely for implementation of the family leave insurance program.

(a) The amount provided in this subsection assumes that, in developing the information technology systems to support the payment of benefits, the department will incorporate the claim filing and benefit payment efficiencies recommended by the joint legislative task force on family leave insurance in Part III of its final report dated January 23, 2008, including:

(i) Eliminating the option for awarding attorney fees and costs for administrative hearings;

(ii) Authorizing claims for benefits to be filed in the six-week period beginning on the first day of the calendar week in which the individual is on family leave;

(iii) Not requiring claimants to verify the birth of a child or the placement of a child for adoption;

(iv) Including an attestation from the claimant that written notice has been provided to the employer of the intention to take family leave; and

(v) Not deducting and withholding federal income taxes from benefit payments.

(b) In addition, the department shall incorporate the following claim filing and benefit payment efficiencies:

(i) Define "qualifying year" to mean the first four of the last five completed calendar quarters or, if eligibility is not established, the last four completed calendar immediately preceding the first day of the application year;

(ii) Allow individuals to file a claim for benefits in the six-week period beginning on the first day of the calendar year in which the individual is on family leave; and

(iii) After an initial family leave insurance benefit is paid, subsequent payments must be made biweekly, rather than semimonthly, thereafter.

(12) $222,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to implement Engrossed Second Substitute House Bill No. 2815 (greenhouse gas emissions). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

(13) $155,000 of the unemployment compensation administration account—federal appropriation is provided solely to implement Second Substitute Senate Bill No. 6732 (construction industry). If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

PART III
NATURAL RESOURCES

Sec. 301. 2008 c 329 s 301 (uncodified) is amended to read as follows:

FOR THE COLUMBIA RIVER GORGE COMMISSION

General Fund—State Appropriation (FY 2008) $524,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$537,000~~))
$509,000
General Fund—Federal Appropriation $9,000
General Fund—Private/Local Appropriation . . . . . ((~~$1,045,000~~))
$1,044,000
TOTAL APPROPRIATION . . . . . ((~~$2,115,000~~))
$2,086,000

Sec. 302. 2008 c 329 s 302 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ECOLOGY

General Fund—State Appropriation (FY 2008) $50,109,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$51,827,000~~))
$45,748,000
General Fund—Federal Appropriation . . . . . ((~~$83,017,000~~))
$83,013,000
General Fund—Private/Local Appropriation $13,618,000
Special Grass Seed Burning Research
Account—State Appropriation $14,000
Reclamation Account—State Appropriation $4,207,000
Flood Control Assistance Account—State Appropriation $4,151,000
Aquatic Lands Enhancement Account—State Appropriation $400,000
State Emergency Water Projects Revolving
Account—State Appropriation $390,000
Waste Reduction/Recycling/Litter
Control—State Appropriation . . . . . ((~~$19,607,000~~))
$19,588,000
State Drought Preparedness—State Appropriation. $115,000
State and Local Improvements Revolving Account
(Water Supply Facilities)—State Appropriation $421,000
Vessel Response Account—State Appropriation . . . . . ((~~$1,649,000~~))
$1,604,000
Freshwater Aquatic Algae Control Account—State
Appropriation. $509,000
Site Closure Account—State Appropriation. $694,000
Water Quality Account—State Appropriation
(FY 2008). $15,137,000

Water Quality Account—State Appropriation
(FY 2009). . . . . ((~~$17,086,000~~))
$16,493,000
Wood Stove Education and Enforcement Account—State
Appropriation. $370,000
Worker and Community Right-to-Know Account—State
Appropriation. $2,247,000
State Toxics Control Account—State Appropriation . . . . . ((~~$99,383,000~~))
$99,235,000
State Toxics Control Account—Private/Local
Appropriation. $381,000
Local Toxics Control Account—State Appropriation. $20,952,000
Water Quality Permit Account—State Appropriation . . . . . ((~~$37,101,000~~))
$34,022,000
Underground Storage Tank Account—State
Appropriation. . . . . ((~~$3,750,000~~))
$3,635,000
Biosolids Permit Account—State Appropriation $1,396,000
Hazardous Waste Assistance Account—State
Appropriation. $5,834,000
Air Pollution Control Account—State Appropriation $6,306,000
Oil Spill Prevention Account—State Appropriation . . . . . ((~~$12,519,000~~))
$12,205,000
Air Operating Permit Account—State Appropriation . . . . . ((~~$2,780,000~~))
$2,680,000
Freshwater Aquatic Weeds Account—State Appropriation $1,690,000
Oil Spill Response Account—State Appropriation $7,078,000
Metals Mining Account—State Appropriation. $14,000
Water Pollution Control Revolving Account—State
Appropriation. $464,000
Water Pollution Control Revolving Account—Federal
Appropriation. $2,271,000
Columbia River Water Delivery Account—State
Appropriation. $2,150,000
TOTAL APPROPRIATION . . . . . ((~~$469,637,000~~))
$459,141,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $170,000 of the oil spill prevention account—state appropriation is provided solely for a contract with the University of Washington's sea grant program to continue an educational program targeted to small spills from commercial fishing vessels, ferries, cruise ships, ports, and marinas.

(2) $256,000 of the general fund—state appropriation for fiscal year 2008, $209,000 of the general fund—state appropriation for fiscal year 2009, and $200,000 of the general fund—private local appropriation are provided solely to implement activities associated with a regional haze program. Funds shall be collected and expended in accordance with the terms of the contract entered into with affected businesses and the department of ecology.

(3) $2,000,000 of the local toxics control account—state appropriation is provided solely to local governments outside of Puget Sound for municipal storm water programs, including but not limited to, implementation of phase II municipal storm water permits, source control for toxics in association with cleanup of contaminated sediment sites, and source control programs for shellfish protection districts where storm water is a significant contributor.

(4) Fees approved by the department of ecology in the 2007-09 biennium are authorized to exceed the fiscal growth factor under RCW 43.135.055. Pursuant to RCW 43.135.055, the department is further authorized to increase the following fees in fiscal year 2009 as necessary to meet the actual costs of conducting business and the appropriation levels in this section: Wastewater discharge permit, not more than 5.57 percent; dam periodic inspection permit, not more than 5.57 percent; dam construction permit, not more than 5.57 percent; and mixed waste management, not more than 14.14 percent.

(5) $1,000,000 of the general fund—state appropriation for fiscal year 2008 and $927,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to improve the performance of wetland mitigation. Of this amount, $55,000 of the general fund—state appropriation for fiscal year 2008 and $55,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to support a wetland in Whatcom county. The program will engage local, state, and federal agencies, private investors, property owners, and others in the creation of one or more wetland banks and other measures to protect habitat functions and values while accommodating urban growth in the region. Priority shall be given to state and local government partnerships for wetland characterization. The department shall issue a report of its findings and recommendations on how wetland mitigation success can be improved to the office of financial management and the appropriate policy committees of the legislature.

(6) $260,000 of the state toxics control account—state appropriation is provided solely to support pesticide container recycling activities in Washington.

(7) $250,000 of the general fund—state appropriation for fiscal year 2008 and $250,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a pilot project to provide grants to two local government jurisdictions located in the Puget Sound area to improve compliance with existing environmental laws. Grant funds shall be used for providing information on existing requirements, providing technical assistance necessary to comply on a voluntary basis, and taking enforcement action.

(8) $1,257,000 of the reclamation account—state appropriation is provided solely to implement Substitute Senate Bill No. 5881 (water power license fees). If the bill is not enacted by June 30, 2007, the amount provided in this section shall lapse.

(9) $694,000 of the underground storage tank account—state appropriation is provided solely to implement Substitute Senate Bill No. 5475 (underground storage tanks). If the bill is not enacted by June 30, 2007, the amount provided in this section shall lapse.

(10) $2,026,000 of the local toxics control account—state appropriation is provided solely for local governments located near hazardous waste clean-up sites, including Duwamish Waterway, Commencement Bay, and Bellingham

Bay, to work with small businesses and citizens to safely manage hazardous and solid wastes to prevent the contamination.

(11) $876,000 of the state toxics control account and $876,000 of the local toxics control account are provided solely for public participation grants related to toxic cleanup sites within and around Puget Sound.

(12) $831,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$1,169,000~~)) $669,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement watershed plans. Of this amount, $313,650 of the general fund—state appropriation for fiscal year 2008 and ((~~$646,350~~)) $529,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to support the implementation of the WRIA 1 watershed plan and the Bertrand watershed improvement district plan, including but not limited to implementation of the Nooksack River basin stream gauging program, study of the feasibility of a public utility district pipeline in the Bertrand watershed, study and construction of water storage and augmentation in the Bertrand watershed, and preparation and development of the next subbasin watershed plan agreed to by the Bertrand instream flow policy group.

(13) $75,000 of the general fund—state appropriation for fiscal year 2008 and $75,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement Second Substitute House Bill No. 2220 (shellfish). The department shall develop, by rule, guidelines for the appropriate siting and operation of geoduck aquaculture operations to be included in any master program under the shorelines management act. If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(14) $15,000 of the general fund—state appropriation for fiscal year 2008 and $15,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for convening a stakeholder group to recommend establishing a sustainable statewide regional CBRNE/Hazmat response capability.

(15) $100,000 of the general fund—state appropriation for fiscal year 2008 and $100,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement key recommendations and actions identified in the "Washington's Ocean Action Plan: Enhancing Management of Washington State's Ocean and Outer Coast". The department shall provide a progress report on implementing this plan to the appropriate policy committees of the legislature by December 31, 2008.

(16) $464,000 of the general fund—state appropriation for fiscal year 2008 and $136,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement Engrossed Substitute Senate Bill No. 6001 (climate change). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(17) $75,000 of the general fund—state appropriation for fiscal year 2008 and $75,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the department to oversee beach seaweed removal in the west Seattle Fauntleroy community. The department may spend up to $25,000 of this amount for its cost of administration.

(18) $693,000 of the state toxics control account is provided solely for implementation of Senate Bill No. 5421 (environmental covenants). If the bill is not enacted by June 30, 2007, the amount provided in this section shall lapse.

(19) $99,000 of the general fund—state appropriation for fiscal year 2008 and $100,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a marshland study of key areas of salmon habitat along the Snohomish river estuary.

(20) $196,000 of the general fund—state appropriation for fiscal year 2008, $132,000 of the general fund—state appropriation for fiscal year 2009, and $19,000 of the oil spill prevention account appropriation are provided solely to implement Engrossed Substitute Senate Bill No. 5372 (Puget Sound partnership). If the bill is not enacted by June 30, 2007, the department shall execute activities as described in Engrossed Substitute Senate Bill No. 5372 (Puget Sound partnership).

(21) $150,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the department to contract with the U.S. institute for environmental conflict resolution, a federal agency, to develop a pilot water management process with three federally recognized treaty Indian tribes. $50,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the northwest Indian fisheries commission to help establish the pathway for the process in federal agencies.

(22) $150,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to continue the pilot water pathways project through the remainder of the biennium. The department will work with the northwest Indian fisheries commission and the U.S. institute on environmental conflict resolution to find resolution on persistent water policy issues between tribes and nontribal entities.

(23) $319,000 of the general fund—state appropriation for fiscal year 2008 and $241,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of Engrossed Second Substitute Senate Bill No. 6117 (reclaimed water). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(24) $53,000 of the oil spill prevention account—state appropriation is provided solely for the implementation of Senate Bill No. 5552 (penalties for oil spills). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(25) $50,000 of the general fund—state appropriation for fiscal year 2008 and $50,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to the department to convene a shellfish aquaculture regulatory committee, composed of a balanced representation from interested state regulatory agencies, Native American tribes, local governments and the environmental and shellfish farming communities. The group will be facilitated by the office of regulatory assistance and will address federal, state, and local regulatory issues related to shellfish farming.

(26) Within the appropriations provided in this section for the development of water supplies in the Columbia river basin, the department shall assist county governments located east of the crest of the Cascade mountain range that: Have an international border; or border a county with an international boundary and a county with four hundred thousand or more residents, to identify water supply projects to compete for funding from the Columbia river basin water management program. The department shall provide technical assistance as needed to further refine priority projects identified by these counties. The

department shall consider and balance regional water supply needs in its funding allocation decisions made as a part of this program.

(((~~(28)~~))) (27) $50,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for coordinating with the University of Washington to assess the current energy profile of Washington state pulp and paper mills. The energy consumption and energy generation capability will be determined for both steam and electrical power. In addition, the sources and types of fuels used in various boilers will be assessed.

(((~~(29)~~))) (28) $195,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to support a collaborative process to design a proposed comprehensive water management structure for the Walla Walla river basin. The proposed structure should address the allocation of functions, authorities, resource requirements, and issues associated with interstate watershed management of the basin. Invited participants should include but not be limited to the confederated tribes of the Umatilla Indian reservation; appropriate state agencies; and Walla Walla basin interests such as municipalities, irrigation districts, conservation districts, fisheries, agriculture, economic development, and environmental representatives. A report outlining the proposed governance and water management structure shall be submitted to the governor and the appropriate committees of the legislature by November 15, 2008.

(((~~(30)~~))) (29) $333,000 of the state toxics control account—state appropriation is provided solely for implementation of Engrossed Second Substitute House Bill No. 2647 (children's safe products). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(31)~~))) (30) $256,000 of the general fund—state appropriation for fiscal year 2008 and $1,027,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for Engrossed Second Substitute House Bill No. 2815 (reducing greenhouse gases emissions in the Washington economy). In participating in the western climate initiative under Engrossed Second Substitute House Bill No. 2815, the director of the department shall seek to ensure that the design for a regional multisector market-based system confers equitable economic benefits and opportunities to electric utilities operating in Washington by having that system recognize at least the following: (a) Voluntary investments made by Washington utilities in energy efficiency measures; (b) emission reduction benefits that other state and provincial participants in the western climate initiative derive from consuming renewable energy generated in Washington; and (c) adverse impacts that climate change uniquely has upon the capabilities of hydroelectric power generation. Washington state's representatives to the western climate initiative process shall advocate for a regional multisector market-based design that addresses competitive disadvantages that could be experienced by in-region industries as compared to industries in states or countries that do not have greenhouse gas reduction programs that are substantively equivalent to the system designed under the western climate initiative process. If the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

(((~~(34)~~))) (31) Within the appropriations provided in this section the department shall ensure that standard statewide protocols for surface water monitoring are developed and included in status and trends monitoring to utilize

information from other entities, including other state agencies, local governments, and volunteer groups.

(((~~(35)~~))) (32)(a) $2,000,000 of the Columbia river water delivery account appropriation is provided solely for distribution to affected counties as defined in Engrossed Second Substitute Senate Bill No. 6874 (Columbia river water) to mitigate for negative impacts caused by releases of Lake Roosevelt water for the purposes described in that bill. The criteria for allocating these funds shall be developed by the department in consultation with affected local governments.

(b) $150,000 of the Columbia river water delivery account appropriation is provided solely for the department to retain a contractor to perform an independent analysis of legislative options to protect rural communities in northeast Washington from disproportionate economic, agricultural, and environmental impacts when upstream water rights are purchased and transferred for use, or idled and used as mitigation, in a downstream watershed or county. Before retaining a contractor, the department shall consult with affected counties as defined in Engrossed Second Substitute Senate Bill No. 6874 (Columbia river water). The contractor selected shall conduct the independent analysis and develop a report describing options and recommended actions. The department of ecology shall provide the report to the appropriate committees of the legislature by December 1, 2008.

(c) If Engrossed Second Substitute Senate Bill No. 6874 (Columbia river water delivery) is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

(((~~(36)~~))) (33) $210,000 of the local toxics control account—state appropriation is provided solely to clean up naturally occurring asbestos from Swift Creek.

(((~~(38)~~))) (34) $80,000 of the state toxics control account—state appropriation is provided solely for the department to create a stakeholder advisory committee to review and develop recommendations to help businesses achieve a fifty percent toxics reduction use goal. The committee shall: (a) Review and make recommendations to improve the effectiveness and delivery of technical assistance in pollution prevention planning; (b) develop recommendations for strategies to encourage moving away from "end-of-pipe" pollution reduction approaches to increase hazardous waste prevention throughout the state; and (c) review and make recommendations on revising the hazardous waste planning fee under RCW 70.95E.030, including opportunities to provide incentives that reward businesses for toxic use reduction successes in meeting a fifty percent toxics use reduction goal. The committee shall report its findings and recommendations to the fiscal and policy committees of the senate and house of representatives by November 1, 2008.

(((~~(40)~~))) (35) $70,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for Substitute Senate Bill No. 6805 (relating to promoting farm and forest land preservation and environmental restoration through conservation markets). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

Sec. 303. 2008 c 329 s 303 (uncodified) is amended to read as follows:

FOR THE STATE PARKS AND RECREATION COMMISSION

General Fund—State Appropriation (FY 2008) $48,970,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$49,187,000~~)) $45,503,000
General Fund—Federal Appropriation $5,731,000
General Fund—Private/Local Appropriation $73,000
Winter Recreation Program Account—State Appropriation $1,559,000
Off-Road Vehicle Account—State Appropriation $234,000
Snowmobile Account—State Appropriation $4,829,000
Aquatic Lands Enhancement Account—State Appropriation $363,000
Public Safety and Education Account—State Appropriation (FY 2008) $23,000
Public Safety and Education Account—State Appropriation (FY 2009) $24,000
Parks Renewal and Stewardship Account—State Appropriation . . . . . ((~~$36,534,000~~)) $37,334,000
Parks Renewal and Stewardship Account—Private/Local Appropriation $300,000
TOTAL APPROPRIATION . . . . . ((~~$147,827,000~~)) $144,943,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Fees approved by the state parks and recreation commission in the 2007-09 biennium are authorized to exceed the fiscal growth factor under RCW 43.135.055.

(2) $79,000 of the general fund—state appropriation for fiscal year 2008 and $79,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a grant for the operation of the Northwest avalanche center.

(3) $300,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for project scoping and cost estimating for the agency's 2009-11 capital budget submittal.

(4) $2,255,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for costs associated with relocating the commission's Tumwater headquarters office.

(5) $272,000 of the general fund—state appropriation for fiscal year 2008 and $271,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for costs associated with relocating the commission's eastern Washington regional headquarters office.

(6) $1,000,000 of the general fund—state appropriation for fiscal year 2008 ((~~and $1,000,000 of the general fund—state appropriation for fiscal year 2009 are~~)) is provided solely for replacing vehicles and equipment.

(7) $1,611,000 of the general fund—state appropriation for fiscal year 2008 and $1,428,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for planned and emergency maintenance of park facilities.

(8) $1,700,000 of the general fund—federal appropriation for fiscal year 2009 is provided solely for the recreational boating safety program.

(9) $954,000 of the general fund—state appropriation for fiscal year 2008 and $1,007,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the operations of Cama Beach state park.

(10) $25,000 of the general fund—state appropriation for fiscal year 2008 and $25,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for implementation of Substitute Senate Bill No. 5219 (weather and avalanche center). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(11) $9,000 of the general fund—state appropriation for fiscal year 2008 and $9,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for implementation of Substitute Senate Bill No. 5463 (forest fire protection). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(12) $9,000 of the general fund—state appropriation for fiscal year 2008 and $9,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for implementation of Substitute Senate Bill No. 5236 (public lands management). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(13) $264,000 of the general fund—state appropriation for fiscal year 2008 and $217,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to establish a pilot lifeguard program at Lake Sammamish and Nolte state parks. The department shall complete a comprehensive risk analysis to determine if expansion of the lifeguard program or other drowning risk reduction measures should be implemented. The department shall report its findings to the office of financial management and the appropriate committees of the legislature by July 1, 2009. The department shall fully implement this program as intended in this subsection.

(14) $455,000 of the general fund—state appropriation for fiscal year 2008 and $10,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the development of a long-range plan for Fort Worden state park, including architectural and site design guidelines, business and operations implementation, site and facilities use plan, and for the department to convene a task force to recommend alternative governance structures for the park.

(15) $1,600,000 of the parks renewal stewardship account—state appropriation is provided solely for operating state parks, developing and renovating park facilities, undertaking deferred maintenance, enhancing park stewardship and other state park purposes, pursuant to Substitute House Bill No. 2275 (raising funds for state parks). Expenditures from the amount provided in this subsection shall not exceed actual revenues received under Substitute House Bill No. 2275. If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(16) $40,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Second Substitute House Bill No. 2514 (orca whale protection). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(17) $58,000 of the general fund—state appropriation for fiscal year 2008 and $73,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for one-time financial assistance to the northwest weather and

avalanche center, administered by the United States forest service, to keep the center operational through the remainder of the biennium.

(((~~(19)~~))) (18) ((~~$120,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for~~)) Funds in this section are sufficient for continued implementation of Engrossed Substitute Senate Bill No. 5010 (foster home pass). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

Sec. 304. 2008 c 329 s 304 (uncodified) is amended to read as follows:

FOR THE RECREATION AND CONSERVATION FUNDING BOARD

General Fund—State Appropriation (FY 2008) $1,557,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$1,592,000~~))
$1,514,000
General Fund—Federal Appropriation $18,382,000
General Fund—Private/Local Appropriation $250,000
Aquatic Lands Enhancement Account—State
Appropriation $275,000
Water Quality Account—State Appropriation (FY 2008) $100,000
Water Quality Account—State Appropriation (FY 2009) $100,000
Firearms Range Account—State Appropriation $37,000
Recreation Resources Account—State Appropriation . . . . . ((~~$2,773,000~~))
$2,772,000
Nonhighway and Off-Road Vehicles Activities Program
Account—State Appropriation $1,004,000
Boating Activities Account—State Appropriation $2,000,000
TOTAL APPROPRIATION . . . . . ((~~$28,070,000~~))
$27,991,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $16,025,000 of the general fund—federal appropriation is provided solely for implementation of the forest and fish agreement rules. These funds shall be allocated to the department of natural resources and the department of fish and wildlife.

(2) $22,000 of the general fund—state appropriation for fiscal year 2008 and $22,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of Substitute Senate Bill No. 5372 (Puget Sound partnership). If the bill is not enacted by June 30, 2007, the department shall execute activities as described in Engrossed Substitute Senate Bill No. 5372 (Puget Sound partnership).

(3) $2,000,000 of the boating activities account—state appropriation is provided solely to implement Substitute House Bill No. 1651 (boating activities). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

Sec. 305. 2008 c 329 s 305 (uncodified) is amended to read as follows:

FOR THE ENVIRONMENTAL HEARINGS OFFICE

General Fund—State Appropriation (FY 2008) $1,144,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$1,142,000~~))
$1,109,000

TOTAL APPROPRIATION . . . . . ((~~$2,286,000~~))
$2,253,000

The appropriations in this section are subject to the following condition and limitation: $10,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for employee retirement buyout costs.

Sec. 306. 2008 c 329 s 306 (uncodified) is amended to read as follows:

FOR THE CONSERVATION COMMISSION

General Fund—State Appropriation (FY 2008) $2,889,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$3,107,000~~))
$3,063,000
General Fund—Federal Appropriation $1,178,000
Water Quality Account—State Appropriation (FY 2008) $5,301,000
Water Quality Account—State Appropriation (FY 2009) . . . . . ((~~$5,316,000~~))
$5,315,000
TOTAL APPROPRIATION . . . . . ((~~$17,791,000~~))
$17,746,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $100,000 of the general fund—state appropriation for fiscal year 2008 and $100,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for supplementary basic funding grants to the state's lowest-income conservation districts. The supplementary grant process shall be structured to aid recipients in becoming financially self-sufficient in the future.

(2) $250,000 of the general fund—state appropriation for fiscal year 2008 and $250,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement Substitute Senate Bill No. 5108 (office of farmland preservation). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(3) $250,000 of the general fund—state appropriation for fiscal year 2008 and $250,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the pioneers in conservation program to provide grants through a competitive process to agricultural landowners for projects that benefit fish and wildlife restoration and farm operations. Grants must be matched by an equal amount or more from nonstate sources with priority for projects identified in the Puget Sound Chinook salmon recovery plan and the Puget Sound partnership strategy.

(4) $78,000 of the general fund—state appropriation for fiscal year 2008 and $72,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement Engrossed Second Substitute Senate Bill No. 5372 (Puget Sound partnership). If the bill is not enacted by June 30, 2007, the department shall execute activities as described in Engrossed Substitute Senate Bill No. 5372 (Puget Sound partnership).

(5) $250,000 of the water quality account—state appropriation for fiscal year 2009 is provided solely for livestock nutrient program cost share for the poultry industry.

(6) $35,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for support of conservation resource management.

(7) $174,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Substitute Senate Bill No. 6805 (conservation markets). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

Sec. 307. 2008 c 329 s 307 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF FISH AND WILDLIFE

General Fund—State Appropriation (FY 2008) $56,158,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$54,319,000~~))
$49,062,000
General Fund—Federal Appropriation . . . . . ((~~$52,273,000~~))
$52,270,000
General Fund—Private/Local Appropriation . . . . . ((~~$37,189,000~~))
$37,184,000
Off-Road Vehicle Account—State Appropriation $413,000
Aquatic Lands Enhancement Account—State Appropriation $6,022,000
Public Safety and Education Account—State Appropriation (FY 2008) $268,000
Public Safety and Education Account—State Appropriation (FY 2009) $323,000
Recreational Fisheries Enhancement—State Appropriation $3,600,000
Warm Water Game Fish Account—State Appropriation $2,992,000
Eastern Washington Pheasant Enhancement Account—State Appropriation $753,000
Aquatic Invasive Species Enforcement Account—State Appropriation $204,000
Aquatic Invasive Species Prevention Account—State Appropriation $842,000
Wildlife Account—State Appropriation . . . . . ((~~$63,589,000~~))
$63,549,000
Wildlife Account—Federal Appropriation $34,279,000
Wildlife Account—Private/Local Appropriation $13,187,000
Game Special Wildlife Account—State Appropriation $2,478,000
Game Special Wildlife Account—Federal Appropriation $8,911,000
Game Special Wildlife Account—Private/Local Appropriation $483,000
Water Quality Account—State Appropriation (FY 2008) $160,000
Water Quality Account—State Appropriation (FY 2009) $160,000
Regional Fisheries Salmonid Recovery Account—Federal Appropriation $5,001,000
Oil Spill Prevention Account—State Appropriation $1,093,000
Oyster Reserve Land Account—State Appropriation $416,000
Wildlife Rehabilitation Account—State Appropriation $270,000
TOTAL APPROPRIATION . . . . . ((~~$345,383,000~~))
$340,078,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The department shall use the department of printing for printing needs. Funds provided in this section may not be used to staff or fund a stand-alone printing operation.

(2) $175,000 of the general fund—state appropriation for fiscal year 2008 and $175,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of hatchery reform recommendations defined by the hatchery scientific review group.

(3) The department shall support the activities of the aquatic nuisance species coordination committee to foster state, federal, tribal, and private cooperation on aquatic nuisance species issues. The committee shall strive to prevent the introduction of nonnative aquatic species and to minimize the spread of species that are introduced.

(4) The department shall emphasize enforcement of laws related to protection of fish habitat and the illegal harvest of salmon and steelhead. Within the amount provided for the agency, the department shall provide support to the department of health to enforce state shellfish harvest laws.

(5) $400,000 of the general fund—state appropriation for fiscal year 2008 and $400,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a state match to support the Puget Sound nearshore partnership between the department and the U.S. army corps of engineers.

(6) The department shall assist the office of regulatory assistance in implementing activities consistent with the governor's regulatory improvement program. The department shall support and provide expertise to facilitate, coordinate, and simplify citizen and business interactions so as to improve state regulatory processes involving state, local, and federal stakeholders.

(7) $634,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for operations and fish production costs at department-operated Mitchell act hatchery facilities.

(8) $609,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the department to implement a pilot project with the Confederated Tribes of the Colville Reservation to develop expanded recreational fishing opportunities on Lake Rufus Woods and its northern shoreline and to conduct joint enforcement of lake fisheries on Lake Rufus Woods and adjoining waters, pursuant to state and tribal intergovernmental agreements developed under the Columbia River water supply program.

(a) For the purposes of the pilot project:

(i) A fishing permit issued to a nontribal member by the Colville Tribes shall satisfy the license requirement of RCW 77.32.010 on the waters of Lake Rufus Woods and on the north shore of Lake Rufus Woods;

(ii) The Colville Tribes have agreed to provide to holders of its nontribal member fishing permits a means to demonstrate that fish in their possession were lawfully taken in Lake Rufus Woods;

(iii) A Colville tribal member identification card shall satisfy the license requirement of RCW 77.32.010 on all waters of Lake Rufus Woods;

(iv) The department and the Colville Tribes shall jointly designate fishing areas on the north shore of Lake Rufus Woods for the purposes of enhancing access to the recreational fisheries on the lake; and

(v) The Colville Tribes have agreed to recognize a fishing license issued under RCW 77.32.470 or RCW 77.32.490 as satisfying the nontribal member

fishing permit requirements of Colville tribal law on the reservation portion of the waters of Lake Rufus Woods and at designated fishing areas on the north shore of Lake Rufus Woods;

(b) The director, in collaboration with the Colville Tribes, shall provide an interim report to the office of financial management and the appropriate committees of the legislature by December 31, 2008. The report shall describe the status of the pilot project, and make recommendations as needed to fully implement the project, pursuant to the state and tribal agreement on Lake Rufus Woods.

(9) $182,000 of the general fund—state appropriation for fiscal year 2008 and $182,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to continue the ballast water management program in Puget Sound and expand the program to include the Columbia river and coastal ports.

(10) $250,000 of the general fund—state appropriation for fiscal year 2008 and $250,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for hatchery facility maintenance improvements.

(11) $440,000 of the general fund—state appropriation for fiscal year 2008 and $409,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for estimates of juvenile abundance of federally listed salmon and steelhead populations. The department shall report to the office of financial management and the appropriate fiscal committees of the legislature with a letter stating the use and measurable results of activities that are supported by these funds.

(12) $125,000 of the general fund—state appropriation for fiscal year 2008 and $125,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the strategic budget and accountability program.

(13) $113,000 of the general fund—state appropriation for fiscal year 2008 and $113,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement Engrossed Substitute Senate Bill No. 5372 (Puget Sound partnership). If the bill is not enacted by June 30, 2007, the department shall execute activities as described in Engrossed Substitute Senate Bill No. 5372 (Puget Sound partnership).

(14) Prior to submitting its 2009-11 biennial operating and capital budget request related to state fish hatcheries to the office of financial management, the department shall contract with the hatchery scientific review group (HSRG) to review this request. This review shall: (a) Determine if the proposed requests are consistent with HSRG recommendations; (b) prioritize the components of the requests based on their contributions to protecting wild salmonid stocks and meeting the recommendations of the HSRG; and (c) evaluate whether the proposed requests are being made in the most cost effective manner. The department shall provide a copy of the HSRG review to the office of financial management and the appropriate legislative committees by October 1, 2008.

(15) $43,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the implementation of Substitute Senate Bill No. 5447 (coastal Dungeness crab). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(16) $4,000 of the general fund—state appropriation for fiscal year 2008 and $4,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of Substitute Senate Bill No. 5463 (forest

fire protection). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(17) $89,000 of the general fund—state appropriation for fiscal year 2008 and $89,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of Substitute Senate Bill No. 6141 (forest health). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(18) $204,000 of the aquatic invasive species enforcement account—state appropriation is provided solely for the implementation of Substitute Senate Bill No. 5923 (aquatic invasive species). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(19) $352,000 of the wildlife rehabilitation account is provided solely for the implementation of Senate Bill No. 5188 (wildlife rehabilitation). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(20) $77,000 of the general fund—state appropriation for fiscal year 2008 and $75,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the department of fish and wildlife to participate in the upper Columbia salmon recovery plan implementation, habitat conservation plan hatchery committees, and the priest rapids salmon and steelhead agreement hatchery technical committee.

(21)(a) Within existing funds, the department of fish and wildlife shall sell the upper 20-acre parcel of the Beebe springs property.

(b) Proceeds from the sale are to be used to develop the Beebe springs natural interpretive site. Up to $300,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the development of the Beebe springs natural interpretive site. The department shall not expend more than the amount received from the sale proceeds.

(22) $50,000 of the general fund—state appropriation for fiscal year 2008 and $49,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement Substitute House Bill No. 2049 (marine resource committees). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(23) $35,000 of the general fund—state appropriation for fiscal year 2008 and $35,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a study of introducing oxygen to the waters of Hood Canal. The study shall propose a location in a small marine area where a large number of bottom-dwelling fish species exist, and analyze the impact of injected dissolved oxygen on aquatic life. The department shall report to the appropriate committees of the legislature on the results of the study and recommend whether to proceed with a project to inject oxygen into Hood Canal.

(24) $1,310,000 of the general fund—state appropriation for fiscal year 2008 is provided solely to replace state wildlife account funds for the engineering program and $610,000 of the general fund—state appropriation for fiscal year 2008 are provided solely to replace state wildlife account funds for the hydraulic project permitting program, including the development of a permit fee schedule for the hydraulic project approval program to make the program self supporting. Fees may be based on factors relating to the complexity of the permit issuance. The fees received by the department must be deposited into the

state wildlife account and shall be expended exclusively for the purposes of the hydraulic project permitting program. By December 1, 2008, the department shall provide a permit fee schedule for the hydraulic project approval program to the office of financial management and the appropriate committees of the legislature.

(25) $245,000 of the general fund—state appropriation for fiscal year 2008 ((~~and $245,000 of the general fund—state appropriation for fiscal year 2009 are~~)) is provided solely to the department to work in cooperation with the department of natural resources to assist with the implementation of the wild horse coordinated resource management plan. Implementation may include providing grant funding to other state and nonstate entities as needed.

(26) $270,000 of the general fund—state appropriation for fiscal year 2008 and $270,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the department to develop siting guidelines for power generation facilities, provide technical assistance for permitting, support voluntary compliance with the guidelines, and to conduct bird and wildlife assessments on state lands most eligible for wind power leases.

(27) $50,000 of the general fund—state appropriation for fiscal year 2008 is provided solely to implement Second Substitute House Bill No. 2220 (shellfish). The department shall develop and maintain an electronic database for aquatic farmer registration. If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(28) During the 2007-09 biennium, the department shall not make a permanent closure of any hatchery facility currently in operation.

(29) Within existing funds, the department shall continue implementing its capital program action plan dated September 1, 2007, including the purchase of the necessary maintenance and support costs for the capital programs and engineering tools. The department shall report to the office of financial management and the appropriate committees of the legislature, its progress in implementing the plan, including improvements instituted in its capital program, by September 30, 2008.

(30) $46,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Second Substitute House Bill No. 2514 (orca whale protection). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(33)~~))) (31) The department shall complete an inventory of department purchased or leased lands acquired for mixed agriculture and fish and wildlife habitat and provide for each purchase or lease agreement the cost and date of the agreement, the previous use of the land, any agreement or deed specifying continuing use of the land, and the current management cost and status of each parcel of purchased or leased lands. The department shall provide the inventory to the appropriate committees of the legislature by December 1, 2008.

(((~~(34)~~))) (32) $289,000 of the general fund—state appropriation for fiscal year 2008 and $301,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for selective fisheries.

(((~~(35)~~))) (33) $100,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for removal of derelict gear in Washington waters.

((~~(36)~~)) (34) $135,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for a review of the effectiveness of the department's existing hydraulic project approval process and environmental outcomes.

((~~(37)~~)) (35) $75,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to implement the 2008 Wiley Slough restoration project report to the legislature recommendation to establish a private farmland, public recreation partnership that would provide farmland preservation, waterfowl management, and public recreational access.

((~~(38)~~)) (36) $95,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for Ebey Island property management costs.

((~~(39)~~)) (37)(a) A work group on Electron dam salmon passage is established, with 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 of the house of representatives.

(iii) The department of fish and wildlife shall appoint at least one representative from each of the following entities: The department of fish and wildlife, Puyallup Tribe of Indians, and Puget Sound energy.

(b) The department of fish and wildlife shall provide staff support to the work group.

(c) The work group shall study possible enhancements for improving outbound juvenile salmon passage at Electron dam on the Puyallup river.

(d) Legislative members of the work group shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(e) The expenses of the work group, other than travel expenses of legislative members, shall be paid within existing funds from the department of fish and wildlife.

(f) The work group shall present its findings and recommendations to the appropriate committees of the legislature by January 1, 2009.

(g) This subsection expires January 1, 2009.

((~~(40)~~)) (38) As part of its 2009-11 biennial budget request, the department shall submit a report detailing the methodology for determining the value of payment in lieu of taxes as provided in RCW 79.70.130. At a minimum, the report will show the number of acres subject to the payment in lieu of taxes, the tax rates assumed by each affected county, and the resulting value of the state general fund obligation.

((~~(41)~~)) (39) Within the appropriations in this section, specific funding is provided to implement Engrossed Senate Bill No. 6821 (fish and wildlife information).

((~~(42)~~)) (40) $250,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for Second Substitute Senate Bill No. 6227 (outer coast marine resources committees). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

((~~(43)~~)) (41) $115,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for Substitute Senate Bill No. 6231 (marine

protected areas). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

Sec. 308. 2008 c 329 s 308 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF NATURAL RESOURCES

General Fund—State Appropriation (FY 2008) $50,328,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$51,345,000~~))
$48,695,000
General Fund—Federal Appropriation $27,855,000
General Fund—Private/Local Appropriation $1,408,000
Forest Development Account—State Appropriation . . . . . ((~~$57,616,000~~))
$57,603,000
Off-Road Vehicle Account—State Appropriation $4,196,000
Surveys and Maps Account—State Appropriation . . . . . ((~~$2,524,000~~))
$2,523,000
Aquatic Lands Enhancement Account—State
Appropriation . . . . . ((~~$7,899,000~~))
$7,897,000
Resources Management Cost Account—State
Appropriation . . . . . ((~~$95,326,000~~))
$94,633,000
Surface Mining Reclamation Account—State
Appropriation . . . . . ((~~$3,280,000~~))
$3,279,000
Disaster Response Account—State Appropriation $5,000,000
Forest and Fish Support Account—State Appropriation $7,000,000
Water Quality Account—State Appropriation (FY 2008) $1,348,000
Water Quality Account—State Appropriation (FY 2009) . . . . . ((~~$1,349,000~~))
$1,348,000
Aquatic Land Dredged Material Disposal Site
Account—State Appropriation $1,335,000
Natural Resources Conservation Areas Stewardship
Account—State Appropriation $34,000
State Toxics Control Account—State Appropriation $80,000
Air Pollution Control Account—State Appropriation $567,000
Nonhighway and Off-Road Vehicle Activities Program
Account—State Appropriation $982,000
Derelict Vessel Removal Account—State Appropriation $3,650,000
Agricultural College Trust Management Account—State
Appropriation . . . . . ((~~$2,047,000~~))
$2,046,000
TOTAL APPROPRIATION . . . . . ((~~$325,169,000~~))
$321,807,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $1,021,000 of the general fund—state appropriation for fiscal year 2008 and $1,043,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for deposit into the agricultural college trust management

account and are provided solely to manage approximately 70,700 acres of Washington State University's agricultural college trust lands.

(2) $13,920,000 of the general fund—state appropriation for fiscal year 2008, $13,542,000 of the general fund—state appropriation for fiscal year 2009, and $5,000,000 of the disaster response account—state appropriation are provided solely for emergency fire suppression. None of the general fund and disaster response account amounts provided in this subsection may be used to fund agency indirect and administrative expenses. Agency indirect and administrative costs shall be allocated among the agency's remaining accounts and appropriations.

(3) Fees approved by the department of natural resources and the board of natural resources in the 2007-09 biennium are authorized to exceed the fiscal growth factor under RCW 43.135.055.

(4) $198,000 of the general fund—state appropriation for fiscal year 2008 and $199,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the department to work with appropriate stakeholders and state agencies in determining how privately owned lands, in combination with other land ownership such as public and tribal lands, contribute to wildlife habitat. The assessment will also determine how commercial forests, forest lands on the urban fringe, and small privately-owned forest lands that are managed according to Washington's forest and fish prescriptions, in combination with other forest management activities, function as wildlife habitat now and in the future.

(5) $5,000,000 of the forest and fish support account—state appropriation is provided solely for adaptive management, monitoring, and participation grants to tribes. If federal funding for this purpose is reinstated, the amount provided in this subsection shall lapse. The department shall compile the outcomes of these grants annually and submit them to the office of financial management by September 1 of 2008 and 2009.

(6) $400,000 of the forest and fish support account—state appropriation is provided solely for adaptive management, monitoring, and participation grants to the departments of ecology and fish and wildlife. If federal funding for this purpose is reinstated, this subsection shall lapse.

(7) The department shall prepare a feasibility study that analyzes applicable business processes and develops the scope, requirements, and alternatives for replacement of the department's current suite of payroll-support systems. The department shall use an independent consultant to assist with the study, and shall submit the completed analysis to the office of financial management, the department of personnel, and the department of information services by August 1, 2008.

(8) $600,000 of the general fund—state appropriation for fiscal year 2008 and $600,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to continue interagency agreements with the department of fish and wildlife and the department of ecology for forest and fish report field implementation tasks.

(9) All department staff serving as recreation-management trail stewards shall be noncommissioned.

(10) $112,000 of the aquatic lands enhancement account—state appropriation is provided solely for spartina eradication efforts. The department

may enter into agreements with federal agencies to eradicate spartina from private lands that may provide a source of reinfestation to public lands.

(11) $40,000 of the general fund—state appropriation for fiscal year 2008 and $40,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the department to convene and staff a work group to study issues related to wildfire prevention and protection. The work group shall be composed of members representing rural counties in eastern and western Washington, fire districts, environmental protection organizations, industrial forest landowners, the agricultural community, the beef industry, small forest landowners, the building industry, realtors, the governor or a designee, the insurance commissioner or a designee, the office of financial management, the state fire marshal or a designee, the state building code council, and the commissioner or public lands or a designee. The work group shall issue a report of findings and recommendations to the appropriate committees of the legislature by August 1, 2008.

(12) $249,000 of the aquatic lands enhancement account—state appropriation is provided solely to implement Engrossed Substitute Senate Bill No. 5372 (Puget Sound partnership). If the bill is not enacted by June 30, 2007, the department shall execute activities as described in Engrossed Substitute Senate Bill No. 5372 (Puget Sound partnership).

(13) $2,000,000 of the derelict vessel removal account—state appropriation is provided solely for the implementation of Engrossed Second Substitute Senate Bill No. 6044 (derelict vessels). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(14) $34,000 of the general fund—state appropriation for fiscal year 2008 and $34,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of Substitute Senate Bill No. 5236 (public lands management). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(15) $14,000 of the forest development account—state appropriation and $52,000 of the resources management cost account—state appropriation are provided solely for implementation of Substitute Senate Bill No. 5463 (forest fire protection). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(16) $100,000 of the general fund—state appropriation for fiscal year 2008 and $900,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the removal of one or two large floating dry docks off Lake Washington near the Port Quendall site in north Renton.

(17) $547,000 of the general fund—state appropriation for fiscal year 2008 and $726,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the implementation of Substitute Senate Bill No. 6141 (forest health). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(18) $22,000 of the surface mining reclamation account—state appropriation and $22,000 of the resources management cost account—state appropriation are provided solely for the implementation of Substitute Senate Bill No. 5972 (surface mining reclamation). If the bill is not enacted by June 30, 2007, the amounts in this subsection shall lapse.

(19) $125,000 of the general fund—state appropriation for fiscal year 2008, $125,000 of the general fund—state appropriation for fiscal year 2009, and $250,000 of the resource management cost account—state appropriation are provided solely to extend the 2005-2007 contract with the University of Washington college of forestry resources for additional research and technical assistance on the future of Washington forests. Reports shall be submitted by June 30, 2009, to the appropriate committees of the legislature on the following topics:

(a) An exploration of the potential markets for renewable energy from biomass from Washington forests, especially from material removed from eastern Washington forests as part of forest health improvement efforts. This exploration shall assess the feasibility of converting large amounts of underutilized forest biomass into useful products and green energy by providing required analyses needed to efficiently collect and deliver forest biomass to green energy end users. The role of transportation and processing infrastructure in developing markets for such material for both clean energy and value-added products shall be included in the exploration. The college shall coordinate with Washington State University efforts to identify what new biological, chemical, and engineering technologies are emerging for converting forest biomass to clean and efficient energy.

(b) Recommendations for the college's northwest environmental forum for retaining the highest valued working forest lands at risk of conversion to nonforest uses. These recommendations should include an examination of means to enhance biodiversity through strategic retention of certain lands, as well as economic incentives for landowners to retain lands as working forests and provide ecosystem services. The recommendations shall consider the health and value of the forest lands, the rate of loss of working forest lands in the area, the risk to timber processing infrastructure from continued loss of working forest lands, and the multiple benefits derived from retaining working forest lands. The recommendations shall prioritize forest lands in the Cascade foothills, which include the area generally encompassing the nonurbanized lands within the Cascade mountain range and drainages lying between three hundred and three thousand feet above mean sea level, and located within Whatcom, Skagit, Snohomish, King, Pierce, Thurston, and Lewis counties.

(20) $25,000 of the general fund—state appropriation for fiscal year 2008 and $25,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for Chelan county, as the chair of the Stemilt partnership, to perform the following:

(a) Work with private and public land management entities to identify and evaluate land ownership possibilities;

(b) Allocate up to $10,000 to the department of fish and wildlife to perform technical studies, baseline assessments, environmental review, due diligence, and similar real estate evaluations; and

(c) Implement real estate transactions based on the results of the studies.

(21) $15,000 of the general fund—state appropriation for fiscal year 2008 and $15,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for health benefits to Washington conservation corps employees.

(22) $300,000 of the general fund—state appropriation for fiscal year 2008 and $300,000 of the general fund—state appropriation for fiscal year 2009 are

provided solely for staff support for the natural heritage program to integrate, analyze, and provide bird area information, and for state designations and mapping support, among other activities.

(23) $48,000 of the resource management cost account—state appropriation is provided solely to implement Second Substitute House Bill No. 2220 (shellfish). The department shall participate in a shellfish aquaculture regulatory committee, convened by the department of ecology. If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(24) $150,000 of the general fund—private/local appropriation is provided solely for the implementation of Substitute Senate Bill No. 5445 (cost-reimbursement agreements). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(25) $191,000 of the aquatic lands enhancement account—state appropriation is provided solely for the department to coordinate with the Puget Sound partnership to complete a final habitat conservation plan for state-owned aquatic lands and an environmental impact statement by June 2009.

(26) $251,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Engrossed Second Substitute House Bill No. 2844 (urban forestry). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

((~~(28)~~)) (27) $80,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to complete maps of lower Hood Canal, including subsurface geologic layers, lithology, digital layers, and maps to identify liquifiable sediments for hazard mitigation. The department shall provide a report to the appropriate committees of the legislature on maps that were produced by December 1, 2008.

((~~(29)~~)) (28) As part of its 2009-11 biennial budget request, the department shall submit a report detailing the methodology for determining the value of payment in lieu of taxes as provided in RCW 79.70.130. At a minimum, the report will show the number of acres subject to the payment in lieu of taxes, the tax rates assumed by each affected county, and the resulting value of the state general fund obligation.

((~~(30)~~)) (29) $200,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to supplement other available funds for an analysis of whether forest practices rules (including rules for harvest on potentially unstable slopes, road construction and maintenance, and post-harvest slash treatment) effectively protect public resources and public safety from landslides, and other storm-related impacts. The analysis is to be accomplished using the forest practices board adaptive management process. The cooperative monitoring, evaluation, and research (CMER) committee of the adaptive management program shall submit a report of its preliminary analysis and conclusions to the appropriate committees of the legislature by December 1, 2008. The forest practices board shall submit a complete report of the CMER study on the effectiveness of current prescriptions and practices by June 30, 2009. This amount is ongoing solely to make improvements to the state's geological survey.

((~~(31)~~)) (30) $26,000 of the general fund—state appropriation for fiscal year 2008 and $71,000 of the general fund—state appropriation for fiscal year 2009

are provided solely to implement Substitute House Bill No. 2472 (recreational opportunities).

Sec. 309. 2008 c 329 s 309 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF AGRICULTURE

General Fund—State Appropriation (FY 2008) $14,073,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$14,555,000~~)) $12,798,000
General Fund—Federal Appropriation . . . . . ((~~$11,329,000~~)) $11,325,000
General Fund—Private/Local Appropriation $420,000
Aquatic Lands Enhancement Account—State Appropriation . . . . . ((~~$2,052,000~~)) $2,051,000
Energy Freedom Account—State Appropriation $500,000
Water Quality Account—State Appropriation (FY 2008) $604,000
Water Quality Account—State Appropriation (FY 2009) . . . . . ((~~$605,000~~)) $604,000
State Toxics Control Account—State Appropriation . . . . . ((~~$4,100,000~~)) $4,098,000
Water Quality Permit Account—State Appropriation $59,000
TOTAL APPROPRIATION . . . . . ((~~$48,297,000~~)) $46,532,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Fees and assessments approved by the department in the 2007-09 biennium are authorized to exceed the fiscal growth factor under RCW 43.135.055. Pursuant to RCW 43.135.055, during fiscal year 2009 the department is further authorized to increase the apple pest certification assessment by up to $0.015 per hundredweight of fruit.

(2) Within funds appropriated in this section, the department, in addition to the authority provided in RCW 17.26.007, may enter into agreements with federal agencies to eradicate spartina from private lands that may provide a source of reinfestation to public lands.

(3) $78,000 of the general fund—state appropriation for fiscal year 2008 and $72,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement Engrossed Substitute Senate Bill No. 5372 (Puget Sound partnership). If the bill is not enacted by June 30, 2007, the department shall execute activities as described in Engrossed Substitute Senate Bill No. 5372 (Puget Sound partnership).

(4) $62,000 of the general fund—state appropriation for fiscal year 2008 and $63,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a study to evaluate the use of sugar beets for the production of biofuels.

(5) $275,000 of the general fund—state appropriation for fiscal year 2008 and $275,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for direct allocation, without deduction, to the Washington tree fruit research commission, established under chapter 15.26 RCW, for

development and implementation of a pest management transition program to reduce the use by the tree fruit industry of certain organophosphate insecticides.

(6) $250,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$250,000~~)) $225,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for distribution to counties with weed boards to control invasive weeds. Of this amount, $150,000 of the general fund—state appropriation for fiscal year 2008 and $150,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to control Japanese knotweed in counties with weed boards.

(7) $250,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$250,000~~)) $162,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for pass through funding to the nonprofit opportunities industrialization center to provide training to agricultural workers related to farm skills, English as a second language, and other skills.

(8) $65,000 of the general fund—state appropriation for fiscal year 2009 and $35,000 of the aquatic lands enhancement account appropriation are provided solely for funding to the Pacific county noxious weed control board to continue its planning and implementation of spartina eradication activities.

(9) ((~~$290,000~~)) $148,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Second Substitute Senate Bill No. 6483 (local food production). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(10) ((~~$57,000~~)) $25,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Engrossed Second Substitute House Bill No. 2815 (greenhouse gases emissions). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(11) In addition to other reductions, the reduced appropriations in this section reflect an additional $222,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 310. 2008 c 329 s 310 (uncodified) is amended to read as follows:

FOR THE WASHINGTON POLLUTION LIABILITY REINSURANCE PROGRAM

Pollution Liability Insurance Program Trust Account—State Appropriation . . . . . ((~~$737,000~~)) $707,000

Sec. 311. 2008 c 329 s 311 (uncodified) is amended to read as follows:

FOR THE PUGET SOUND PARTNERSHIP

General Fund—State Appropriation (FY 2008) $370,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$654,000~~)) $560,000
General Fund—Federal Appropriation $2,655,000
General Fund—Private/Local Appropriation $2,500,000
Aquatic Lands Enhancement Account—State Appropriation $500,000
Water Quality Account—State Appropriation (FY 2008) $3,660,000
Water Quality Account—State Appropriation (FY 2009) $4,098,000

State Toxics Account—State Appropriation. . . . . ((~~$1,710,000~~))
$1,510,000
TOTAL APPROPRIATION . . . . . ((~~$16,147,000~~))
$15,853,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $600,000 of the water quality account—state appropriation for fiscal year 2008, $1,400,000 of the water quality account—state appropriation for fiscal year 2009, and $2,500,000 of the general fund—private/local appropriation are provided solely for the education of citizens through attracting and utilizing volunteers to engage in activities that result in environmental benefits.

(2) $2,208,000 of the water quality account—state appropriation for fiscal year 2008, $2,209,000 of the water quality account—state appropriation for fiscal year 2009, $370,000 of the general fund—state appropriation for fiscal year 2008, ((~~$630,000~~)) $560,000 of the general fund—state appropriation for fiscal year 2009, and $1,155,000 of the general fund—federal appropriation are provided solely to implement Substitute Senate Bill No. 5372 (Puget Sound partnership). If the bill is not enacted by June 30, 2007, then $2,208,000 of the water quality account—state appropriation for fiscal year 2008, $2,209,000 of the water quality account—state appropriation for fiscal year 2009, $1,155,000 of the general fund—federal appropriation, $500,000 of the general fund—state appropriation for fiscal year 2008, and $500,000 of the general fund—state appropriation for fiscal year 2009 are appropriated to the office of the governor for operation of the Puget Sound action team.

(3) To implement the 2007-09 Puget Sound biennial plan required by Engrossed Substitute Senate Bill No. 5372 (Puget Sound partnership), funding is provided solely for Puget Sound recovery activities in the budgets of selected agencies and institutions of higher education, including the department of agriculture, department of community, trade and economic development, conservation commission, department of ecology, department of fish and wildlife, department of health, interagency committee for outdoor recreation, department of natural resources, state parks and recreation commission, the Puget Sound partnership, University of Washington, and Washington State University. During the 2007-09 biennium, moneys are provided solely for these agencies and institutions of higher education as provided for in LEAP document PSAT-2007.

(4) $305,000 of the water quality account—state appropriation for fiscal year 2009 and $305,000 of the general fund—federal appropriation are provided solely for an outcome monitoring program first for Puget Sound and Washington's coastline and then across the remaining salmon recovery regions across the state.

((~~(6)~~)) (5) $852,000 of the water quality account—state appropriation for fiscal year 2008, $231,000 of the water quality account—state appropriation for fiscal year 2009, and $900,000 of the state toxics control account appropriation are provided solely for development and implementation of the 2020 action agenda.

PART IV
TRANSPORTATION

Sec. 401. 2008 c 329 s 401 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING

General Fund—State Appropriation (FY 2008) $1,730,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$2,055,000~~))
$1,686,000
Architects' License Account—State Appropriation $754,000
Cemetery Account—State Appropriation $237,000
Professional Engineers' Account—State Appropriation $3,457,000
Real Estate Commission Account—State Appropriation $9,163,000
Master License Account—State Appropriation $14,311,000
Uniform Commercial Code Account—State Appropriation $3,063,000
Real Estate Education Account—State Appropriation $276,000
Real Estate Appraiser Commission Account—State
Appropriation $1,667,000
Business and Professions Account—State Appropriation . . . . . ((~~$11,680,000~~))
$11,201,000
Real Estate Research Account—State Appropriation $320,000
Funeral Directors And Embalmers Account—State
Appropriation $588,000
Geologists' Account—State Appropriation $56,000
Data Processing Revolving Account—State Appropriation $29,000
Derelict Vessel Removal Account—State Appropriation $31,000
TOTAL APPROPRIATION . . . . . ((~~$49,417,000~~))
$48,569,000

The appropriations in this section are subject to the following conditions and limitations:

(1) In accordance with RCW 43.24.086, it is the policy of the state of Washington that the cost of each professional, occupational, or business licensing program be fully borne by the members of that profession, occupation, or business. For each licensing program covered by RCW 43.24.086, the department shall set fees at levels sufficient to fully cover the cost of administering the licensing program, including any costs associated with policy enhancements funded in the 2007-09 fiscal biennium. Pursuant to RCW 43.135.055, during the 2007-09 fiscal biennium, the department may increase fees in excess of the fiscal growth factor if the increases are necessary to fully fund the costs of the licensing programs. Pursuant to RCW 43.135.055 and 43.24.086, the department is further authorized to increase the following fees as necessary to meet the actual costs of conducting business and the appropriation levels in this section: Real estate appraiser certification, by not more than $30 in fiscal year 2009; real estate appraiser certification, original via reciprocity, by not more than $30 in fiscal year 2009; security guard license, original, by not more than $30 in fiscal year 2009; security guard license, renewal, by not more than $30 in 2009; and skills testing fee, a new fee may be established of not more than $100 for most drivers and $75 for nonprofit ECEAP or head start program.

(2) $230,000 of the master license account—state appropriation is provided solely for Engrossed Second Substitute House Bill No. 1461 (manufactured/

mobile home dispute resolution). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(3) $64,000 of the business and professions account—state appropriation is provided solely for implementation of Engrossed Substitute Senate Bill No. 6437 (bail bond agents). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(4) $210,000 of the business and professions account—state appropriation is provided solely to implement Engrossed Substitute Senate Bill No. 6606 (home inspectors). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(5) $87,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the department to conduct a review of the need for regulation of general and specialty contractors involved in the repair, alteration, or construction of single-family homes using the public interest criteria set forth in RCW 18.118.010 and as generally described in Second Substitute House Bill No. 3349 (residential contractors). By October 1, 2008, the department and the department of labor and industries shall report their findings to the appropriate committees of the legislature.

(6) The department of licensing and the department of health shall jointly review and report to the appropriate policy committees of the legislature by December 1, 2008, recommendations for implementing a process of holding in abeyance for up to six months following the conclusion of active duty service the expiration of, and currency requirements for, professional licenses and certificates for individuals who have been called to active duty military service.

(7) The higher education coordinating board, the department of licensing, and the department of health shall jointly review and report to the appropriate policy committees of the legislature by December 1, 2008, on barriers and opportunities for increasing the extent to which veterans separating from duty are able to apply skills sets and education required while in service to certification, licensure, and degree requirements.

Sec. 402. 2008 c 329 s 402 (uncodified) is amended to read as follows:

FOR THE STATE PATROL

General Fund—State Appropriation (FY 2008) $38,968,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$31,262,000~~))
$28,334,000
General Fund—Federal Appropriation $5,629,000
General Fund—Private/Local Appropriation $1,223,000
Death Investigations Account—State Appropriation $5,680,000
Public Safety and Education Account—State
Appropriation (FY 2008) $1,476,000
Public Safety and Education Account—State
Appropriation (FY 2009) $2,687,000
Enhanced 911 Account—State Appropriation $572,000
County Criminal Justice Assistance Account—State
Appropriation $3,133,000
Municipal Criminal Justice Assistance
Account—State Appropriation $1,222,000
Fire Service Trust Account—State Appropriation $131,000

Disaster Response Account—State Appropriation $2,000
Fire Service Training Account—State Appropriation $8,010,000
Aquatic Invasive Species Enforcement
Account—State Appropriation $54,000
State Toxics Control Account—State Appropriation $495,000
Violence Reduction and Drug Enforcement
Account—State Appropriation (FY 2008) $3,007,000
Violence Reduction and Drug Enforcement
Account—State Appropriation (FY 2009) $4,429,000
Fingerprint Identification Account—State
Appropriation. $10,057,000
TOTAL APPROPRIATION . . . . . ((~~$118,037,000~~))
$115,109,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $233,000 of the general fund—state appropriation for fiscal year 2008, $282,000 of the general fund—state appropriation for fiscal year 2009, and $357,000 of the fingerprint identification account—state appropriation are provided solely for workload associated with implementation of the federal Adam Walsh Act — the Children's Safety and Violent Crime Reduction Act of 2006.

(2) In accordance with RCW 10.97.100 and chapter 43.43 RCW, the Washington state patrol is authorized to perform and charge fees for criminal history and background checks for state and local agencies, and nonprofit and other private entities and disseminate the records. It is the policy of the state of Washington that the fees cover, as nearly as practicable, the direct and indirect costs of performing criminal history and background checks activities. Pursuant to RCW 43.135.055, during the 2007-2009 fiscal biennium, the Washington state patrol may increase fees in excess of the fiscal growth factor if the increases are necessary to fully fund the direct and indirect cost of the criminal history and background check activities.

(3) $200,000 of the fire service training account—state appropriation is provided solely for two FTEs in the office of the state director of fire protection to exclusively review K-12 construction documents for fire and life safety in accordance with the state building code. It is the intent of this appropriation to provide these services only to those districts that are located in counties without qualified review capabilities.

(4) $350,000 of the fire service training account—state appropriation is provided solely to implement the provisions of Senate Bill No. 6119 (firefighter apprenticeship training program). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(5) $200,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for efforts to reduce the number of convicted offender biological samples awaiting DNA analysis.

(6) Within the appropriations in this section, specific funding is provided to implement Second Substitute Senate Bill No. 5642 (cigarette ignition).

PART V
EDUCATION

Sec. 501. 2008 c 329 s 501 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION

((~~(1) STATE AGENCY OPERATIONS~~))

General Fund—State Appropriation (FY 2008) . . . . . ((~~$22,161,000~~)) $36,444,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$25,223,000~~)) $38,605,000

General Fund—Federal Appropriation . . . . . ((~~$21,292,000~~)) $77,182,000

TOTAL APPROPRIATION . . . . . ((~~$68,676,000~~)) $152,231,000

The appropriations in this section are subject to the following conditions and limitations:

((~~(a)~~)) (1) A maximum of $11,920,000 of the general fund—state appropriation for fiscal year 2008 and a maximum of $12,019,000 of the general fund—state appropriation for fiscal year 2009 are ((~~provided solely~~)) for the operation and expenses of the office of the superintendent of public instruction. Within the amounts provided in this subsection, the superintendent shall recognize the extraordinary accomplishments of four students who have demonstrated a strong understanding of the civics essential learning requirements to receive the Daniel J. Evans civic education award. The students selected for the award must demonstrate understanding through completion of at least one of the classroom-based civics assessment models developed by the superintendent of public instruction, and through leadership in the civic life of their communities. The superintendent shall select two students from eastern Washington and two students from western Washington to receive the award, and shall notify the governor and legislature of the names of the recipients.

((~~(b)~~)) (2) $1,080,000 of the general fund—state appropriation for fiscal year 2008 and $815,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the operation and expenses of the state board of education, including basic education assistance activities. Within the amounts provided, the board shall implement the provisions of Second Substitute House Bill No. 1906 (improving mathematics and science education) for which it is responsible, including: ((~~(i)~~)) (a) Develop a comprehensive set of recommendations for an accountability system; ((~~(ii)~~)) (b) adopt high school graduation requirements aligned with international performance standards in mathematics and science and, in conjunction with the office of the superintendent of public instruction, identify no more than three curricula that are aligned with these standards; and ((~~(iii)~~)) (c) review all requirements related to the high school diploma as directed by section 405, chapter 263, Laws of 2006.

((~~(c)~~)) (3) $4,779,000 of the general fund—state appropriation for fiscal year 2008 and $6,248,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to the professional educator standards board for the following:

((~~(i)~~)) (a) $930,000 in fiscal year 2008 and ((~~$1,284,000~~)) $1,257,000 in fiscal year 2009 are for the operation and expenses of the Washington professional educator standards board, including administering the alternative routes to certification program, pipeline for paraeducators conditional scholarship loan program, and the retooling to teach math conditional loan program. Within the amounts provided in this subsection ((~~(1)(d)(i)~~)) (3)(a), the professional educator standards board shall: ((~~(A)~~)) (i) Revise the teacher mathematics endorsement competencies and alignment of teacher tests to the updated competencies; ((~~(B)~~)) (ii) review teacher preparation requirements in cultural understanding and make recommendations for strengthening these standards; ((~~(C)~~)) (iii) create a new professional level teacher assessment; ((~~(D)~~)) (iv) expand the alternative routes to teacher certification program for business professionals and instructional assistants who will teach math and science; ((~~(E)~~)) (v) revise requirements for college and university teacher preparation programs to match a new knowledge- and skill-based performance system; and ((~~(F)~~)) (vi) test implementation of a revised teacher preparation program approach that is classroom experience-intensive and performance-based;

((~~(ii)~~)) (b) $3,269,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$4,289,000~~)) $3,966,000 of the general fund-state appropriation for fiscal year 2009 are for conditional scholarship loans and mentor stipends provided through the alternative routes to certification program administered by the professional educator standards board. Of the amounts provided in this subsection ((~~(1)(d)(ii)~~)) (3)(b):

((~~(A)~~)) (i) $500,000 each year is provided solely for conditional scholarships to candidates seeking an endorsement in special education, math, science, or bilingual education;

((~~(B)~~)) (ii) $2,210,000 for fiscal year 2008 and $3,230,000 for fiscal year 2009 are for the expansion of conditional scholarship loans and mentor stipends for individuals enrolled in alternative route state partnership programs and seeking endorsements in math, science, special education or bilingual education ((~~as follows: (I) For route one interns (those currently holding associates of arts degrees), in fiscal year 2008, 120 interns seeking endorsements in the specified subject areas and for fiscal year 2009, an additional 120 interns in the specified subject areas; and (II) for all other routes, funding is provided each year for 140 interns seeking endorsements in the specified subject areas~~));

((~~(C)~~)) (iii) Remaining amounts in this subsection ((~~(1)(d)(ii)~~)) (3)(b) shall be used to continue existing alternative routes to certification programs; and

((~~(D)~~)) (iv) Candidates seeking math and science endorsements under ((~~(A)~~)) (i) and ((~~(B)~~)) (ii) of this subsection (3)(b) shall receive priority for funding;

((~~(iii)~~)) (c) $236,000 of the general fund—state appropriation for fiscal year 2008 and $231,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the recruiting Washington teachers program established in Second Substitute Senate Bill No. 5955 (educator preparation, professional development, and compensation);

((~~(iv)~~)) (d) $100,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$200,000~~)) $110,000 of the general fund—state appropriation for fiscal year 2009 provided in this subsection ((~~(1)(d)~~)) (3) are for $4,000 conditional loan stipends for paraeducators participating in the pipeline for

paraeducators established in Second Substitute House Bill No. 1906 (improving mathematics and science education); and

(((~~(v)~~))) (e) $244,000 of the general fund—state appropriation for fiscal year 2008 and $244,000 of the general fund—state appropriation for fiscal year 2009 are for conditional stipends for certificated teachers pursuing a mathematics or science endorsement under the retooling to teach mathematics or science program established in Second Substitute House Bill No. 1906 (improving mathematics and science education). The conditional stipends shall be for endorsement exam fees as well as stipends for teachers who must also complete coursework.

(((~~(d) $555,000 of the general fund—state appropriation for fiscal year 2008 and $867,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for increased attorney general fees related to education litigation.~~

~~(e) $67,000 of the general fund—state appropriation for fiscal year 2009 is provided solely~~)) (4) Within the amounts appropriated in this section, funding is for the professional educator standards board (PESB) to convene a work group to develop recommendations for increasing teacher knowledge, skills, and competencies to address the needs of English language learner students, pursuant to Second Substitute Senate Bill No. 6673 (student learning opportunities). ((~~If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.~~

~~(f)~~)) (5) $425,000 of the general fund—state appropriation for fiscal year 2008 and $1,975,000 of the general fund—state appropriation for fiscal year 2009 are ((~~provided solely~~)) for replacement of the apportionment system, which includes the processes that collect school district budget and expenditure information, staffing characteristics, and the student enrollments that drive the funding process.

(((~~(g) $78,000 of the general fund—state appropriation for fiscal year 2008 and $78,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to provide~~)) (6) Within the amounts appropriated in this section, funding is for direct services and support to schools around an integrated, interdisciplinary approach to instruction in conservation, natural resources, sustainability, and human adaptation to the environment. Specific integration efforts will focus on science, math, and the social sciences. Integration between basic education and career and technical education, particularly agricultural and natural sciences education, is to be a major element.

(((~~(h) $1,336,000 of the general fund—state appropriation for fiscal year 2008 and $1,227,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (7) Within the amounts appropriated in this section, funding is for the creation of a statewide data base of longitudinal student information. This amount is conditioned on the department satisfying the requirements in section 902 of this act.

(((~~(i) $325,000 of the general fund—state appropriation for fiscal year 2008 and $325,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (8) Within the amounts appropriated in this section, funding is for comprehensive cultural competence and anti-bias education programs for educators and students. The office of superintendent of public instruction shall

administer grants to school districts with the assistance and input of groups such as the anti-defamation league and the Jewish federation of Seattle.

(((j) $50,000 of the general fund - state appropriation for fiscal year 2008 and $50,000 of the general fund - state appropriation for fiscal year 2009 are provided solely)) (9) Within the amounts appropriated in this section, funding is to promote the financial literacy of students. The effort will be coordinated through the financial literacy public-private partnership.

(((k) $204,000 of the general fund - state appropriation for fiscal year 2008 and $66,000 of the general fund - state appropriation for fiscal year 2009 are provided solely)) (10) Within the amounts appropriated in this section, funding is for the implementation of Engrossed Second Substitute Senate Bill No. 5843 (regarding educational data and data systems). ((If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(l) $114,000 of the general fund - state appropriation for fiscal year 2008 and $114,000 of the general fund - state appropriation for fiscal year 2009 are provided solely)) (11) Within the amounts appropriated in this section, funding is for the implementation of Substitute House Bill No. 1052 (legislative youth advisory council). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(((m) $162,000 of the general fund - state appropriation for fiscal year 2008 and $31,000 of the general fund - state appropriation for fiscal year 2009 are provided solely)) (12) Within the amounts appropriated in this section, funding is for the implementation of Engrossed Second Substitute House Bill No. 1422 (children and families of incarcerated parents). ((If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(n) $28,000 of the general fund - state appropriation for fiscal year 2008 and $27,000 of the general fund - state appropriation for fiscal year 2009 are provided solely)) (13) Within the amounts appropriated in this section, funding is for the implementation of Second Substitute Senate Bill No. 5098 (Washington college bound scholarship). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(((o) $46,000 of the general fund - state appropriation for fiscal year 2008 and $3,000 of the general fund - state appropriation for fiscal year 2009 are provided solely)) (14) Within the amounts appropriated in this section, funding is for the implementation of Engrossed Substitute Senate Bill No. 5297 (regarding providing medically and scientifically accurate sexual health education in schools). ((If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(p) $45,000 of the general fund - state appropriation for fiscal year 2008 is provided solely for the office of superintendent of public instruction to convene a workgroup to develop school food allergy guidelines and policies for school district implementation. The workgroup shall complete the development of the food allergy guidelines and policies by March 31, 2008, in order to allow for school district implementation in the 2008-2009 school year. The guidelines developed shall incorporate state and federal laws that impact management of food allergies in school settings.

(q) $42,000 of the general fund - state appropriation for fiscal year 2008 and $42,000 of the general fund - state appropriation for fiscal year 2009 are provided solely)) (15) Within the amounts appropriated in this section, funding

is ((~~to support~~)) for a program to recognize the work of outstanding classified staff in school districts throughout the state.

(((~~(r) $96,000 of the general fund - state appropriation for fiscal year 2008 and $98,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (16) Within the amounts appropriated in this section, funding is ((~~to support~~)) for a full-time director of skills centers within the office of the superintendent of public instruction.

(((~~(s) $555,000 of the general fund - state appropriation for fiscal year 2008 and $475,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (17) Within the amounts appropriated in this section, funding is ((~~to~~)) for the office of the superintendent of public instruction to contract with the northwest educational research laboratory (NWREL) to conduct two educational studies. Specifically, NWREL shall:

(((~~(i)~~))) (a) Conduct a study regarding teacher preparation, training, and coordinated instructional support strategies for English language learners, as outlined in Engrossed Second Substitute Senate Bill No. 5841 (enhancing student learning opportunities and achievement). An interim report is due November 1, 2008, and the final report is due December 1, 2009. Both reports shall be delivered to the governor, the office of the superintendent of public instruction, and the appropriate early learning, education, and fiscal committees of the legislature; and

(((~~(ii)~~))) (b) Conduct a study of the effectiveness of the K-3 demonstration projects as outlined in Engrossed Second Substitute Senate Bill No. 5841 (enhancing student learning opportunities and achievement). An interim report is due November 1, 2008, and the final report is due December 1, 2009. Both reports shall be delivered to the governor, the office of the superintendent of public instruction, and the appropriate early learning, education, and fiscal committees of the legislature.

(((~~(t) $100,000 of the general fund - state appropriation for fiscal year 2008 and $100,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (18) Within the amounts appropriated in this section, funding is ((~~to~~)) for the office of the superintendent of public instruction to contract with Washington State University social and economic sciences research center (WSU-SESRC) to conduct to educational research studies. The WSU-SESRC shall:

(((~~(i)~~))) (a) Conduct a study which reviews chapter 207, Laws of 2002 (bullying in schools), evaluate the outcomes resulting from the legislation, and to make recommendations for continued improvement. The study shall, at a minimum, determine: (((~~(A)~~))) (i) Whether the policies have been developed and implemented in all elementary, middle, and high schools; (((~~(B)~~))) (ii) whether there has been any measurable improvement in the safety and civility of schools' climate and environment as a result of the legislation; (((~~(C)~~))) (iii) whether there are still issues that need to be addressed in light of the original intent of the legislation; and (((~~(D)~~))) (iv) recommended actions to be taken at the school, district, and state level to address the identified issues. Additionally, WSU-SESRC shall research and identify effective programs and the components of effective programs. A report shall be submitted to the education committees of the legislature and the office of the superintendent of public instruction by September 1, 2008.

((~~(ii)~~)) (b) Conduct an evaluation of the mathematics and science instructional coach program as described in Second Substitute House Bill No. 1906 (improving mathematics and science education). Findings shall include an evaluation of the coach development institute, coaching support seminars, and other coach support activities; recommendations with regard to the characteristics required of the coaches; identification of changes in teacher instruction related to coaching activities; and identification of the satisfaction level with coaching activities as experienced by classroom teachers and administrators. An interim report is due November 1, 2008. The final report is due December 1, 2009. Both the interim and final report shall be presented to the governor, the office of the superintendent of public instruction, and the education and fiscal committees of the legislature.

((~~(u) $150,000 of the general fund - state appropriation for fiscal year 2008 and $150,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (19) Within the amounts appropriated in this section, funding is for additional costs incurred by the state board of education in reviewing proposed math standards and curriculum.

((~~(v)~~)) (20) During the 2007-09 biennium, to the maximum extent possible, in adopting new agency rules or making any changes to existing rules or policies related to the fiscal provisions in the administration of part V of this act, the office of the superintendent of public instruction shall attempt to request approval through the normal legislative budget process.

((~~(w) $142,000 of the general fund - state appropriation for fiscal year 2009 is provided solely~~)) (21) Within the amounts appropriated in this section, funding is for ((~~the conducting of~~)) a comprehensive analysis of math and science teacher supply and demand issues by the professional educator standards board. By December 1, 2008, the professional educator standards board shall submit a final report to the governor and appropriate policy and fiscal committees of the legislature, that includes, but is not limited to: ((~~(i)~~)) (a) Specific information on the current number of math and science teachers assigned to teach mathematics and science both with and without appropriate certification in those subjects by region and statewide; ((~~(ii)~~)) (b) projected demand information by detailing the number of K-12 mathematics and science teachers needed by the 2010-11 school year by region and statewide; ((~~(iii)~~)) (c) specific recommendations on how the demand will be met through recruitment programs, alternative route certification programs, potential financial incentives, retention strategies, and other efforts; and ((~~(iv)~~)) (d) identification of strategies, based on best practices, to improve the rigor and productivity of state-funded mathematics and science teacher preparation programs. As part of the final report, the professional educator standards board and the Washington state institute for public policy shall provide information from a study of differential pay for teachers in high-demand subject areas such as mathematics and science, including the design, successes, and limitations of differential pay programs in other states. In order for the professional educator standards board to quantify demand, each school district shall provide to the board, by a date and in a format specified by the board, the number of teachers assigned to teach mathematics and science, both with and without appropriate certification and endorsement in those subjects, and the number of mathematics and science teaching vacancies

needing to be filled, and the board shall include this data, by district, in its analysis.

(((~~(x) $45,000 of the general fund—state appropriation for fiscal year 2009 is provided solely~~)) (22) Within the amounts appropriated in this section, funding is for the implementation of Substitute Senate Bill No. 6556 (anaphylactic policy). ((~~If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.~~

~~(y) $44,000 of the general fund—state appropriation for fiscal year 2009 is provided solely~~)) (23) Within the amounts appropriated in this section, funding is for the implementation of Substitute Senate Bill No. 6742 (guidelines for students with autism) and Substitute Senate Bill No. 6743 (training for students with autism). ((~~If neither bill is enacted by June 30, 2008, the amount provided in this subsection shall lapse.~~

~~(z)~~)) (24) Within the appropriations in this section, specific funding is provided for the implementation of Second Engrossed Substitute Senate Bill No. 5100 (health insurance information for students).

(((~~(aa) $150,000 of the general fund—state appropriation for fiscal year 2009 is provided solely~~)) (25) Within the amounts appropriated in this section, funding is for implementation of Second Substitute House Bill No. 2722 (achievement gap for African-American students). The center for the improvement of student learning will convene an advisory committee to conduct a detailed analysis of the achievement gap for African-American students; recommend a comprehensive plan for closing the gap pursuant to goals under the federal no child left behind act for all groups of students to meet academic standards by 2014; and identify performance measures to monitor adequate yearly progress. A study update shall be submitted by September 15, 2008, and the committee's final report shall be submitted by December 30, 2008, to the superintendent of public instruction, the state board of education, the governor, the P-20 council, the basic education finance task force, and the education committees of the legislature. ((~~If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.~~

~~(bb)~~)) (26) Within the appropriations in this section specific funding is provided to implement Second Substitute House Bill No. 2598 (online mathematics curriculum).

(((~~(cc)~~))) (27) Within the appropriations in this section specific funding is provided to implement Second Substitute House Bill No. 2635 (school district boundaries and organization).

(((~~(dd)~~))) (28) Within the appropriations in this section specific funding is provided to implement Second Substitute House Bill No. 3129 (online learning programs for high school students to earn college credit).

(((~~(ee) $136,000 of the general fund—state appropriation for fiscal year 2009 is provided solely~~)) (29) Within the amounts appropriated in this section, funding is for the office of superintendent of public instruction to assign at least one full-time equivalent staff position to serve as the world language supervisor.

(((~~(2) STATEWIDE PROGRAMS~~

~~General Fund—State Appropriation (FY 2008) . . . . . $14,283,000~~
~~General Fund—State Appropriation (FY 2009) . . . . . $16,128,000~~
~~General Fund—Federal Appropriation . . . . . $55,890,000~~

~~TOTAL APPROPRIATION. . . . . $86,301,000~~

~~The appropriations in this subsection are provided solely for the statewide programs specified in this subsection and are subject to the following conditions and limitations:~~

~~(a) HEALTH AND SAFETY~~

~~(i) $2,541,000 of the general fund—state appropriation for fiscal year 2008 and $2,541,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (30) Within the amounts appropriated in this section, funding is for a corps of nurses located at educational service districts, as determined by the superintendent of public instruction, to be dispatched to the most needy schools to provide direct care to students, health education, and training for school staff.

(((~~(ii) $96,000 of the general fund—state appropriation for fiscal year 2008 and $96,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (31) Within the amounts appropriated in this section, funding is for the school safety center in the office of the superintendent of public instruction subject to the following conditions and limitations:

(((~~(A)~~)) (a) The safety center shall: Disseminate successful models of school safety plans and cooperative efforts; provide assistance to schools to establish a comprehensive safe school plan; select models of cooperative efforts that have been proven successful; act as an information dissemination and resource center when an incident occurs in a school district either in Washington or in another state; coordinate activities relating to school safety; review and approve manuals and curricula used for school safety models and training; and develop and maintain a school safety information web site.

(((~~(B)~~)) (b) The school safety center advisory committee shall develop a training program, using the best practices in school safety, for all school safety personnel.

(((~~(iii) $100,000 of the general fund—state appropriation for fiscal year 2008 and $100,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (32) Within the amounts appropriated in this section, funding is for a school safety training program provided by the criminal justice training commission. The commission, in collaboration with the school safety center advisory committee, shall provide the school safety training for all school administrators and school safety personnel, including school safety personnel hired after the effective date of this section.

(((~~(iv) $40,000 of the general fund—state appropriation for fiscal year 2008 and $40,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (33) Within the amounts appropriated in this section, funding is for the safety center advisory committee to develop and distribute a pamphlet to promote internet safety for children, particularly in grades seven through twelve. The pamphlet shall be posted on the superintendent of public instruction's web site. To the extent possible, the pamphlet shall be distributed in schools throughout the state and in other areas accessible to youth, including but not limited to libraries and community centers.

(((~~(v) $10,344,000~~)) (34) $9,670,000 of the general fund—federal appropriation is provided for safe and drug free schools and communities grants for drug and violence prevention activities and strategies.

(((~~(vi) $271,000 of the general fund - state appropriation for fiscal year 2008 and $271,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (35) Within the amounts appropriated in this section, funding is for a nonviolence and leadership training program provided by the institute for community leadership. The program shall provide a request for proposal process, with up to 80 percent funding, for nonviolence leadership workshops serving at least 12 school districts with direct programming in 36 elementary, middle, and high schools throughout Washington state.

(((~~(vii) $100,000 of the general fund - state appropriation for fiscal year 2008 and $100,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (36) Within the amounts appropriated in this section, funding is for a pilot youth suicide prevention and information program. The office of superintendent of public instruction will work with selected school districts and community agencies in identifying effective strategies for preventing youth suicide.

(((~~(viii) $800,000 of the general fund - state appropriation for fiscal year 2008 and $800,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (37) Within the amounts appropriated in this section, funding is for programs to improve safety and emergency preparedness and planning in public schools, as generally described in Substitute Senate Bill No. 5097. The superintendent of public instruction shall design and implement the grant program in consultation with the educational service districts, the school safety advisory committee, and the Washington association of sheriffs and police chiefs. The funding shall support grants to school districts for the development and updating of comprehensive safe school plans, school safety training, and the conducting of safety-related drills. As a condition of receiving these funds, school districts must ensure that schools (((~~(A)~~))) (a) conduct at least one lockdown and one shelter in place safety drill each school year, and (((~~(B)~~))) (b) send updated school mapping database information on an annual basis to the Washington association of sheriffs and police chiefs.

(((~~(ix) $40,000 of the general fund - state appropriation for fiscal year 2009 is provided solely~~)) (38) Within the amounts appropriated in this section, funding is for the Washington state school directors' association to mediate and facilitate a school disciplinary action task force to review and make recommendations on a model policy regarding the use of physical force in schools. The model policy shall be submitted to the appropriate policy committees of the legislature by November 1, 2008.

(((~~(b) TECHNOLOGY~~

~~(i) $1,939,000 of the general fund - state appropriation for fiscal year 2008 and $1,939,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (39) Within the amounts appropriated in this section, funding is for K-20 telecommunications network technical support in the K-12 sector to prevent system failures and avoid interruptions in school utilization of the data processing and video-conferencing capabilities of the network. These funds may be used to purchase engineering and advanced technical support for the network.

(((~~(ii)~~))) (40) The office of the superintendent of public instruction shall coordinate, in collaboration with educational service districts, a system of outreach to school districts not currently maximizing their eligibility for federal

e-rate funding through the schools and libraries program administered by the federal communications commission. By December 15, 2008, the office of the superintendent of public instruction shall issue a report to the fiscal committees of the legislature identifying school districts that were eligible but did not apply for e-rate funding for the last two years, and an estimate of the amounts for which they were eligible in those years. The report shall also include recommendations for following-up on the findings relative to the e-rate program contained in the state auditor's performance audit of educational service districts completed September, 2007.

(((~~(c) GRANTS AND ALLOCATIONS~~

~~(i) $652,000 of the general fund—state appropriation for fiscal year 2008 and $1,329,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (41) Within the amounts appropriated in this section, funding is to expand the special services pilot project to include up to seven participating districts. The office of the superintendent of public instruction shall allocate these funds to the district or districts participating in the pilot program according to the provisions of RCW 28A.630.016. ((~~Of the amounts provided, $11,000 of the general fund—state appropriation for fiscal year 2008 and $11,000 of the general fund—state appropriation for fiscal year 2009 are provided for the office of the superintendent of public instruction to conduct a study of the expanded special services pilot.~~

~~(ii) $31,000 of the general fund—state appropriation for fiscal year 2008 and $31,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (42) Within the amounts appropriated in this section, funding is for operation of the Cispus environmental learning center.

(((~~(iii) $97,000 of the general fund—state appropriation for fiscal year 2008 and $97,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (43) Within the amounts appropriated in this section, funding is ((~~to support~~)) for vocational student leadership organizations.

(((~~(iv) $146,000 of the general fund—state appropriation for fiscal year 2008 and $146,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (44) Within the amounts appropriated in this section, funding is for the Washington civil liberties education program.

(((~~(v) $1,000,000 of the general fund—state appropriation for fiscal year 2008 and $1,000,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (45) Within the amounts appropriated in this section, funding is for the Washington state achievers scholarship program. The funds shall be used to support community involvement officers that recruit, train, and match community volunteer mentors with students selected as achievers scholars.

(((~~(vi) $294,000 of the general fund—state appropriation for fiscal year 2008 and $294,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (46) Within the amounts appropriated in this section, funding is for the Lorraine Wojahn dyslexia pilot reading program in up to five school districts.

(((~~(vii) $75,000 of the general fund—state appropriation for fiscal year 2008 and $75,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (47) Within the amounts appropriated in this section, funding

is for developing and disseminating curriculum and other materials documenting women's role in World War II.

(((~~(viii) $175,000 of the general fund - state appropriation for fiscal year 2008 and $175,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (48) Within the amounts appropriated in this section, funding is for incentive grants for districts and pilot projects to develop preapprenticeship programs. Incentive grant awards up to $10,000 each shall be used to support the program's design, school/business/labor agreement negotiations, and recruiting high school students for preapprenticeship programs in the building trades and crafts.

(((~~(ix) $3,220,000 of the general fund - state appropriation for fiscal year 2008 and $3,220,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (49) Within the amounts appropriated in this section, funding is for the dissemination of the Navigation 101 curriculum to all districts, including disseminating electronic student planning tools and software for analyzing the impact of the implementation of Navigation 101 on student performance, and grants to at least one hundred school districts each year for the implementation of the Navigation 101 program. The implementation grants will be limited to a maximum of two years and the school districts selected shall represent various regions of the state and reflect differences in school district size and enrollment characteristics.

(((~~(x) $36,000 of the general fund - state appropriation for fiscal year 2008 and $36,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (50) Within the amounts appropriated in this section, funding is for the enhancement of civics education. Of this amount, $25,000 each year is provided solely for competitive grants to school districts for curriculum alignment, development of innovative civics projects, and other activities that support the civics assessment established in chapter 113, Laws of 2006.

(((~~(xi) $2,500,000 of the general fund - state appropriation for fiscal year 2008 and $2,500,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (51) Within the amounts appropriated in this section, funding is for the implementation of Second Substitute House Bill No. 1573 (authorizing a statewide program for comprehensive dropout prevention, intervention, and retrieval). ((~~If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.~~

~~(xii) $25,000 of the general fund - state appropriation for fiscal year 2008 and $25,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (52) Within the amounts appropriated in this section, funding is for the communities in school program in Pierce county.

(((~~(xiii) $70,000 of the general fund - state appropriation for fiscal year 2008 and $70,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (53) Within the amounts appropriated in this section, funding is ((~~to~~)) for support and ((~~expand~~)) expansion of the mentoring advanced placement program in current operation in southwest Washington.

(((~~(xiv) $75,000 of the general fund - state appropriation for fiscal year 2008 and $75,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~)) (54) Within the amounts appropriated in this section, funding is for program initiatives to address the educational needs of Latino students and families. ((~~Using the full amounts of the appropriations under this subsection,~~))

The office of the superintendent of public instruction shall contract with the Seattle community coalition of compana quetzal to provide for three initiatives: (((~~(A)~~))) (a) Early childhood education; (((~~(B)~~))) (b) parent leadership training; and (((~~(C)~~))) (c) high school success and college preparation programs. Campana quetzal shall report to the office of the superintendent of public instruction by June 30, 2009, regarding impact of the programs on addressing the academic achievement gap, including high school drop-out rates and college readiness rates, for Latino students.

(((~~(xvii) $100,000 of the general fund—state appropriation for fiscal year 2009 is provided solely~~))) (55) Within the amounts appropriated in this section, funding is for implementation of Second Substitute House Bill No. 2870 (professional development for instructional assistants). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(xix) $150,000 of the general fund—state appropriation for fiscal year 2009 is provided solely~~))) (56) Within the amounts appropriated in this section, funding is for a pilot project to encourage bilingual high school students to pursue public school teaching as a profession. ((~~Using the full amounts of the appropriation under this subsection,~~)) The office of the superintendent of public instruction shall contract with the Latino/a educational achievement project (LEAP) to work with school districts to identify and mentor not fewer than fifty bilingual students in their junior year of high school, encouraging them to become bilingual instructors in schools with high English language learner populations. Students shall be mentored by bilingual teachers and complete a curriculum developed and approved by the participating districts.

(57) In addition to other reductions, the reduced appropriations in this section reflect an additional $225,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 502. 2008 c 329 s 502 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR GENERAL APPORTIONMENT

General Fund—State Appropriation (FY 2008) $4,436,719,000
General Fund—State Appropriation (FY 2009) $4,477,998,000
Education Legacy Trust Account—State
Appropriation $9,373,000
Pension Funding Stabilization Account Appropriation $341,624,000
TOTAL APPROPRIATION $9,265,714,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Each general fund fiscal year appropriation includes such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(2) Allocations for certificated staff salaries for the 2007-08 and 2008-09 school years shall be determined using formula-generated staff units calculated pursuant to this subsection. Staff allocations for small school enrollments in (e) through (g) of this subsection shall be reduced for vocational full-time

equivalent enrollments. Staff allocations for small school enrollments in grades K-6 shall be the greater of that generated under (a) of this subsection, or under (d) and (e) of this subsection. Certificated staffing allocations shall be as follows:

(a) On the basis of each 1,000 average annual full-time equivalent enrollments, excluding full-time equivalent enrollment otherwise recognized for certificated staff unit allocations under (d) through (g) of this subsection:

(i) Four certificated administrative staff units per thousand full-time equivalent students in grades K-12;

(ii) Forty-nine certificated instructional staff units per thousand full-time equivalent students in grades K-3;

(iii) Forty-six certificated instructional staff units per thousand full-time equivalent students in grades 4-12; and

(iv) An additional 4.2 certificated instructional staff units for grades K-3 and an additional 7.2 certificated instructional staff units for grade 4. Any funds allocated for the additional certificated units provided in this subsection (iv) shall not be considered as basic education funding;

(A) Funds provided under this subsection (2)(a)(iv) in excess of the amount required to maintain the statutory minimum ratio established under RCW 28A.150.260(2)(b) shall be allocated only if the district documents an actual ratio in grades K-4 equal to or greater than 53.2 certificated instructional staff per thousand full-time equivalent students. For any school district documenting a lower certificated instructional staff ratio, the allocation shall be based on the district's actual grades K-4 certificated instructional staff ratio achieved in that school year, or the statutory minimum ratio established under RCW 28A.150.260(2)(b), if greater;

(B) Districts at or above 51.0 certificated instructional staff per one thousand full-time equivalent students in grades K-4 may dedicate up to 1.3 of the 53.2 funding ratio to employ additional classified instructional assistants assigned to basic education classrooms in grades K-4. For purposes of documenting a district's staff ratio under this section, funds used by the district to employ additional classified instructional assistants shall be converted to a certificated staff equivalent and added to the district's actual certificated instructional staff ratio. Additional classified instructional assistants, for the purposes of this subsection, shall be determined using the 1989-90 school year as the base year;

(C) Any district maintaining a ratio in grades K-4 equal to or greater than 53.2 certificated instructional staff per thousand full-time equivalent students may use allocations generated under this subsection (2)(a)(iv) in excess of that required to maintain the minimum ratio established under RCW 28A.150.260(2)(b) to employ additional basic education certificated instructional staff or classified instructional assistants in grades 5-6. Funds allocated under this subsection (2)(a)(iv) shall only be expended to reduce class size in grades K-6. No more than 1.3 of the certificated instructional funding ratio amount may be expended for provision of classified instructional assistants;

(b) For school districts with a minimum enrollment of 250 full-time equivalent students whose full-time equivalent student enrollment count in a given month exceeds the first of the month full-time equivalent enrollment count by 5 percent, an additional state allocation of 110 percent of the share that such

increased enrollment would have generated had such additional full-time equivalent students been included in the normal enrollment count for that particular month;

(c)(i) On the basis of full-time equivalent enrollment in:

(A) Vocational education programs approved by the superintendent of public instruction, a maximum of 0.92 certificated instructional staff units and 0.08 certificated administrative staff units for each 19.5 full-time equivalent vocational students; and

(B) Skills center programs meeting the standards for skills center funding established in January 1999 by the superintendent of public instruction with a waiver allowed for skills centers in current operation that are not meeting this standard until the 2008-09 school year, 0.92 certificated instructional staff units and 0.08 certificated administrative units for each 16.67 full-time equivalent vocational students;

(ii) Vocational full-time equivalent enrollment shall be reported on the same monthly basis as the enrollment for students eligible for basic support, and payments shall be adjusted for reported vocational enrollments on the same monthly basis as those adjustments for enrollment for students eligible for basic support; and

(iii) Indirect cost charges by a school district to vocational-secondary programs shall not exceed 15 percent of the combined basic education and vocational enhancement allocations of state funds;

(d) For districts enrolling not more than twenty-five average annual full-time equivalent students in grades K-8, and for small school plants within any school district which have been judged to be remote and necessary by the state board of education and enroll not more than twenty-five average annual full-time equivalent students in grades K-8:

(i) For those enrolling no students in grades 7 and 8, 1.76 certificated instructional staff units and 0.24 certificated administrative staff units for enrollment of not more than five students, plus one-twentieth of a certificated instructional staff unit for each additional student enrolled; and

(ii) For those enrolling students in grades 7 or 8, 1.68 certificated instructional staff units and 0.32 certificated administrative staff units for enrollment of not more than five students, plus one-tenth of a certificated instructional staff unit for each additional student enrolled;

(e) For specified enrollments in districts enrolling more than twenty-five but not more than one hundred average annual full-time equivalent students in grades K-8, and for small school plants within any school district which enroll more than twenty-five average annual full-time equivalent students in grades K-8 and have been judged to be remote and necessary by the state board of education:

(i) For enrollment of up to sixty annual average full-time equivalent students in grades K-6, 2.76 certificated instructional staff units and 0.24 certificated administrative staff units; and

(ii) For enrollment of up to twenty annual average full-time equivalent students in grades 7 and 8, 0.92 certificated instructional staff units and 0.08 certificated administrative staff units;

(f) For districts operating no more than two high schools with enrollments of less than three hundred average annual full-time equivalent students, for enrollment in grades 9-12 in each such school, other than alternative schools:

(i) For remote and necessary schools enrolling students in any grades 9-12 but no more than twenty-five average annual full-time equivalent students in grades K-12, four and one-half certificated instructional staff units and one-quarter of a certificated administrative staff unit;

(ii) For all other small high schools under this subsection, nine certificated instructional staff units and one-half of a certificated administrative staff unit for the first sixty average annual full time equivalent students, and additional staff units based on a ratio of 0.8732 certificated instructional staff units and 0.1268 certificated administrative staff units per each additional forty-three and one-half average annual full time equivalent students.

Units calculated under (g)(ii) of this subsection shall be reduced by certificated staff units at the rate of forty-six certificated instructional staff units and four certificated administrative staff units per thousand vocational full-time equivalent students;

(g) For each nonhigh school district having an enrollment of more than seventy annual average full-time equivalent students and less than one hundred eighty students, operating a grades K-8 program or a grades 1-8 program, an additional one-half of a certificated instructional staff unit; and

(i) For each nonhigh school district having an enrollment of more than fifty annual average full-time equivalent students and less than one hundred eighty students, operating a grades K-6 program or a grades 1-6 program, an additional one-half of a certificated instructional staff unit.

(3) Allocations for classified salaries for the 2007-08 and 2008-09 school years shall be calculated using formula-generated classified staff units determined as follows:

(a) For enrollments generating certificated staff unit allocations under subsection (2)(e) through (i) of this section, one classified staff unit for each 2.94 certificated staff units allocated under such subsections;

(b) For all other enrollment in grades K-12, including vocational full-time equivalent enrollments, one classified staff unit for each 58.75 average annual full-time equivalent students; and

(c) For each nonhigh school district with an enrollment of more than fifty annual average full-time equivalent students and less than one hundred eighty students, an additional one-half of a classified staff unit.

(4) Fringe benefit allocations shall be calculated at a rate of 14.11 percent in the 2007-08 school year and 16.75 percent in the 2008-09 school year for certificated salary allocations provided under subsection (2) of this section, and a rate of 17.04 percent in the 2007-08 school year and 18.72 percent in the 2008-09 school year for classified salary allocations provided under subsection (3) of this section.

(5) Insurance benefit allocations shall be calculated at the maintenance rate specified in section 504(2) of this act, based on the number of benefit units determined as follows:

(a) The number of certificated staff units determined in subsection (2) of this section; and

(b) The number of classified staff units determined in subsection (3) of this section multiplied by 1.152. This factor is intended to adjust allocations so that, for the purposes of distributing insurance benefits, full-time equivalent classified employees may be calculated on the basis of 1440 hours of work per year, with no individual employee counted as more than one full-time equivalent.

(6)(a) For nonemployee-related costs associated with each certificated staff unit allocated under subsection (2)(a), (b), and (d) through (h) of this section, there shall be provided a maximum of $9,703 per certificated staff unit in the 2007-08 school year and a maximum of $10,178 per certificated staff unit in the 2008-09 school year.

(b) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(i)(A) of this section, there shall be provided a maximum of $23,831 per certificated staff unit in the 2007-08 school year and a maximum of $24,999 per certificated staff unit in the 2008-09 school year.

(c) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(i)(B) of this section, there shall be provided a maximum of $18,489 per certificated staff unit in the 2007-08 school year and a maximum of $19,395 per certificated staff unit in the 2008-09 school year.

(7) Allocations for substitute costs for classroom teachers shall be distributed at a maintenance rate of $555.20 for the 2007-08 and 2008-09 school years per allocated classroom teachers exclusive of salary increase amounts provided in section 504 of this act. Solely for the purposes of this subsection, allocated classroom teachers shall be equal to the number of certificated instructional staff units allocated under subsection (2) of this section, multiplied by the ratio between the number of actual basic education certificated teachers and the number of actual basic education certificated instructional staff reported statewide for the prior school year.

(8) Any school district board of directors may petition the superintendent of public instruction by submission of a resolution adopted in a public meeting to reduce or delay any portion of its basic education allocation for any school year. The superintendent of public instruction shall approve such reduction or delay if it does not impair the district's financial condition. Any delay shall not be for more than two school years. Any reduction or delay shall have no impact on levy authority pursuant to RCW 84.52.0531 and local effort assistance pursuant to chapter 28A.500 RCW.

(9) $1,870,000 of the general fund—state appropriation for fiscal year 2008 and $2,421,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to implement Engrossed Second Substitute House Bill No. 1432 (granting service credit to educational staff associates for nonschool employment). ((~~If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.~~))

(10) The superintendent may distribute a maximum of $16,620,000 outside the basic education formula during fiscal years 2008 and 2009 as follows:

(a) For fire protection for school districts located in a fire protection district as now or hereafter established pursuant to chapter 52.04 RCW, a maximum of $547,000 may be expended in fiscal year 2008 and a maximum of $567,000 may be expended in fiscal year 2009;

(b) For summer vocational programs at skills centers, a maximum of $2,385,000 may be expended for the 2008 fiscal year and a maximum of $2,385,000 for the 2009 fiscal year. 20 percent of each fiscal year amount may carry over from one year to the next;

(c) A maximum of $393,000 may be expended for school district emergencies;

(d) A maximum of $485,000 each fiscal year may be expended for programs providing skills training for secondary students who are enrolled in extended day school-to-work programs, as approved by the superintendent of public instruction. The funds shall be allocated at a rate not to exceed $500 per full-time equivalent student enrolled in those programs; and

(e) $9,373,000 of the education legacy trust account appropriation is provided solely for allocations for equipment replacement in vocational programs and skills centers. Each year of the biennium, the funding shall be allocated based on $75 per full-time equivalent vocational student and $125 per full-time equivalent skills center student.

(f) ((~~$2,991,000 of the general fund—state appropriation for fiscal year 2008 and $4,403,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) Within the amounts appropriated in this section, funding is for the implementation of Second Substitute Senate Bill No. 5790 (regarding skills centers). ((~~If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.~~))

(11) For purposes of RCW 84.52.0531, the increase per full-time equivalent student is 5.7 percent from the 2006-07 school year to the 2007-08 school year and 6.0 percent from the 2007-08 school year to the 2008-09 school year.

(12) If two or more school districts consolidate and each district was receiving additional basic education formula staff units pursuant to subsection (2)(b) through (h) of this section, the following shall apply:

(a) For three school years following consolidation, the number of basic education formula staff units shall not be less than the number of basic education formula staff units received by the districts in the school year prior to the consolidation; and

(b) For the fourth through eighth school years following consolidation, the difference between the basic education formula staff units received by the districts for the school year prior to consolidation and the basic education formula staff units after consolidation pursuant to subsection (2)(a) through (h) of this section shall be reduced in increments of twenty percent per year.

(13) The appropriation levels in part V of this act assume implementation of the reimbursement provisions of Senate Bill No. 6450 (school district reimbursement of performance audits).

Sec. 503. 2008 c 329 s 507 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR EDUCATIONAL SERVICE DISTRICTS

General Fund—State Appropriation (FY 2008) $7,519,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$10,248,000~~)) $8,530,000

TOTAL APPROPRIATION . . . . . ((~~$17,767,000~~)) $16,049,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The educational service districts shall continue to furnish financial services required by the superintendent of public instruction and RCW 28A.310.190 (3) and (4).

(2) $1,662,000 of the general fund—state appropriation in fiscal year 2008 and $3,355,000 of the general fund—state appropriation in fiscal year 2009 are provided solely for regional professional development related to mathematics and science curriculum and instructional strategies. For each educational service district, $184,933 is provided in fiscal year 2008 for professional development activities related to mathematics curriculum and instruction and $372,357 is provided in fiscal year 2009 for professional development activities related to mathematics and science curriculum and instruction. Each educational service district shall use this funding solely for salary and benefits for a certificated instructional staff with expertise in the appropriate subject matter and in professional development delivery, and for travel, materials, and other expenditures related to providing regional professional development support. The office of superintendent of public instruction shall also allocate to each educational service district additional amounts provided in section 504 of this act for compensation increases associated with the salary amounts and staffing provided in this subsection (2).

(3) The educational service districts, at the request of the state board of education pursuant to RCW 28A.310.010 and 28A.310.340, may receive and screen applications for school accreditation, conduct school accreditation site visits pursuant to state board of education rules, and submit to the state board of education post-site visit recommendations for school accreditation. The educational service districts may assess a cooperative service fee to recover actual plus reasonable indirect costs for the purposes of this subsection.

Sec. 504. 2008 c 329 s 511 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—EDUCATION REFORM PROGRAMS

General Fund—State Appropriation (FY 2008) $66,272,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$89,985,000~~))
$84,636,000
Education Legacy Trust Account—State
Appropriation. . . . . ((~~$120,790,000~~))
$117,890,000
General Fund—Federal Appropriation $152,568,000
TOTAL APPROPRIATION . . . . . ((~~$429,615,000~~))
$421,366,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $19,716,000 of the general fund—state appropriation for fiscal year 2008, ((~~$21,996,000~~)) $20,948,000 of the general fund—state appropriation for fiscal year 2009, $1,350,000 of the education legacy trust account—state appropriation, and $15,870,000 of the general fund—federal appropriation are provided solely for development and implementation of the Washington assessments of student learning (WASL), including: (i) Development and

implementation of retake assessments for high school students who are not successful in one or more content areas of the WASL; and (ii) development and implementation of alternative assessments or appeals procedures to implement the certificate of academic achievement. The superintendent of public instruction shall report quarterly on the progress on development and implementation of alternative assessments or appeals procedures. Within these amounts, the superintendent of public instruction shall contract for the early return of 10th grade student WASL results, on or around June 10th of each year. In addition to the amounts provided for the Washington assessments of student learning in this subsection, $11,372,000 is also included in the appropriations to the office of financial management in this act for an interagency agreement with the office of superintendent of public instruction for the expenditure of those funds based on compliance with certain requirements.

(2) $3,249,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the implementation of Substitute House Bill No. 3166 (design of the state assessment system and the Washington assessment of student learning), including section 3 of the act providing for end-of-course tests in math. If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(3) $250,000 of the general fund—state appropriation for fiscal year 2008, $250,000 of the general fund—state appropriation for fiscal year 2009, and ((~~$4,400,000~~)) $1,630,000 of the education legacy trust account—state appropriation is provided solely for the development and implementation of diagnostic assessments, subject to the following terms and conditions:

(a) A maximum of $2,540,000 of the funding provided in this subsection shall support the development and implementation of voluntary classroom-based diagnostic assessments and progress monitoring tools for all subject areas included in the WASL by the office of the superintendent of public instruction; and

(b) $2,360,000 of the funding provided in this subsection is for allocations to school districts to purchase assessment tools which supplement the system of diagnostic tests developed by the office of the superintendent of public instruction as described in (a) of this subsection.

(4) ((~~$70,000 of the general fund—state appropriation for fiscal year 2008 and $70,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) Within the amounts appropriated in this section, funding is for ((~~the~~)) second grade assessments.

(5) $1,414,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$1,414,000 of the general fund—state appropriation for fiscal year 2009 are~~)) is provided solely for (a) the tenth grade mathematics assessment tool that: (i) Presents the mathematics essential learnings in segments for assessment; (ii) is comparable in content and rigor to the tenth grade mathematics WASL when all segments are considered together; (iii) is reliable and valid; and (iv) can be used to determine a student's academic performance level; (b) tenth grade mathematics knowledge and skill learning modules to teach middle and high school students specific skills that have been identified as areas of difficulty for tenth grade students; and (c) making the modules available on-line.

(6) ((~~$2,267,000~~)) $1,966,000 of the general fund—state appropriation for fiscal year 2009 and ((~~$2,367,000~~)) $2,337,000 of the education legacy trust

account appropriation are provided solely to develop a system of mathematics and science standards and instructional materials that are internationally competitive and consistent with emerging best practices research. Funding in this subsection shall fund all of the following specific projects:

(a) The office of the superintendent of public instruction shall adopt revised state standards in mathematics as directed by Second Substitute House Bill No. 1906 (improving mathematics and science education). Activities include conducting research at the request of the state board of education, engaging one or more national experts in mathematics selected by the board, and convening education practitioners and community members in an advisory capacity regarding revised standards in mathematics.

(b) The office of the superintendent of public instruction, in consultation with the state board of education, shall research and identify not more than three basic mathematics curricula as well as diagnostic and supplemental instructional materials for elementary, middle, and high school grade spans that align with the revised mathematics standards.

(c) The office of the superintendent of public instruction shall adopt revised state standards in science as directed by Second Substitute House Bill No. 1906 (improving mathematics and science education. Activities include conducting research at the request of the state board of education, engaging one or more national experts in science selected by the board, and convening education practitioners and community members in an advisory capacity regarding revised standards in science.

(d) The office of the superintendent of public instruction, in consultation with the state board of education, shall research and identify not more than three basic science curricula as well as diagnostic and supplemental instructional materials for elementary, middle, and high school grade spans that align with the revised science standards.

(e) The office of the superintendent of public instruction shall evaluate science textbooks, instructional materials, and diagnostic tools to determine the extent to which they are aligned with the revised science standards. Once the evaluations have been conducted, results will be shared with science teachers, other educators, and community members.

(f) Funding is provided for the office of the superintendent of public instruction to develop WASL knowledge and skill learning modules to assist students performing at tenth grade level 1 and level 2 in science.

(g) Of the amounts provided in this subsection, $300,000 is provided solely to the state board of education to increase capacity to implement the provisions of Second Substitute House Bill No. 1906 (improving mathematics and science education) and Engrossed Second Substitute Senate Bill No. 6023 (regarding alternative assessments).

(7) $8,950,000 of the education legacy trust account appropriation is ((~~provided solely~~)) for allocations to districts for salaries and benefits for the equivalent of two additional professional development days each school year for fourth and fifth grade teachers. The allocations shall be made based on the calculations of certificated instructional staff units for fourth and fifth grade provided in section 502 of this act and on the calculations of compensation provided in sections 503 and 504 of this act. Allocations made pursuant to this subsection are intended to be formula-driven, and the office of the

superintendent of public instruction shall provide updated projections of the relevant budget drivers by November 20, 2007, and by November 20, 2008. In the 2007-08 school year, the professional development activities funded by this subsection shall be focused on development of mathematics knowledge and instructional skills and on improving instruction in science. In the 2008-09 school year, the additional professional development shall focus on skills related to implementing the new international mathematics and science standards and curriculum. Districts may use the funding to support additional days for professional development as well as job-embedded forms of professional development.

(8) $13,058,000 of the education legacy trust fund appropriation is ((~~provided solely~~)) for allocations to districts for salaries and benefits for the equivalent of three additional professional development days for middle and high school math teachers and the equivalent of three additional professional development days for middle and high school science teachers. The office of the superintendent of public instruction shall develop rules to determine the number of math and science teachers in middle and high schools within each district. Allocations made pursuant to this subsection are intended to be formula-driven, and the office of the superintendent of public instruction shall provide updated projections of the relevant budget drivers by November 20, 2007, and by November 20, 2008. Districts may use the funding to support additional days for professional development as well as job-embedded forms of professional development, consistent with the following:

(a) For middle school teachers during the 2007-08 school year the additional math professional development funded in this subsection shall focus on development of basic mathematics knowledge and instructional skills and the additional science professional development shall focus on examination of student science assessment data and identification of science knowledge and skill areas in need of additional instructional attention. For middle school teachers during the 2008-09 school year the additional math professional development shall focus on skills related to implementing the new international mathematics standards and the additional science professional development shall focus on skills related to implementing the new international science standards.

(b) For high school teachers during the 2007-08 school year the additional math professional development funded in this subsection shall focus on skills related to implementing state math learning modules, the segmented math class/ assessment program, the collection of evidence alternative assessment, and basic mathematics knowledge and instructional skills, and the additional science professional development shall focus on skills related to examination of student science assessment data and identification of science knowledge and skill areas in need of additional instructional attention. For high school teachers during the 2008-09 school year the additional math professional development shall focus on skills related to implementing the new international mathematics standards and the additional science professional development shall focus on skills related to implementing the new international science standards.

(9) $17,491,000 of the education legacy trust fund appropriation is ((~~provided solely~~)) for allocations to districts for specialized professional development in math for one math teacher and one science teacher in each middle school and one math teacher and one science teacher in each high school.

The allocations shall be based on five additional professional development days per teacher and an additional allocation per teacher of $1,500 for training costs. In order to generate an allocation under this subsection, a teacher must participate in specialized professional development that leads to the implementation of mathematics and science courses that add new rigor to the math and science course offerings in the school. Allocations made pursuant to this subsection are intended to be formula-driven, and the office of the superintendent of public instruction shall provide updated projections of the relevant budget drivers by November 20, 2007, and by November 20, 2008.

(10) $5,376,000 of the education legacy trust account—state appropriation is provided solely for a math and science instructional coaches program pursuant to Second Substitute House Bill No. 1906 (improving mathematics and science education). Funding shall be used to provide grants to schools and districts to provide salaries, benefits, and professional development activities to twenty-five instructional coaches in middle and high school math in the 2007-08 and 2008-09 school years and twenty-five instructional coaches in middle and high school science in the 2008-09 school years; and up to $300,000 may be used by the office of the superintendent of public instruction to administer and coordinate the program. Each instructional coach will receive five days of training at a coaching institute prior to being assigned to serve two schools each. These coaches will attend meetings during the year to further their training and assist with coordinating statewide trainings on math and science.

(11) $1,133,000 of the general fund—state appropriation for fiscal year 2008 and $1,133,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to allow approved middle and junior high school career and technical education programs to receive enhanced vocational funding pursuant to Second Substitute House Bill No. 1906 (improving mathematics and science education). ((~~If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.~~)) The office of the superintendent of public instruction shall provide allocations to districts for middle and junior high school students in accordance with the funding formulas provided in section 502 of this act. Although the allocations are formula-driven, the office of the superintendent shall consider the funding provided in this subsection as a fixed amount, and shall adjust funding to stay within the amounts provided in this subsection.

(12) ((~~$143,000 of the general fund—state appropriation for fiscal year 2008 and $139,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) Within the amounts appropriated in this section, funding is for (a) staff at the office of the superintendent of public instruction to coordinate and promote efforts to develop integrated math, science, technology, and engineering programs in schools and districts across the state; and (b) grants of $2,500 to provide twenty middle and high school teachers each year professional development training for implementing integrated math, science, technology, and engineering program in their schools.

(13) ((~~$5,303,000 of the general fund—state appropriation for fiscal year 2008 and $5,303,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) Within the amounts appropriated in this section, funding is for in-service training and educational programs conducted by the Pacific science center and for the Washington state leadership assistance for

science education reform (LASER) regional partnership coordinated at the Pacific science center.

(14) $51,701,000 of the education legacy trust account—state appropriation is provided solely for grants for voluntary full-day kindergarten at the highest poverty schools, as provided in Engrossed Second Substitute Senate Bill 5841 (enhancing student learning opportunities and achievement). The office of the superintendent of public instruction shall provide allocations to districts for recipient schools in accordance with the funding formulas provided in section 502 of this act. Each kindergarten student who enrolls for the voluntary full-day program in a recipient school shall count as one-half of one full-time equivalent student for the purpose of making allocations under this subsection. Although the allocations are formula-driven, the office of the superintendent shall consider the funding provided in this subsection as a fixed amount, and shall limit the number of recipient schools so as to stay within the amounts appropriated each fiscal year in this subsection. The funding provided in this subsection is estimated to provide full-day kindergarten programs for 10 percent of kindergarten enrollment in the 2007-08 school year and 20 percent of kindergarten enrollment in the 2008-09 school year. Funding priority shall be given to schools with the highest poverty levels, as measured by prior year free and reduced priced lunch eligibility rates in each school. Additionally, as a condition of funding, school districts must agree to provide the full-day program to the children of parents who request it in each eligible school. For the purposes of calculating a school district levy base, funding provided in this subsection shall be considered a state block grant program under RCW 84.52.0531.

(a) Of the amounts provided in this subsection, a maximum of $272,000 may be used for administrative support of the full-day kindergarten program within the office of the superintendent of public instruction.

(b) Student enrollment pursuant to this program shall not be included in the determination of a school district's overall K-12 FTE for the allocation of student achievement programs and other funding formulas unless specifically stated.

(15) ((~~$65,000 of the general fund—state appropriation for fiscal year 2008 and $65,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) Within the amounts appropriated in this section, funding is ((~~to~~)) for support of a full-day kindergarten "lighthouse" resource program at the Bremerton school district, as provided in Engrossed Second Senate Bill No. 5841 (enhancing student learning opportunities and achievement). The purpose of the program is to provide technical assistance to districts in the initial stages of implementing a high quality full-day kindergarten program.

(16) ((~~$3,047,000 of the education legacy trust account—state appropriation is provided solely~~)) Within the amounts appropriated in this section, funding is for grants for three demonstration projects for kindergarten through grade three. The purpose of the grants is to implement best practices in developmental learning in kindergarten through third grade pursuant to Engrossed Second Substitute Senate Bill No. 5841 (enhancing student learning opportunities and achievement).

(17) $300,000 of the general fund—state appropriation for fiscal year 2008 and $1,000,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the development of a leadership academy for school principals and administrators. The superintendent of public instruction shall

contract with an independent organization to design, field test, and implement a state-of-the-art education leadership academy that will be accessible throughout the state. Initial development of the content of the academy activities shall be supported by private funds. Semiannually the independent organization shall report on amounts committed by foundations and others to support the development and implementation of this program. Leadership academy partners, with varying roles, shall include the state level organizations for school administrators and principals, the superintendent of public instruction, the professional educator standards board, and others as the independent organization shall identify.

(18) ((~~$661,000 of the general fund—state appropriation for fiscal year 2008 and $684,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) Within the amounts appropriated in this section, funding is for grants to school districts to implement emerging best practices activities in support of classroom teachers' instruction of students, with a first language other than English, who struggle with acquiring academic English skills, as outlined in Engrossed Second Substitute Senate Bill No. 5841 (enhancing student learning opportunities and achievement). Best practices shall focus on professional development for classroom teachers and support of instruction for English language learners in regular classrooms. School districts qualifying for these grants shall serve a student population that reflects many different first languages among their students. The Northwest educational research laboratory (NWREL) shall evaluate the effectiveness of the practices supported by the grants as provided in section 501 of this act. Recipients of these grants shall cooperate with NWREL in the collection of program data.

(19) ((~~$548,000 of the fiscal year 2008 general fund—state appropriation and $548,000 of the fiscal year 2009 general fund—state appropriation are provided solely~~)) Within the amounts appropriated in this section, funding is for training of paraprofessional classroom assistants and certificated staff who work with classroom assistants as provided in RCW 28A.415.310.

(20) ((~~$2,348,000 of the general fund—state appropriation for fiscal year 2008 and $2,348,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) Within the amounts appropriated in this section, funding is provided for mentor teacher assistance, including state support activities, under RCW 28A.415.250 and 28A.415.260, and for a mentor academy. Up to $200,000 of the amount in this subsection may be used each fiscal year to operate a mentor academy to help districts provide effective training for peer mentors. Funds for the teacher assistance program shall be allocated to school districts based on the number of first year beginning teachers.

(21) ((~~$705,000 of the general fund—state appropriation for fiscal year 2008 and $705,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) Within the amounts appropriated in this section, funding is for the leadership internship program for superintendents, principals, and program administrators.

(22) $105,765,000 of the general fund—federal appropriation is provided for preparing, training, and recruiting high quality teachers and principals under Title II of the no child left behind act.

(23)((~~(a) $488,000 of the general fund—state appropriation for fiscal year 2008 and $488,000 of the general fund—state appropriation for fiscal year 2009~~

~~are provided solely~~)) Within the amounts appropriated in this section, funding is for a principal support program. The office of the superintendent of public instruction may contract with an independent organization to administer the program. The program shall include: (((~~(i)~~))) (a) Development of an individualized professional growth plan for a new principal or principal candidate; and (((~~(ii)~~))) (b) participation of a mentor principal who works over a period of between one and three years with the new principal or principal candidate to help him or her build the skills identified as critical to the success of the professional growth plan. Within the amounts provided, $25,000 per year shall be used to support additional participation of secondary principals.

(((~~(b) $3,046,000 of the general fund - state appropriation for fiscal year 2008 and $3,046,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~))) (24) Within the amounts appropriated in this section, funding is ((~~to~~)) for the office of the superintendent of public instruction for focused assistance. The office of the superintendent of public instruction shall conduct educational audits of low-performing schools and enter into performance agreements between school districts and the office to implement the recommendations of the audit and the community. Each educational audit shall include recommendations for best practices and ways to address identified needs and shall be presented to the community in a public meeting to seek input on ways to implement the audit and its recommendations.

(((~~(24) $1,000,000 of the general fund - state appropriation for fiscal year 2008 and $1,000,000 of the general fund - state appropriation for fiscal year 2009 are provided solely~~))) (25) Within the amounts appropriated in this section, funding is for a high school and school district improvement program modeled after the office of the superintendent of public instruction's existing focused assistance program in subsection (25)(b) of this section. The state funding for this improvement program will match an equal amount committed by a nonprofit foundation in furtherance of a jointly funded program.

(((~~(25) A maximum of $375,000 of the general fund - state appropriation for fiscal year 2008 and a maximum of $500,000 of the general fund - state appropriation for fiscal year 2009 are provided~~))) (26) Within the amounts appropriated in this section, funding is for summer accountability institutes offered by the superintendent of public instruction. The institutes shall provide school district staff with training in the analysis of student assessment data, information regarding successful district and school teaching models, research on curriculum and instruction, and planning tools for districts to improve instruction in reading, mathematics, language arts, social studies, including civics, and guidance and counseling. The superintendent of public instruction shall offer at least one institute specifically for improving instruction in mathematics in fiscal years 2008 and 2009 and at least one institute specifically for improving instruction in science in fiscal year 2009.

(((~~(26) $515,000 of the general fund - state appropriation for fiscal year 2008 and $515,000 of the general fund - state appropriation for fiscal year 2009 are provided~~))) (27) Within the amounts appropriated in this section, funding is for the evaluation of mathematics textbooks, other instructional materials, and diagnostic tools to determine the extent to which they are aligned with the state standards. Once the evaluations have been conducted, results will be shared with math teachers, other educators, and community members for the purposes

of validating the conclusions and then selecting up to three curricula, supporting materials, and diagnostic instruments as those best able to assist students to learn and teachers to teach the content of international standards. In addition, the office of the superintendent shall continue to provide support and information on essential components of comprehensive, school-based reading programs.

((~~(27) $1,764,000 of the general fund—state appropriation for fiscal year 2008 and $1,764,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (28) Within the amounts appropriated in this section, funding is for the mathematics helping corps subject to the following conditions and limitations:

(a) In order to increase the availability and quality of technical mathematics assistance statewide, the superintendent of public instruction shall employ mathematics school improvement specialists to provide assistance to schools and districts. The specialists shall be hired by and work under the direction of a statewide school improvement coordinator. The mathematics improvement specialists shall not be permanent employees of the superintendent of public instruction.

(b) The school improvement specialists shall provide the following:

(i) Assistance to schools to disaggregate student performance data and develop improvement plans based on those data;

(ii) Consultation with schools and districts concerning their performance on the Washington assessment of student learning and other assessments emphasizing the performance on the mathematics assessments;

(iii) Consultation concerning curricula that aligns with the essential academic learning requirements emphasizing the academic learning requirements for mathematics, the Washington assessment of student learning, and meets the needs of diverse learners;

(iv) Assistance in the identification and implementation of research-based instructional practices in mathematics;

(v) Staff training that emphasizes effective instructional strategies and classroom-based assessment for mathematics;

(vi) Assistance in developing and implementing family and community involvement programs emphasizing mathematics; and

(vii) Other assistance to schools and school districts intended to improve student mathematics learning.

((~~(28) $125,000 of the general fund—state appropriation for fiscal year 2008 and $125,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (29) Within the amounts appropriated in this section, funding is for the improvement of reading achievement and implementation of research-based reading models. The superintendent shall evaluate reading curriculum programs and other instructional materials to determine the extent to which they are aligned with state standards. A report of the analyses shall be made available to school districts. The superintendent shall report to districts the assessments that are available to screen and diagnose reading difficulties, and shall provide training on how to implement a reading assessment system. Resources may also be used to disseminate grade level expectations and develop professional development modules and web-based materials.

(((~~(29)~~))) (30) $30,706,000 of the general fund—federal appropriation is provided for the reading first program under Title I of the no child left behind act.

(((~~(a)~~))) (31) $500,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the office of the superintendent of public instruction to award five grants to parent, community, and school district partnership programs that will meet the unique needs of different groups of students in closing the achievement gap. The legislature intends that the pilot programs will help students meet state learning standards, achieve the skills and knowledge necessary for college or the workplace, reduce the achievement gap, prevent dropouts, and improve graduation rates.

(((~~(b)~~))) (a) The pilot programs shall be designed in such a way as to be supplemental to educational services provided in the district and shall utilize a community partnership based approach to helping students and their parents.

(((~~(c)~~))) (b) The grant recipients shall work in collaboration with the office of the superintendent of public instruction to develop measurable goals and evaluation methodologies for the pilot programs. $25,000 of this appropriation may be used by the office of the superintendent of public instruction to hold a statewide meeting to disseminate successful strategies developed by the grantees.

(((~~(d)~~))) (c) The office of the superintendent of public instruction shall issue a report to the legislature in the 2009 session on the progress of each of the pilot programs.

(((~~(30) $1,500,000 of the general fund—state appropriation for fiscal year 2008 and $1,500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~))) (32) Within the amounts appropriated in this section, funding is for the office of the superintendent of public instruction to support and award Washington community learning center program grants pursuant to Engrossed Second Substitute Senate Bill No. 5841 (enhancing student learning opportunities and achievement). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(((~~(31) $1,643,000 of the general fund—state appropriation for fiscal year 2008 and $1,667,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~))) (33) Within the amounts appropriated in this section, funding is ((~~to eliminate~~)) for the elimination of the lunch co-pay for students in grades kindergarten through third grade that are eligible for reduced price lunch.

(((~~(32) $400,000 of the education legacy trust account—state appropriation is provided solely~~))) (34) Within the amounts appropriated in this section, funding is for the development of mathematics support activities provided by community organizations in after school programs. Pursuant to Second Substitute House Bill No. 1906 (improving mathematics and science education), the office of the superintendent of public instruction shall administer grants to community organizations that partner with school districts to provide these activities and develop a mechanism to report program and student success.

(((~~(33) $5,222,000 of the general fund—state appropriation for fiscal year 2008 and $5,285,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~))) (35) Within the amounts appropriated in this section, funding is for: (a) The meals for kids program under RCW 28A.235.145 through 28A.235.155; (b) to eliminate the breakfast co-pay for students eligible for

reduced price lunch; and (c) for additional assistance for school districts initiating a summer food service program.

(((~~(34) $1,056,000 of the general fund—state appropriation for fiscal year 2008 and $1,056,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (36) Within the amounts appropriated in this section, funding is for the Washington reading corps. The superintendent shall allocate reading corps members to low-performing schools and school districts that are implementing comprehensive, proven, research-based reading programs. Two or more schools may combine their Washington reading corps programs. Grants provided under this section may be used by school districts for expenditures from September 2007 through August 31, 2009.

(((~~(35) $3,594,000 of the general fund—state appropriation for fiscal year 2008 and $3,594,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (37) Within the amounts appropriated in this section, funding is for grants to school districts to provide a continuum of care for children and families to help children become ready to learn. Grant proposals from school districts shall contain local plans designed collaboratively with community service providers. If a continuum of care program exists in the area in which the school district is located, the local plan shall provide for coordination with existing programs to the greatest extent possible. Grant funds shall be allocated pursuant to RCW 70.190.040.

(((~~(36) $1,959,000 of the general fund—state appropriation for fiscal year 2008 and $1,959,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (38) Within the amounts appropriated in this section, funding is for improving technology infrastructure, monitoring and reporting on school district technology development, promoting standards for school district technology, promoting statewide coordination and planning for technology development, and providing regional educational technology support centers, including state support activities, under chapter 28A.650 RCW. The superintendent of public instruction shall coordinate a process to facilitate the evaluation and provision of online curriculum courses to school districts which includes the following: Creation of a general listing of the types of available online curriculum courses; a survey conducted by each regional educational technology support center of school districts in its region regarding the types of online curriculum courses desired by school districts; a process to evaluate and recommend to school districts the best online courses in terms of curriculum, student performance, and cost; and assistance to school districts in procuring and providing the courses to students.

(((~~(37) $126,000 of the general fund—state appropriation for fiscal year 2008 and $126,000 of the general fund—state appropriation for fiscal year 2009 are provided~~)) (39) Within the amounts appropriated in this section, funding is for the development and posting of web-based instructional tools, assessment data, and other information that assists schools and teachers implementing higher academic standards.

(((~~(38) $333,000 of the general fund—state appropriation for fiscal year 2008 and $333,000 of the general fund—state appropriation for fiscal year 2009 are provided solely~~)) (40) Within the amounts appropriated in this section, funding is for the operation of the center for the improvement of student learning pursuant to RCW 28A.300.130.

(((~~(39) $12,400,000 of the education legacy trust account state appropriation is provided solely~~)) (41) Within the amounts appropriated in this section, funding is for one-time allocations for technology upgrades and improvements. The funding shall be allocated based on $3,000 for each elementary school, $6,000 for each middle or junior high school, and $11,000 for each high school. In cases where a particular school's grade span or configuration does not fall into these categories, the office of superintendent of public instruction will develop an allocation to that school that recognizes the unique characteristics but maintains the proportionate allocation identified in this subsection.

(((~~(40) $250,000 of the education legacy trust account state appropriation is provided solely~~)) (42) Within the amounts appropriated in this section, funding is for costs associated with office of the superintendent of public instruction establishing a statewide director of technology position pursuant to Second Substitute House Bill No. 1906 (improving mathematics and science education). ((~~If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.~~

~~(41)(a) $9,747,000 of the general fund state appropriation for fiscal year 2008 and $16,624,000 of the general fund state appropriation for fiscal year 2009 are provided solely~~)) (43)(a) Within the amounts appropriated in this section, funding is for the following bonuses for teachers who hold valid, unexpired certification from the national board for professional teaching standards and who are teaching in a Washington public school, subject to the following conditions and limitations:

(i) For national board certified teachers, a bonus of $5,000 per teacher in fiscal year 2008 and adjusted for inflation in fiscal year 2009. Beginning in the 2007-2008 school year and thereafter, national board certified teachers who become public school principals shall continue to receive this bonus for as long as they are principals and maintain the national board certification;

(ii) During the 2007-2008 school year, for national board certified teachers who teach in schools where at least 70 percent of student headcount enrollment is eligible for the federal free or reduced price lunch program, an additional $5,000 annual bonus to be paid in one lump sum. Beginning in the 2008-2009 school year and thereafter, an additional $5,000 annual bonus shall be paid to national board certified teachers who teach in either: (A) High schools where at least 50 percent of student headcount enrollment is eligible for federal free or reduced price lunch, (B) middle schools where at least 60 percent of student headcount enrollment is eligible for federal free or reduced price lunch, or (C) elementary schools where at least 70 percent of student headcount enrollment is eligible for federal free or reduced price lunch; and

(iii) The superintendent of public instruction shall adopt rules to ensure that national board certified teachers meet the qualifications for bonuses under (a)(ii) of this subsection for less than one full school year receive bonuses in a pro-rated manner.

(b) Included in the amounts provided in this subsection are amounts for mandatory fringe benefits. Unless Senate Bill No. 6657 (salary bonuses for individuals certified by the national board for professional teaching standards) is enacted by June 30, 2008, the annual bonus shall not be included in the definition of "earnable compensation" under RCW 41.32.010(10).

(c) For purposes of this subsection, "the percent of the student headcount enrollment eligible for the federal free or reduced price lunch program" shall be defined as: (i) For the 2007-08 and the 2008-09 school years, schools in which the prior year percentage of students eligible for the federal free and reduced price lunch program meets the criteria specified in subsection (41)(a)(ii) of this section; and (ii) in the 2008-09 school year, any school that met the criterion in (c)(i) of this subsection in the 2007-08 school year.

(d) Within the amounts appropriated in this subsection, the office of superintendent of public instruction shall revise rules to allow teachers who hold valid, unexpired certification from the national board for professional teaching standards and who are teaching at the Washington school for the deaf or Washington school for the blind, to receive the annual bonus amounts specified in this subsection if they are otherwise eligible.

(((~~(42) $2,750,000 of the general fund—state appropriation for fiscal year 2009 is provided solely~~)) (44) Within the amounts appropriated in this section, funding is for the implementation of Second Substitute Senate Bill No. 6377 (career and technical education). ((~~If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.~~

~~(43) $4,000,000~~)) (45) $3,900,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for an allocation of four dollars and nine cents per full-time equivalent student, or as much as the funding in this subsection will allow, to maintain and improve library materials, collections, and services. The funding provided in this subsection shall be used to augment current funding for librarian programs provided through basic education and other existing funding mechanisms. In order to receive allocations under this section, school districts must agree that to the maximum extent possible they will ensure that library programs and services are equitably provided throughout the district.

(((~~(44) $600,000 of the general fund—state appropriation for fiscal year 2009 is provided solely~~)) (46) Within the amounts appropriated in this section, funding is for the implementation of Second Substitute Senate Bill No. 6483 (local farms-healthy kids and communities). ((~~Of the amount provided in subsection, up to $30,000 is provided for administrative costs associated with implementing the legislation and at least $570,000 is provided for grants to school districts associated with implementing the legislation. If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.~~

~~(45) $100,000 of the general fund—state appropriation for fiscal year 2009 is provided solely~~)) (47) Within the amounts appropriated in this section, funding is for the implementation of Engrossed Second Substitute Senate Bill No. 6673 (student learning opportunities) which requires the office of the superintendent of public instruction to explore online curriculum support in languages other than English. ((~~If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.~~

~~(47) $250,000 of the general fund—state appropriation for fiscal year 2009 is provided solely~~)) (48) Within the amounts appropriated in this section, funding is for grants to five skills centers to develop and plan for implementation of integrated English language development/career skills programs that pair English language development teachers with career/technical education instructors in the classroom. The office of the superintendent of public

instruction and skill center staff shall work with the state board for community and technical colleges I-BEST program staff and local community and technical college program staff to develop the program to assure critical program elements are included and that the skill center programs provide a seamless transition for high school students to the community and technical college programs for students choosing that pathway. The request for proposal or grant application shall be issued no later than May 1, 2008, so that grant recipients can begin program planning and development efforts on July 1, 2008. The superintendent of public instruction shall provide the resulting implementation plans to the governor and the appropriate committees of the legislature by November 1, 2008.

(49) ((~~$150,000 of the general fund—state appropriation for fiscal year 2009 is provided solely~~)) Within the amounts appropriated in this section, funding is ((~~to~~)) for support of public high schools' participation in the FIRST robotics program. The office of the superintendent of public instruction shall issue grants not to exceed $10,000 per school to be used for teacher stipends, registration fees, equipment, and other costs associated with direct participation in the program. High-poverty schools and schools starting up robotics programs shall be given priority in funding.

(50) In addition to other reductions, the reduced appropriations in this section reflect an additional $499,000 reduction in administrative costs required by Engrossed Substitute Senate Bill No. 5460 (reducing state government administrative costs). These administrative reductions shall be achieved, to the greatest extent possible, by reducing those administrative costs that do not affect direct client services or direct service delivery or programs.

Sec. 505. 2008 c 329 s 513 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR THE LEARNING ASSISTANCE PROGRAM

General Fund—State Appropriation (FY 2008) $68,381,000
General Fund—State Appropriation (FY 2009) $84,654,000
General Fund—Federal Appropriation $360,660,000
Education Legacy Trust Account—State
Appropriation. 45,953,000
TOTAL APPROPRIATION $559,648,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The general fund—state appropriations in this section are subject to the following conditions and limitations:

(a) The appropriations include such funds as are necessary to complete the school year ending in the fiscal year and for prior fiscal year adjustments.

(b) Funding for school district learning assistance programs shall be allocated at maximum rates of $220.34 per funded student for the 2007-08 school year and $265.08 per funded student for the 2008-09 school year exclusive of salary and benefit adjustments provided under section 504 of this act.

(c) A school district's funded students for the learning assistance program shall be the sum of the following as appropriate:

(i) The district's full-time equivalent enrollment in grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced price lunch in the prior school year; and

(ii) If, in the prior school year, the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced price lunch exceeded forty percent, subtract forty percent from the district's percentage and multiply the result by the district's K-12 annual average full-time equivalent enrollment for the prior school year.

(d) In addition to amounts allocated in (b) and (c) of this subsection, an additional amount shall be allocated to a school district for each school year in which the district's allocation is less than the amount the district received for the general fund—state learning assistance program allocation in the 2004-05 school year. The amount of the allocation in this section shall be sufficient to maintain the 2004-05 school year allocation.

(e) If Second Substitute Senate Bill No. 6673 (student learning opportunities) is enacted by June 30, 2008, in addition to the amounts allocated in (b), (c), and (d) of this subsection, an additional amount shall be allocated to school districts with high concentrations of poverty and English language learner students beginning in the 2008-2009 school year, subject to the following rules and conditions:

(i) To qualify for additional funding under this subsection, a district's October headcount enrollment in grades kindergarten through grade twelve must have at least twenty percent enrolled in the transitional bilingual instruction program based on an average of the program headcount taken in October and May of the prior school year; and must also have at least forty percent eligible for free or reduced price lunch based on October headcount enrollment in grades kindergarten through twelve in the prior school year.

(ii) Districts meeting the specifications in (e)(i) of this subsection shall receive additional funded students for the learning assistance program at the rates specified in subsection (1)(b) of this section. The number of additional funded student units shall be calculated by subtracting twenty percent from the district's percent transitional bilingual instruction program enrollment as defined in (e)(i) of this subsection, and the resulting percent shall be multiplied by the district's kindergarten through twelve annual average full-time equivalent enrollment for the prior school year.

(2) The general fund—federal appropriation in this section is provided for Title I Part A allocations of the no child left behind act of 2001.

(3) Small school districts are encouraged to make the most efficient use of the funding provided by using regional educational service district cooperatives to hire staff, provide professional development activities, and implement reading and mathematics programs consistent with research-based guidelines provided by the office of the superintendent of public instruction.

(4) A school district may carry over from one year to the next up to 10 percent of the general fund—state or education legacy trust funds allocated under this program; however, carryover funds shall be expended for the learning assistance program.

(5) School districts are encouraged to coordinate the use of these funds with other federal, state, and local sources to serve students who are below grade

level and to make efficient use of resources in meeting the needs of students with the greatest academic deficits.

(6) ((~~$15,065,000 of the general fund—state appropriation for fiscal year 2009 is provided solely~~)) Within the amounts appropriated in this section, funding is for the implementation of Engrossed Second Substitute Senate Bill No. 6673 (student learning opportunities) which establishes the extended learning program to provide additional instructional services for eligible students in grades eight, eleven, and twelve during the regular school day, evenings, on weekends, or at other times in order to meet the needs of these students. This funding is in addition to the estimated $986,000 of associated compensation increases associated with this legislation in section 504 of this act. ((~~If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.~~))

Sec. 506. 2008 c 329 s 515 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR STUDENT ACHIEVEMENT PROGRAM

Student Achievement Account—State Appropriation
(FY 2008). $423,369,000
Student Achievement Account—State Appropriation
(FY 2009). . . . . ((~~$444,970,000~~))
$436,910,000
TOTAL APPROPRIATION . . . . . ((~~$868,339,000~~))
$860,279,000

The appropriations in this section are subject to the following conditions and limitations:

(1) Funding for school district student achievement programs shall be allocated at a maximum rate of $450.00 per FTE student for the 2007-08 school year and $458.10 per FTE student for the 2008-09 school year. For the purposes of this section, FTE student refers to the annual average full-time equivalent enrollment of the school district in grades kindergarten through twelve for the prior school year, as reported to the office of the superintendent of public instruction by August 31st of the previous school year.

(2) The appropriation is allocated for the following uses as specified in RCW 28A.505.210:

(a) To reduce class size by hiring certificated elementary classroom teachers in grades K-4 and paying nonemployee-related costs associated with those new teachers;

(b) To make selected reductions in class size in grades 5-12, such as small high school writing classes;

(c) To provide extended learning opportunities to improve student academic achievement in grades K-12, including, but not limited to, extended school year, extended school day, before-and-after-school programs, special tutoring programs, weekend school programs, summer school, and all-day kindergarten;

(d) To provide additional professional development for educators including additional paid time for curriculum and lesson redesign and alignment, training to ensure that instruction is aligned with state standards and student needs, reimbursement for higher education costs related to enhancing teaching skills and knowledge, and mentoring programs to match teachers with skilled, master

teachers. The funding shall not be used for salary increases or additional compensation for existing teaching duties, but may be used for extended year and extended day teaching contracts;

(e) To provide early assistance for children who need prekindergarten support in order to be successful in school; or

(f) To provide improvements or additions to school building facilities which are directly related to the class size reductions and extended learning opportunities under (a) through (c) of this subsection (2).

(3) The superintendent of public instruction shall distribute the school year allocation according to the monthly ((~~apportionment~~)) schedule defined in RCW ((~~28A.510.250~~)) 28A.505.220.

PART VI
HIGHER EDUCATION

Sec. 601. 2008 c 329 s 604 (uncodified) is amended to read as follows:

(1) The appropriations in sections 603 through 609 of this act, ((~~and~~)) sections 605 through 611 of this 2008 act, and sections 602 through 608 of this 2009 act, provide state support for full-time equivalent student enrollments at each institution of higher education. Listed below are the annual full-time equivalent student enrollments by institutions assumed in this act.

	2007-08 Annual Average	2008-09 Annual Average
University of Washington		
Main campus	33,782	34,197
Bothell campus	1,760	1,980
Tacoma campus	2,109	2,349
Washington State University		
Main campus	19,112	19,272
Tri-Cities campus	800	865
Vancouver campus	1,888	2,113
Central Washington University	8,952	9,322
Eastern Washington University	8,996	9,184
The Evergreen State College	4,165	4,213
Western Washington University	12,022	12,175
State Board for Community and Technical Colleges	136,102	139,237

(2) For the state universities, the number of full-time equivalent student enrollments enumerated in this section for the Bothell, Tacoma, Tri-Cities, and Vancouver campuses are the minimum levels at which the universities should

seek to enroll students for those campuses. At the start of an academic year, the governing board of a state university may transfer full-time equivalent student enrollments among campuses. Intent notice shall be provided to the office of financial management and reassignment of funded enrollment is contingent upon satisfying data needed by the forecast division for tracking and monitoring state-supported college enrollment.

Sec. 602. 2008 c 329 s 605 (uncodified) is amended to read as follows:

FOR THE STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

General Fund—State Appropriation (FY 2008) $617,805,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$665,052,000~~)) $631,586,000
Education Legacy Trust Account—State Appropriation. . . . . ((~~$105,432,000~~)) $105,429,000
Pension Funding Stabilization Account Appropriation. $49,800,000
Administrative Contingencies Account—State Appropriation. $2,950,000
TOTAL APPROPRIATION . . . . . ((~~$1,441,039,000~~)) $1,407,570,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $5,040,000 of the education legacy trust account—state appropriation and $10,920,000 of the general fund—state appropriation for fiscal year 2009 are to expand general enrollments by 900 student FTEs in academic year 2008 and by an additional 1,050 student FTEs in academic year 2009.

(2) ((~~$5,720,000~~)) $21,678,000 of the education legacy trust account—state appropriation and ((~~$11,440,000~~)) $19,569,000 of the general fund—state appropriation for fiscal year 2009 are to expand ((~~high demand~~)) targeted enrollments by ((~~650~~)) 1,775 student FTEs in fiscal year 2008 and by an additional ((~~650~~)) 1,905 student FTEs in fiscal year 2009. The programs expanded shall include, but are not limited to, mathematics ((~~and~~)); health sciences; early childhood education programs with a focus on early math awareness; basic skills education; integrated basic education, skills and language program (IBEST); apprenticeship training programs; and the existing four applied baccalaureate degree programs at community and technical colleges as authorized in chapter 28B.50 RCW. The state board shall provide data to the office of financial management that is required to track changes in enrollments, graduations, and the employment of college graduates related to state investments in high-demand enrollment programs. Data may be provided through the public centralized higher education enrollment system or through an alternative means agreed to by the institutions and the office of financial management.

(3) ((~~$1,960,000 of the education legacy trust account—state appropriation is to expand early childhood education programs with a focus on early math and science awareness by 100 student FTEs in fiscal year 2008 and by an additional 150 student FTEs in 2009. The board shall provide data to the office of financial~~

~~management regarding math and science enrollments, graduations, and employment of college graduates related to state investments in math and science programs. Data may be provided through the centralized higher education enrollment system or through an alternative means agreed to by the institutions and the office of financial management.~~

~~(4)~~)) $28,761,000 of the general fund—state appropriation for fiscal year 2008 and $28,761,000 of the general fund—state appropriation for fiscal year 2009 are provided solely as special funds for training and related support services, including financial aid, as specified in RCW 28C.04.390. Funding is provided to support up to 6,200 full-time equivalent students in each fiscal year.

(((~~(5) $3,813,000 of the education legacy trust account—state appropriation and $7,625,000 of the general fund—state appropriation for fiscal year 2009 are for basic skills education enrollments at community and technical colleges. Budgeted enrollment levels shall increase by 625 student FTEs each year.~~

~~(6)~~)) (4) $3,750,000 of the general fund—state appropriation for fiscal year 2008 and $7,500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to increase salaries and related benefits for part-time faculty. It is intended that part-time faculty salaries will increase relative to full-time faculty salaries after all salary increases are collectively bargained.

(((~~(7) $7,350,000 of the education legacy trust account appropriation is to increase enrollment levels in the integrated basic education, skills, and language program (I-BEST) by 250 student FTEs per year. Each student participating on a full-time basis is budgeted and shall be reported as a single FTE for purposes of this expansion.~~

~~(8)~~)) (5) $375,000 of the general fund—state appropriation for fiscal year 2008 and $375,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the transitions math project. This phase of work shall include the establishment of a single math placement test to be used at colleges and universities statewide.

(((~~(9) $2,835,000 of the education legacy trust account appropriation is to increase enrollment in apprenticeship training programs by 150 student FTEs in each fiscal year.~~

~~(10)~~)) (6) $4,000,000 of the education legacy trust account—state appropriation is provided solely to expand the number of TRIO eligible students served in the community and technical college system by 1,700 students each year. TRIO eligible students include low-income, first-generation, and college students with disabilities. The state board for community and technical colleges shall report annually to the office of financial management and the appropriate policy and fiscal committees of the legislature on the retention and completion rates of students served through this appropriation. Retention rates shall continue to exceed 65 percent for TRIO students and other low-income and first-generation students served through this appropriation.

(((~~(11)~~))) (7)(a) The higher education coordinating board, the office of financial management, and the higher education institutions negotiated a set of performance measures and targets in 2006. By July 31, 2007, the state board for community and technical colleges and the higher education coordinating board shall review and revise these targets based on per-student funding in the 2007-09 appropriations act. In addition, the board shall compile comparable data from

peer institutions in the eight global challenge states identified in the Washington Learns study.

(b) The targets previously agreed by the state board and the higher education coordinating board are enumerated as follows:

(i) Increase the percentage and number of academic students who are eligible to transfer to baccalaureate institutions to 18,700;

(ii) Increase the percentage and number of students prepared for work to 23,490; and

(iii) Increase the percentage and number of basic skills students who demonstrate substantive skill gain by 22,850.

The state board for community and technical colleges shall report their progress and ongoing efforts toward meeting the provisions of this section to the higher education coordinating board prior to November 1, 2009.

((~~(12)~~)) (8) $452,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for start-up and planning funds for two applied baccalaureate degree programs at community and technical colleges, of which one degree program must be at a technical college. The applied baccalaureate degrees shall be specifically designed for individuals who hold associate of applied science degrees, or equivalent, in order to maximize application of their technical course credits toward the applied baccalaureate degree.

((~~(13)~~)) (9) $2,502,000 of the general fund—state appropriation for fiscal year 2008 and $5,024,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for faculty salary increments and associated benefits and may be used in combination with salary and benefit savings from faculty turnover to provide salary increments and associated benefits for faculty who qualify through professional development and training. To the extent general salary increase funding is used to pay faculty increments, the general salary increase shall be reduced by the same amount. The state board shall determine the method of allocating to the community and technical colleges the appropriations granted for academic employee increments, provided that the amount of the appropriation attributable to the proportionate share of the part-time faculty salary base shall only be accessible for part-time faculty.

((~~(14)~~)) (10) $50,000 of the general fund—state appropriation for fiscal year 2008 and $50,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for higher education student child care matching grants under chapter 28B.135 RCW.

((~~(15)~~)) (11) $2,725,000 of the general fund—state appropriation for fiscal year 2008 and $2,725,000 of the ((~~general fund—state appropriation~~)) administrative contingency account for fiscal year 2009 are provided solely for administration and customized training contracts through the job skills program. The state board shall make an annual report by January 1st of each year to the governor and to appropriate policy and fiscal committees of the legislature regarding implementation of this section, listing the scope of grant awards, the distribution of funds by educational sector and region of the state, and the results of the partnerships supported by these funds.

((~~(16) $504,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for 80 student FTEs in the existing four applied baccalaureate degree programs at community and technical colleges as authorized in chapter 28B.50 RCW.~~

~~((17))~~ (12) $4,000,000 of the general fund—state appropriation for fiscal year 2008, $4,000,000 of the general fund—state appropriation for fiscal year 2009, and $15,000,000 of the education legacy trust account—state appropriation are provided solely for implementation of Second Substitute House Bill No. 1096 (postsecondary opportunities). The state board shall seek additional private sector involvement and support for the opportunity grants program. If the bill is not enacted by June 30, 2007, the education legacy trust account—state appropriation shall lapse. Remaining amounts in this subsection shall be used for an opportunity grant program to provide grants covering community and technical college tuition and fees for up to 45 credits and books or other materials to be awarded to eligible students. Program participants will earn credentials or certificates in industry-defined occupations with a need for skilled employees.

((~~(18)~~)) (13) From within the funds appropriated in this section, community and technical colleges shall increase salaries for employees subject to the provisions of Initiative Measure No. 732 by an average of 3.7 percent effective July 1, 2007, and by an average of 3.9 percent effective July 1, 2008.

((~~(19)~~)) (14) $1,717,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for increasing salaries for employees who are subject to the provisions of Initiative Measure No. 732 by an average of one-half of one percent effective July 1, 2008.

((~~(20)~~)) (15) From within the funds appropriated in this section, community and technical colleges shall increase salaries for exempt professional staff by an average of 3.2 percent effective September 1, 2007, and by an average of 2.0 percent effective September 1, 2008.

((~~(21)~~)) (16) $1,500,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for competitive grants to labor, management, and college partnerships to develop or expand and evaluate innovative training programs for incumbent hospital workers that lead to careers in nursing and other high-demand health care fields. The board shall report to appropriate policy and fiscal committees of the legislature by November 1, 2008, on the initial implementation of the program, including components of the program created, the program sites, and program enrollments including student background and early progress. By November 2009, the board shall provide a follow up report that additionally includes information on student progress and outcomes.

((~~(22)~~)) (17) $75,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the gateway center pilot project at Highline community college for coaching and managing student participants in the pilot program. The coach will be responsible for credentials interpretation, evaluating prior learning experience, ensuring licensure guidance, providing academic advising and translation services, and helping establish employer relationships.

((~~(25)~~)) (18) $3,000,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the design, development, training, and related expenses associated with a joint labor/management apprenticeship program established under the auspices of an international union representing aerospace workers, which will include but not be limited to training in composite technology. Of this amount, $2,150,000 may be used for program development, curriculum development and equipment, training, and related expenses; and

$850,000 shall be used to support 130 enrollment slots at no more than three community and technical colleges with at least one college being located east of the Cascade mountains, for related supplemental instruction and related expenses. The state board for community and technical colleges shall select the colleges using a joint selection process between the state board and the joint labor/management apprenticeship program.

((~~(26)~~)) (19) $1,178,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to Edmonds community college for operating expenses related to leasing the employment resource center.

((~~(27)~~)) (20) $50,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the Renton technical college to implement workplace-based instructional programs that will enable low-wage working immigrants to improve their English language and work-related skills.

((~~(28)~~)) (21) $500,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to convert classes taught by faculty employed in part-time positions to classes taught by faculty employed in full-time, tenure-track positions. Particular emphasis shall be placed upon increasing the number of full-time faculty in the departments of mathematics, science, adult basic education, early childhood education, and English. The state board shall determine the distribution of these funds among the colleges in consultation with representatives of faculty unions.

((~~(29)~~)) (22) The appropriations in this section include specific funding to implement Substitute Senate Bill No. 5104 (applied baccalaureate degrees).

(23) When implementing reductions in fiscal year 2009, the state board for community and technical colleges shall minimize impacts on academic programs, maximize reductions in administration, and not reduce enrollments below enrollment levels referenced in 2008 c 329 s 604 and section 601 of this act.

Sec. 603. 2008 c 329 s 606 (uncodified) is amended to read as follows:

FOR THE UNIVERSITY OF WASHINGTON

General Fund—State Appropriation (FY 2008) $373,726,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$375,998,000~~))
$358,727,000
General Fund—Private/Local Appropriation $300,000
Education Legacy Trust Account—State
Appropriation. $43,181,000
Accident Account—State Appropriation $6,513,000
Medical Aid Account—State Appropriation $6,371,000
TOTAL APPROPRIATION . . . . . ((~~$806,089,000~~))
$788,818,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $15,744,000 of the education legacy trust account—state appropriation is to expand general enrollments by 625 student FTEs in fiscal year 2008 and by an additional 625 student FTEs in fiscal year 2009. Of these, 165 FTEs in 2008 and 165 FTEs in 2009 are expected to be graduate student FTEs.

(2) $6,975,000 of the education legacy trust account—state appropriation is to expand math and science undergraduate enrollments by 250 student FTEs in

each fiscal year. The programs expanded shall include mathematics, engineering, and the physical sciences. The university shall provide data to the office of financial management that is required to track changes in enrollments, graduations, and the employment of college graduates related to state investments in math and science programs. Data may be provided through the public centralized higher education enrollment system or through an alternative means agreed to by the institutions and the office of financial management.

(3) $85,000 of the general fund—state appropriation for fiscal year 2008 and $85,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for operating support of the Washington state academy of sciences, authorized by chapter 70.220 RCW.

(4) $100,000 of the general fund—state appropriation for fiscal year 2008 and $100,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for operating support of the William D. Ruckelshaus center.

(5) $500,000 of the education legacy trust account—state appropriation is provided solely to expand the number of TRIO eligible students served in the student support services program at the University of Washington by 250 students each year. TRIO students include low-income, first-generation, and college students with disabilities. The student support services program shall report annually to the office of financial management and the appropriate policy and fiscal committees of the legislature on the retention and completion rates of students served through this appropriation. Retention rates shall continue to exceed 85 percent for TRIO students in this program.

(6) $84,000 of the general fund—state appropriation for fiscal year 2008 and $84,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to establish the state climatologist position.

(7) $25,000 of the general fund—state appropriation for fiscal year 2008 and $125,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the William D. Ruckelshaus center to identify and carry out, or otherwise appropriately support, a process to identify issues that have led to conflict around land use requirements and property rights, and explore practical and effective ways to resolve or reduce that conflict. A report with conclusions and recommendations shall be submitted to the governor and the chairs of the appropriate committees of the legislature by October 31, 2007. Work will continue after the submission of the initial report, to include continuing research and the development of financial and policy options and a progress report on fact finding efforts and stakeholder positions due December 1, 2008.

(8) $3,830,000 of the education legacy trust account—state appropriation is provided solely to expand health sciences capacity at the University of Washington. Consistent with the medical and dental school extension program appropriations at Washington State University and Eastern Washington University, funding is provided to expand classes at the University of Washington. Medical and dental students shall take the first year of courses for this program at the Riverpoint campus in Spokane and the second year of courses at the University of Washington in Seattle.

(9) The higher education coordinating board, the office of financial management, and the higher education institutions negotiated a set of performance measures, checkpoints, and targets in 2006. By July 31, 2007, the university and the board shall review and revise these targets based on per-

student funding in the 2007-09 appropriations act. In addition, the board shall compile comparable data from peer institutions in the eight global challenge states identified in the Washington Learns study.

The checkpoints previously agreed by the board and the University of Washington are enumerated as follows:

(a) Increase the combined number of baccalaureate degrees conferred per year at all campuses to 8,850;

(b) Increase the combined number of high-demand baccalaureate degrees conferred at all campuses per year to 1,380;

(c) Increase the combined number of advanced degrees conferred per year at all campuses to 3,610;

(d) Improve the six-year graduation rate for baccalaureate students to 74.7 percent;

(e) Improve the three-year graduation rate for students who transfer with an associates degree to 76.0 percent;

(f) Improve the freshman retention rate to 93.0 percent;

(g) Improve time to degree for baccalaureate students to 92 percent at the Seattle campus and 92.5 percent at the Bothell and Tacoma campuses, measured by the percent of admitted students who graduate within 125 percent of the credits required for a degree; and

(h) The institution shall provide a report on Pell grant recipients' performance within each of the measures included in this subsection.

The University of Washington shall report its progress and ongoing efforts toward meeting the provisions of this section to the higher education coordinating board prior to November 1, 2009.

(10) $750,000 of the education legacy trust account appropriation is provided solely to increase participation in international learning opportunities, particularly for students with lower incomes who would otherwise not have the chance to study, work, or volunteer outside the United States.

(11) $75,000 of the general fund—state appropriation for fiscal year 2008 and $75,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for forestry research by the Olympic natural resources center.

(12) $25,000 of the general fund—state appropriation for fiscal year 2008 and $25,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for coastal marine research by the Olympic natural resources center.

(13) $95,000 of the general fund—state appropriation for fiscal year 2008 and $30,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for increased education, training, and support services for the families of children with autism, and for the production and distribution of digital video discs in both English and Spanish about strategies for working with people with autism.

(14) $2,900,000 of the general fund—state appropriation for fiscal year 2008 and $3,400,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for operating support for the department of global health.

(15) In an effort to introduce students to and inform students of post-secondary opportunities in Washington state, by October 1st of each year the university shall report to the higher education coordinating board progress

towards developing and implementing outreach programs designed to increase awareness of higher education to K-12 populations.

(16) $150,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the rural technology initiative (initiative) at the University of Washington and the transportation research group (group) at the Washington State University to conduct an economic analysis of the costs to safely provide log hauling services. The initiative will be the lead investigator and administer the project. Neither the University of Washington nor the Washington State University may make a deduction for administrative costs. The project shall rely upon the Washington state patrol for determination of basic safe characteristics, consistent with applicable state and federal law. The analysis shall include:

(a) An estimate of log haulers' cost to operate and maintain a basic and safe log truck without operator including:

(i) Variable costs such as fuel, etc;

(ii) Quasi-variable costs such as:

(A) Tires, brakes, wrappers, and other safety related equipment;

(B) Vehicle insurance, taxes, fees, etc;

(C) Maintenance costs such as oil, lubrication, and minor repairs; and

(D) Depreciation and replacement costs;

(b) The source of these cost estimates where possible should be independent vendors of equipment and services or already existing studies;

(c) A calculation of costs for safe operation expressed as per mile, hour or load volume including consideration for regional differences as well as off-road vs. on-road;

(d) An evaluation of comparable trucking services; and

(e) A review of log truck safety statistics in Washington state.

In conducting the analysis, the initiative shall consult with the northwest log truckers cooperative, the Washington trucking association, the Washington contract loggers association, the Washington farm forestry association, and the Washington forest protection association. By June 30, 2008, the initiative shall provide a report of its findings to the legislature and governor and distribute the findings to interested industry groups.

(17) $500,000 of the general fund—state appropriation for fiscal year 2008 and $500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to the Burke museum to support science and social science educational programs including public outreach programs, new educational programs and resources, web-based interactive learning experiences, teacher training, and traveling educational opportunities.

(18) $150,000 of the general fund—state appropriation for fiscal year 2008 and $300,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to the institute for learning and brain sciences.

(19) $30,000 of the general fund—state appropriation for fiscal year 2008 and $30,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the University of Washington to gather data and conduct research associated with preparing the basin-wide assessment and to solicit nominations for review and submittal to the Washington academy of sciences for the creation of the Puget Sound science panel pursuant to Engrossed Second Substitute Senate Bill No. 5372 (Puget Sound partnership).

(20)(a) $500,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the University of Washington school of law loan repayment assistance program endowment fund. The University of Washington shall conduct fund-raising activities to increase private sector support of the endowment program and $250,000 of the appropriation in this subsection is contingent on a private sector match. Funds in the law school repayment assistance program endowment fund shall be used to provide graduates who pursue careers in public interest legal positions with payment assistance toward their student loan debt.

(b) The University of Washington law school shall report to the legislature by December 1, 2010, information about the loan repayment assistance program. The report shall contain at least the following information:

(i) A financial summary of the endowment program;

(ii) The number of individuals receiving assistance from the program and information related to the positions in which these individuals are working;

(iii) Any available information regarding the effect of the loan repayment assistance program on student recruitment and enrollment; and

(iv) Other information the school of law deems relevant to the evaluation of the program.

(c) In its rules for administering the program, the school of law must make provision for cases of hardship or exceptional circumstances, as defined by the school of law. Examples of such circumstances include, but are not limited to, family leave, medical leave, illness or disability, and loss of employment.

(d) The loan repayment assistance program must be available to otherwise eligible graduates of the law school who work in positions with nonprofit organizations or government agencies. Such positions must be located within Washington state. Government agencies shall include the various branches of the military.

(21) $54,000 of the general fund—state appropriation for fiscal year 2008 and $54,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the University of Washington geriatric education center to develop a voluntary adult family home certification program. In addition to the minimum qualifications required under RCW 70.128.120, individuals participating in the voluntary adult family home certification program shall complete fifty-two hours of class requirements as established by the University of Washington geriatric education center. Individuals completing the requirements of RCW 70.128.120 and the voluntary adult family home certification program shall be issued a certified adult family home license by the department of social and health services. The department of social and health services shall adopt rules implementing the provisions of this subsection.

(22) $22,000 of the general fund—state appropriation for fiscal year 2008 and $97,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the William D. Ruckelshaus center for implementation of section 5 of Engrossed Second Substitute House Bill No. 3123 (nurse staffing). If section 5 of the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

((~~(25)~~)) (23) $1,000,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to establish an e-Science institute that will provide infrastructure and consulting expertise to university researchers in advanced

computational techniques needed to capture, store, organize, access, mine, visualize, and interpret massive data sets.

(((~~(28)~~))) (24) $50,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for incentive grants to support medical research or medical training projects focused upon improvement of services to persons with developmental disabilities. The university shall report to appropriate committees of the legislature by December 1, 2008, on incentive grants awarded, and other efforts to improve training for medical students in treating persons with developmental disabilities.

(25) When implementing reductions in fiscal year 2009, the University of Washington shall minimize impacts on academic programs, maximize reductions in administration, and not reduce enrollments below enrollment levels referenced in 2008 c 329 s 604 and section 601 of this act.

Sec. 604. 2008 c 329 s 607 (uncodified) is amended to read as follows:

FOR WASHINGTON STATE UNIVERSITY

General Fund—State Appropriation (FY 2008) $232,201,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$235,108,000~~))
$223,819,000
Education Legacy Trust Account—State
Appropriation. $33,884,000
Pension Funding Stabilization Account
Appropriation. $2,450,000
TOTAL APPROPRIATION . . . . . ((~~$503,643,000~~))
$492,354,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $5,315,000 of the education legacy trust account—state appropriation is to expand general enrollments by 290 student FTEs in fiscal year 2008 and by an additional 300 student FTEs in fiscal year 2009.

(2) $3,525,000 of the education legacy trust account—state appropriation is to expand math and science enrollments by 65 student FTEs in fiscal year 2008, and by an additional 90 FTE students in fiscal year 2009, of which 15 FTEs in each fiscal year are expected to be graduate enrollments. The programs expanded shall include mathematics, engineering, and the physical sciences. Fifty student FTEs in each year will be shifted from general enrollments to high-demand, high-cost fields, and thus do not affect the enrollment levels listed in section 602 of this act. The university shall provide data to the office of financial management regarding math and science enrollments, graduations, and the employment of college graduates related to state investments in math and science programs. Data may be provided through the public centralized higher education enrollment system or through an alternative means agreed to by the institutions and the office of financial management.

(3) $2,356,000 of the education legacy trust account appropriation is to expand bachelors-level, masters-level, and PhD enrollment at the Tri-Cities and Spokane campuses by 45 FTE students in fiscal year 2008, and by an additional 40 FTEs in fiscal year 2009.

(4) $2,000,000 of the general fund—state appropriation for fiscal year 2008 and $2,000,000 of the general fund—state appropriation for fiscal year 2009 are

provided solely for research and commercialization in bio-products and bio-fuels. Of this amount, $2,000,000 shall be targeted at the development of new crops to be used in the bio-products facility at WSU-Tri-Cities. The remainder shall be used for research into new bio-products created from agricultural waste to be conducted in the Tri-Cities in a joint program between Washington State University and Pacific Northwest national laboratories.

(5) $500,000 of the education legacy trust account—state appropriation is provided solely to expand the number of TRIO eligible students served in the student support services program at Washington State University by 250 students each year. TRIO students include low-income, first-generation, and college students with disabilities. The student support services program shall report annually to the office of financial management and the appropriate policy and fiscal committees of the legislature on the retention and completion rates of students served through this appropriation. Retention rates shall continue to exceed 85 percent for TRIO students in this program.

(6) $1,500,000 of the general fund—state appropriation for fiscal year 2008 and $1,500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to promote the development of the Spokane-based applied sciences laboratory into a strong, self-sustaining research organization. The state funds shall be used to recruit and retain at least three senior research scientists; to employ business development and administrative personnel; and to establish and equip facilities for computational modeling and for materials and optical characterization.

(7) $85,000 of the general fund—state appropriation for fiscal year 2008 and $85,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for operating support of the Washington state academy of sciences, under chapter 70.220 RCW.

(8) $100,000 of the general fund—state appropriation for fiscal year 2008 and $100,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for operating support of the William D. Ruckelshaus center.

(9) $25,000 of the general fund—state appropriation for fiscal year 2008 and $175,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the William D. Ruckelshaus center to identify and carry out, or otherwise appropriately support, a process to identify issues that have led to conflict around land use requirements and property rights, and explore practical and effective ways to resolve or reduce that conflict. A report with conclusions and recommendations shall be submitted to the governor and the chairs of the appropriate committees of the legislature by October 31, 2007. Work will continue after the submission of the initial report, to include continuing research and the development of financial and policy options and a progress report on fact finding efforts and stakeholder positions due December 1, 2008.

(10) $6,360,000 of the education legacy trust account—state appropriation is provided solely to expand health sciences offerings in Spokane. The university shall enroll 20 student FTEs in fiscal year 2009 in a University of Washington medical school extension program at the Riverpoint campus of WSU in Spokane. Students shall take the first year of courses for this program at the Riverpoint campus in Spokane, and shall do their clinical rotations and other upper level training in the inland northwest.

(11) $1,000,000 of the general fund—state appropriation for fiscal year 2008 and $1,000,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for start-up and ongoing operation of the Vancouver campus-based electrical engineering program.

(12) The higher education coordinating board, the office of financial management, and the higher education institutions negotiated a set of performance measures, checkpoints, and targets in 2006. By July 31, 2007, the university and the board shall review and revise these targets based on per-student funding in the 2007-09 appropriations act. In addition, the board shall compile comparable data from peer institutions in the eight global challenge states identified in the Washington Learns study.

The checkpoints previously agreed by the board and the Washington State University are enumerated as follows:

(a) Increase the combined number of baccalaureate degrees conferred per year at all campuses to 4,170;

(b) Increase the combined number of high-demand baccalaureate degrees conferred at all campuses per year to 630;

(c) Increase the combined number of advanced degrees conferred per year at all campuses to 1,090;

(d) Improve the six-year graduation rate for baccalaureate students to 63.2 percent;

(e) Improve the three-year graduation rate for students who transfer with an associates degree to 65.4 percent;

(f) Improve the freshman retention rate to 84.8 percent;

(g) Improve time to degree for baccalaureate students to 92 percent, measured by the percent of admitted students who graduate within 125 percent of the credits required for a degree; and

(h) The institution shall provide a report on Pell grant recipients' performance within each of the measures included in this section.

The Washington State University shall report its progress and ongoing efforts toward meeting the provisions of this section to the higher education coordinating board prior to November 1, 2009.

(13) In an effort to introduce students to and inform students of post-secondary opportunities in Washington state, by October 1st of each year the university shall report to the higher education coordinating board progress towards developing and implementing outreach programs designed to increase awareness of higher education to K-12 populations.

(14) $3,000,000 of the general fund—state appropriation for fiscal year 2008 and $3,000,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to support the unified agriculture initiative at Washington State University. Funds are provided for competitive agriculture grant funds, of which $400,000 is provided for biological intensive and organic agriculture grants; for operating and program support for the university's research and extension centers, of which $735,000 is for maintenance and operations support for the Mount Vernon research facility; and for positions to fill research gaps in the development of value-added agricultural products and economically and environmentally sustainable food production.

(15) $75,000 of the general fund—state appropriation for fiscal year 2008 and $75,000 of the general fund—state appropriation for fiscal year 2009 are

provided solely for support of basic operations and research at the university's grizzly bear study center.

(16) $75,000 of the general fund—state appropriation for fiscal year 2008 and $75,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the energy development center to establish certification standards and to process applications for renewable energy cost recovery incentives, as provided in chapters 300 and 301, Laws of 2005.

(17) $30,000 of the general fund—state appropriation for fiscal year 2008 and $30,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for Washington State University to gather data and conduct research associated with preparing the basin-wide assessment and to solicit nominations for review and submittal to the Washington academy of sciences for the creation of the Puget Sound science panel pursuant to Engrossed Second Substitute Senate Bill No. 5372 (Puget Sound partnership).

(18) $10,000 of the general fund—state appropriation for fiscal year 2008 and $40,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the William D. Ruckelshaus center for implementation of section 5 of Engrossed Second Substitute House Bill No. 3123 (nurse staffing). If section 5 of the bill is not enacted by June 30, 2008, the amounts provided in this subsection shall lapse.

((~~(20)~~)) (19) $160,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for administrative resources and personnel necessary for the implementation of Substitute House Bill No. 2963 (WSU collective bargaining). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

((~~(21)~~)) (20) $200,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to implement a teacher preparation program at Washington State University-Vancouver that will prepare currently-licensed teachers to more effectively educate K-12 students who are deaf or hearing-impaired. The program will use a variety of distance learning instructional methods and delivery formats in order to reach teachers throughout the state.

((~~(24)~~)) (21) $500,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of section 6 of Senate Bill No. 6438 (high speed internet deployment). If section 6 of Senate Bill No. 6438 is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

((~~(25)~~)) (22) The appropriations in this section include specific funding to implement Senate Bill No. 6187 (food animal veterinarians).

(23) When implementing reductions in fiscal year 2009, Washington State University shall minimize impacts on academic programs, maximize reductions in administration, and not reduce enrollments below enrollment levels referenced in 2008 c 329 s 604 and section 601 of this act.

Sec. 605. 2008 c 329 s 608 (uncodified) is amended to read as follows:

FOR EASTERN WASHINGTON UNIVERSITY

General Fund—State Appropriation (FY 2008) $48,911,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$48,959,000~~))

$45,771,000

Education Legacy Trust Account—State
Appropriation. . . . . ((~~$14,753,000~~))
$14,748,000
Pension Funding Stabilization Account
Appropriation. $4,758,000
TOTAL APPROPRIATION . . . . . ((~~$117,381,000~~))
$114,188,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $930,000 of the education legacy trust account—state appropriation is to expand general enrollments by 130 student FTEs in fiscal year 2009. Of these, 30 FTEs in 2009 are expected to be graduate student FTEs.

(2) $1,170,000 of the education legacy trust account—state appropriation is to expand high-demand undergraduate enrollments by 50 student FTEs in each fiscal year. The programs expanded shall include, but are not limited to, mathematics, engineering, and health sciences. The university shall provide data to the office of financial management that is required to track changes in enrollments, graduations, and the employment of college graduates related to state investments in high-demand enrollment programs. Data may be provided through the public centralized higher education enrollment system or through an alternative means agreed to by the institutions and the office of financial management.

(3) $500,000 of the education legacy trust account—state appropriation is provided solely to expand the number of TRIO eligible students served in the student support services program at Eastern Washington University by 250 students each year. TRIO students include low-income, first-generation, and college students with disabilities. The student support services program shall report annually to the office of financial management and the appropriate policy and fiscal committees of the legislature on the retention and completion rates of students served through this appropriation. Retention rates shall continue to exceed 85 percent for TRIO students in this program.

(4) $1,021,000 of the education legacy trust account—state appropriation is provided solely for the RIDE program. The program shall enroll eight student FTEs in the University of Washington school of dentistry in fiscal year 2009. Students shall take the first year of courses for this program at the Riverpoint campus in Spokane, and their second and third years at the University of Washington school of dentistry.

(5) The higher education coordinating board, the office of financial management, and the higher education institutions negotiated a set of performance measures, checkpoints, and targets in 2006. By July 31, 2007, the university and the board shall review and revise these targets based on per-student funding in the 2007-09 appropriations act. In addition, the board shall compile comparable data from peer institutions in the eight global challenge states identified in the Washington Learns study.

The checkpoints previously agreed by the board and the Eastern Washington University are enumerated as follows:

(a) Increase the number of baccalaureate degrees conferred per year to 2035;

(b) Increase the number of high-demand baccalaureate degrees conferred per year to 405;

(c) Increase the number of advanced degrees conferred per year at all campuses to 550;

(d) Improve the six-year graduation rate for baccalaureate students to 50.0 percent;

(e) Improve the three-year graduation rate for students who transfer with an associates degree to 61.0 percent;

(f) Improve the freshman retention rate to 76.0 percent;

(g) Improve time to degree for baccalaureate students to 81.0 percent, measured by the percent of admitted students who graduate within 125 percent of the credits required for a degree; and

(h) The institution shall provide a report on Pell grant recipients' performance within each of the measures included in this section.

Eastern Washington University shall report its progress and ongoing efforts toward meeting the provisions of this section to the higher education coordinating board prior to November 1, 2009.

(6) In an effort to introduce students to and inform students of post-secondary opportunities in Washington state, by October 1st of each year the university shall report to the higher education coordinating board progress towards developing and implementing outreach programs designed to increase awareness of higher education to K-12 populations.

((~~(8)~~)) (7) $62,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the institute for public policy and economic analysis to conduct an assessment of the likely medical, health care delivery, and economic consequences of the proposed sale of a major eastern Washington health care delivery system.

((~~(9)~~)) (8) $100,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the northwest autism center to increase child diagnostic services and teacher training services.

(9) When implementing reductions in fiscal year 2009, Eastern Washington University shall minimize impacts on academic programs, maximize reductions in administration, and not reduce enrollments below enrollment levels referenced in 2008 c 329 s 604 and section 601 of this act.

Sec. 606. 2008 c 329 s 609 (uncodified) is amended to read as follows:

FOR CENTRAL WASHINGTON UNIVERSITY

General Fund—State Appropriation (FY 2008) $47,691,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$47,978,000~~)) $45,272,000

Education Legacy Trust Account—State Appropriation. $16,219,000

Pension Funding Stabilization Account Appropriation. $4,330,000

TOTAL APPROPRIATION . . . . . ((~~$116,218,000~~)) $113,512,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $2,474,000 of the education legacy trust account—state appropriation is to increase general enrollments by 70 FTE students in fiscal year 2008 and by an additional 211 FTE enrollments in fiscal year 2009. At least 30 of the additional fiscal year 2009 enrollments are expected to be graduate students.

(2) $1,816,000 of the education legacy trust account—state appropriation for fiscal year 2008 is to increase math and science enrollments by 105 FTE students in fiscal year 2008 and by an additional 89 FTE students in fiscal year 2009. The university shall provide data to the office of financial management regarding math and science enrollments, graduations, and employment of college graduates related to state investments in math and science enrollment programs. Data may be provided through the centralized higher education enrollment system or through an alternative means agreed to by the institutions and the office of financial management.

(3) $1,801,000 of the education legacy trust account—state appropriation is to increase high-demand undergraduate enrollments by 85 student FTEs in fiscal year 2008 and by an additional 70 FTE students in fiscal year 2009. The programs expanded shall include, but are not limited to, bilingual education and information technology. The university shall provide data to the office of financial management that is required to track changes in enrollments, graduations, and the employment of college graduates related to state investments in high-demand enrollment programs. Data may be provided through the public centralized higher education enrollment system or through an alternative means agreed to by the institutions and the office of financial management.

(4) $500,000 of the education legacy trust account—state appropriation is provided solely to expand the number of TRIO eligible students served in the student support services program at Central Washington University by 250 students each year. TRIO students include low-income, first-generation, and college students with disabilities. The student support services program shall report annually to the office of financial management and the appropriate policy and fiscal committees of the legislature on the retention and completion rates of students served through this appropriation. Retention rates shall continue to exceed 85 percent for TRIO students in this program.

(5) The higher education coordinating board, the office of financial management, and the higher education institutions negotiated a set of performance measures, checkpoints, and targets in 2006. By July 31, 2007, the university and the board shall review and revise these targets based on per-student funding in the 2007-09 appropriations act. In addition, the board shall compile comparable data from peer institutions in the eight global challenge states identified in the Washington Learns study.

The checkpoints previously agreed by the board and the Central Washington University are enumerated as follows:

(a) Increase the number of baccalaureate degrees conferred per year to 2,050;

(b) Increase the number of high-demand baccalaureate degrees conferred per year to 49;

(c) Increase the number of advanced degrees conferred per year at all campuses to 196;

(d) Improve the six-year graduation rate for baccalaureate students to 51.1 percent;

(e) Improve the three-year graduation rate for students who transfer with an associates degree to 72.3 percent;

(f) Improve the freshman retention rate to 78.2 percent;

(g) Improve time to degree for baccalaureate students to 86.6 percent, measured by the percent of admitted students who graduate within 125 percent of the credits required for a degree; and

(h) The institution shall provide a report on Pell grant recipients' performance within each of the measures included in this section.

Central Washington University shall report its progress and ongoing efforts toward meeting the provisions of this section to the higher education coordinating board prior to November 1, 2009.

(6) $500,000 of the education legacy trust account appropriation is provided solely to implement Engrossed Substitute House Bill No. 1497 (Central Washington University operating fee waivers). If the bill is not enacted by June 30, 2007, this appropriation shall lapse.

(7) In an effort to introduce students to and inform students of post-secondary opportunities in Washington state, by October 1st of each year the university shall report to the higher education coordinating board progress towards developing and implementing outreach programs designed to increase awareness of higher education to K-12 populations.

(8) When implementing reductions in fiscal year 2009, Central Washington University shall minimize impacts on academic programs, maximize reductions in administration, and not reduce enrollments below enrollment levels referenced in 2008 c 329 s 604 and section 601 of this act.

Sec. 607. 2008 c 329 s 610 (uncodified) is amended to read as follows:

FOR THE EVERGREEN STATE COLLEGE

General Fund—State Appropriation (FY 2008) $29,747,000

General Fund—State Appropriation (FY 2009) . . . . . ((~~$29,403,000~~)) $27,973,000

Education Legacy Trust Account—State Appropriation. . . . . ((~~$4,758,000~~)) $4,725,000

TOTAL APPROPRIATION . . . . . ((~~$63,908,000~~)) $62,445,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $562,000 of the education legacy trust account—state appropriation is to expand upper division math and science enrollments by 22 student FTEs in fiscal year 2008 and by an additional 28 student FTEs in fiscal year 2009.

(2) $260,000 of the education legacy trust account—state appropriation for fiscal year 2009 is for 20 student FTE graduate enrollments in the masters in education program.

(3) $500,000 of the education legacy trust account—state appropriation is provided solely to expand the number of TRIO eligible students served in the student support services program at The Evergreen State College by 250 students each year. TRIO students include low-income, first-generation, and

college students with disabilities. The student support services program shall report annually to the office of financial management and the appropriate policy and fiscal committees of the legislature on the retention and completion rates of students served through this appropriation. Retention rates shall continue to exceed 80 percent for students served in this program, with a goal of reaching a retention rate in excess of 85 percent.

(4) $614,000 of the education legacy trust account appropriation is provided solely to increase the number and value of tuition waivers awarded to state-supported students.

(5) The higher education coordinating board, the office of financial management, and the higher education institutions negotiated a set of performance measures, checkpoints, and targets in 2006. By July 31, 2007, the college and the board shall review and revise these targets based on per-student funding in the 2007-09 appropriations act. In addition, the board shall compile comparable data from peer institutions in the eight global challenge states identified in the Washington Learns study.

The checkpoints previously agreed by the board and The Evergreen State College are enumerated as follows:

(a) Increase the number of baccalaureate degrees conferred per year to 1182;

(b) Increase the number of advanced degrees conferred per year at all campuses to 92;

(c) Improve the six-year graduation rate for baccalaureate students to 57.0 percent;

(d) Improve the three-year graduation rate for students who transfer with an associates degree to 72.8 percent;

(e) Improve the freshman retention rate to 73.9 percent;

(f) Improve time to degree for baccalaureate students to 97.0 percent, measured by the percent of admitted students who graduate within 125 percent of the credits required for a degree; and

(g) The institution shall provide a report on Pell grant recipients' performance within each of the measures included in this section.

The Evergreen State College shall report its progress and ongoing efforts toward meeting the provisions of this section to the higher education coordinating board prior to November 1, 2009.

(6) In an effort to introduce students to and inform students of post-secondary opportunities in Washington state, by October 1st of each year the university shall report to the higher education coordinating board progress towards developing and implementing outreach programs designed to increase awareness of higher education to K-12 populations.

(7) $435,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the Washington state institute for public policy (WSIPP) to assist the joint task force on basic education finance created pursuant to Engrossed Second Substitute Senate Bill No. 5627 (requiring a review and development of basic education funding). The institute shall assist the joint task force in a review of the definition of basic education and the development of options for a new funding structure for K-12 public schools. The task force on basic education as created in chapter 399, Laws of 2007 shall consider the ruling of the King County Superior Court in the matter of *Federal Way School District v. The State of Washington* in developing recommendations for a new basic

education school finance formula. The recommendations should include proposals that directly address the issue of equity in salary allocations in the new school finance formula.

(8) $180,000 of the general fund—state appropriation for fiscal year 2008 and $180,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the Washington state institute for public policy to study the program effectiveness and cost-benefit of state-funded programs that meet the criteria of evidence-based programs and practices, and emerging best practice/ promising practice, as defined in RCW 71.24.025 (12) and (13) for adult offenders in the department of corrections, and juvenile offenders under state and local juvenile authority.

(9) $75,000 of the general fund—state appropriation for fiscal year 2008 and $75,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the Washington state institute for public policy to evaluate the effectiveness of current methods for screening and treating depression in women who receive temporary assistance for needy families (TANF), and to make recommendations for their improvement.

(10) $133,000 of the general fund—state appropriation for fiscal year 2008 is provided solely to implement Substitute House Bill No. 1472 (child welfare). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(11) Notwithstanding other provisions in this section, the Washington state institute for public policy may adjust due dates for projects included on the institute's 2007-09 workplan as necessary to efficiently manage workload.

(12) $19,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the Washington state institute for public policy (WSIPP) to (a) conduct a national review of state programs for youth transitioning out of foster care and analyze state policies on eligibility requirements for continued foster care, age thresholds for transition services, types of services provided, and use of state funds to supplement federal moneys; and (b) survey foster youth and foster parents in Washington regarding how well current services are meeting the needs of youth transitioning out of foster care to independence. The institute shall issue a preliminary report by September 1, 2008, with a final report by December 31, 2008.

((~~(14)~~)) (13) $46,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the Washington state institute for public policy (WSIPP) for implementation of Second Substitute Senate Bill No. 6732 (construction industry). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

((~~(15)~~)) (14) $69,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the Washington state institute for public policy to study the status of adult literacy education in Washington. The study shall include an analysis of literacy rates by county; a review of the research literature; a description of literacy-related services provided by state agencies and community-based organizations; and an analysis of the characteristics of persons receiving those services. The institute shall report its findings to the governor, appropriate committees of the legislature, and to the state board for community and technical colleges by December 1, 2008.

(((~~(16)~~))) (15) $23,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to implement the evaluation required by Senate Bill No. 6665 (crisis response programs). If the bill is not enacted by June 30, 2009, the amount provided in this subsection shall lapse.

(((~~(17)~~))) (16) $100,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the Washington state institute for public policy to conduct a review of research on service and support programs for children and adults with developmental disabilities, excluding special education, and an economic analysis of net program costs and benefits. The institute shall submit a preliminary report of findings by January 1, 2009, and a final report by June 30, 2009.

(((~~(19)~~))) (17) $70,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the Washington state institute for public policy to analyze local practices regarding RCW 28A.225.020, 28A.225.025, and 28A.225.030.

(a) The institute shall: (i) Sample school districts' and superior courts' expenditures in fiscal years 2005, 2006, 2007, and 2008 used to comply with RCW 28A.225.020, 28A.225.025, and 28A.225.030; (ii) evaluate evidence-based, research-based, promising, and consensus-based truancy intervention and prevention programs and report on local practices that could be designated as such; (iii) survey school district truancy petition and intervention programs and services currently available and report on any gaps in accessing services; (iv) survey the districts' definitions of "absence" and "unexcused absence"; (v) survey the courts' frequency of use of contempt proceedings and barriers to the use of proceedings; and (vi) analyze the academic impact of RCW 28A.225.030 by sampling school districts' student academic records to ascertain the students' post-petition attendance rate, grade progression, and high school graduation for students where the school district filed a truancy petition in superior court.

(b) In conducting its analysis, the institute may consult with employees and access data systems of the office of the superintendent of public instruction and any educational service district or school district and the administrative office of the courts, each of which shall provide the institute with access to necessary data and administrative systems.

(18) When implementing reductions in fiscal year 2009, The Evergreen State College shall minimize impacts on academic programs, maximize reductions in administration, and not reduce enrollments below enrollment levels referenced in 2008 c 329 s 604 and section 601 of this act.

Sec. 608. 2008 c 329 s 611 (uncodified) is amended to read as follows:

FOR WESTERN WASHINGTON UNIVERSITY

General Fund—State Appropriation (FY 2008) $66,774,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$68,085,000~~))
$64,450,000
Education Legacy Trust Account—State
Appropriation. $11,845,000
TOTAL APPROPRIATION . . . . . ((~~$146,704,000~~))
$143,069,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $281,000 of the education legacy trust account—state appropriation is to expand math and science enrollments by 8 student FTEs in fiscal year 2008 and by an additional 8 student FTEs in fiscal year 2009. Programs expanded include cell and molecular biology. The university shall provide data to the office of financial management regarding math and science enrollments, graduations, and the employment of college graduates related to state investments in math and science enrollment programs. Data may be provided through the public centralized higher education enrollment system or through an alternative means agreed to by the institutions and the office of financial management.

(2) $4,013,000 of the education legacy trust account—state appropriation is to expand general enrollments by 235 student FTEs in fiscal year 2008 and by an additional 130 student FTEs in fiscal year 2009. Of these, 24 FTEs in each fiscal year are expected to be graduate student FTEs.

(3) $920,000 of the education legacy trust account—state appropriation is to expand high demand enrollments by 50 FTE students in fiscal year 2008 and by an additional 15 FTE students in fiscal year 2009. Programs expanded include early childhood education and teaching English as a second language. The university shall provide data to the office of financial management regarding high-demand enrollments, graduations, and employment of college graduates related to state investments in high demand enrollment programs. Data may be provided through the centralized higher education enrollment system or through an alternative means agreed to by the institutions and the office of financial management.

(4) $500,000 of the education legacy trust account—state appropriation is provided solely to expand the number of low-income and first-generation students served in the student outreach services program at Western Washington University by 500 students over the biennium. The student outreach services program shall report annually to the office of financial management and the appropriate policy and fiscal committees of the legislature on the retention and completion rates of students served through this appropriation. Retention rates shall continue to exceed 80 percent for students served in this program, with a goal of reaching a retention rate in excess of 85 percent.

(5) The higher education coordinating board, the office of financial management, and the higher education institutions negotiated a set of performance measures, checkpoints, and targets in 2006. By July 31, 2007, the university and the board shall review and revise these targets based on per-student funding in the 2007-09 appropriations act. In addition, the board shall compile comparable data from peer institutions in the eight global challenge states identified in the Washington Learns study.

The checkpoints previously agreed by the board and the Western Washington University are enumerated as follows:

(a) Increase the number of baccalaureate degrees conferred per year to 2,968;

(b) Increase the number of high-demand baccalaureate degrees conferred per year to 371;

(c) Increase the number of advanced degrees conferred per year at all campuses to 375;

(d) Improve the six-year graduation rate for baccalaureate students to 62.8 percent;

(e) Improve the three-year graduation rate for students who transfer with an associates degree to 61.4 percent;

(f) Improve the freshman retention rate to 85.0 percent;

(g) Improve time to degree for baccalaureate students to 95.6 percent, measured by the percent of admitted students who graduate within 125 percent of the credits required for a degree; and

(h) The institution shall provide a report on Pell grant recipients' performance within each of the measures included in this section.

Western Washington University shall report its progress and ongoing efforts toward meeting the provisions of this section to the higher education coordinating board prior to November 1, 2009.

(6) In an effort to introduce students to and inform students of post-secondary opportunities in Washington state, the university shall report progress towards developing and implementing outreach programs designed to increase awareness of higher education to K-12 populations to the higher education coordinating board by October 1st of each year.

(7) $1,169,000 of the education legacy trust account appropriation is for the advanced materials science and engineering program. The program shall develop the advanced materials science and engineering center for research, teaching, and development which will offer a minor degree in materials science and engineering beginning in the fall 2009.

(8) $444,000 of the general fund—state appropriation for fiscal year 2008 and $611,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for development of the biomedical research activities in neuroscience (BRAIN) program. The program shall link biology and chemistry curriculum to prepare students for biomedical research positions in academia and industry.

(9) When implementing reductions in fiscal year 2009, Western Washington University shall minimize impacts on academic programs, maximize reductions in administration, and not reduce enrollments below enrollment levels referenced in 2008 c 329 s 604 and section 601 of this act.

Sec. 609. 2008 c 329 s 612 (uncodified) is amended to read as follows:

FOR THE HIGHER EDUCATION COORDINATING BOARD—POLICY COORDINATION AND ADMINISTRATION

General Fund—State Appropriation (FY 2008) $7,008,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$7,231,000~~))
$6,533,000
General Fund—Federal Appropriation $4,333,000
TOTAL APPROPRIATION . . . . . ((~~$18,572,000~~))
$17,874,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $87,000 of the general fund—state appropriation for fiscal year 2008 and $169,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to maintain and update a scholarship clearinghouse that lists every public and private scholarship available to Washington students. The higher education coordinating board shall develop a web-based interface for students and families as well as a common application for these scholarships.

(2) $339,000 of the general fund—state appropriation for fiscal year 2008 and $330,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for implementation of Second Substitute Senate Bill No. 5098 (the college bound scholarship). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(3) $200,000 of the general fund—state appropriation for fiscal year 2008 and $150,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for implementation of Engrossed Substitute House Bill No. 1131 (the passport to college promise). If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(4) $152,000 of the general fund—state appropriation for fiscal year 2008 and $191,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for administration of conditional scholarships.

(5) Except for moneys provided in this section for specific purposes, and to the extent that the executive director finds that the agency will not require the full amount appropriated for a fiscal year in this section, the unexpended appropriation shall be transferred to the state education trust account established under RCW 28B.92.140 for purposes of fulfilling unfunded scholarship commitments that the board made under its federal GEAR UP Grant 1.

(6) $200,000 of the general fund—state appropriation is provided solely to implement a capital facility and technology capacity study which will compare the 10-year enrollment projections with the capital facility requirements and technology application and hardware capacity needed to deliver higher education programs for the period 2009-2019. The higher education coordinating board shall:

(a) Develop the study in collaboration with the state board for community and technical colleges, four-year universities, and the Washington independent colleges;

(b) Determine the 10-year capital facilities and technology application and hardware investment needed by location to deliver higher education programs to additional student FTE;

(c) Estimate operational and capital costs of the additional capacity; and

(d) Report findings to the legislature on October 1, 2008.

(7) $85,000 of the general fund—state appropriation for fiscal year 2008 and $127,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the board to prepare a program and operating plan for a higher education center in the Kitsap county area. The plan shall be developed in consultation with an advisory committee of civic, business, and educational leaders from Clallam, Jefferson, Kitsap, and Mason counties. It shall include a projection of lower and upper division and graduate enrollment trends in the study area; a review of assessments of employer needs; an inventory of existing and needed postsecondary programs; recommended strategies for promoting active program participation in and extensive program offerings at the center by public and private baccalaureate institutions; and an estimate of operating and capital costs for the creation and operation of the center. The board shall submit its findings and recommendations to the governor and legislature by December 1, 2008.

((~~(10)~~)) (8) $60,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Engrossed House Bill No. 2641

(education performance agreements). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(11)~~))) (9) The higher education coordinating board, the department of licensing, and the department of health shall jointly review and report to appropriate policy committees of the legislature by December 1, 2008, on barriers and opportunities for increasing the extent to which veterans separating from duty are able to apply skills sets and education required while in service to certification, licensure, and degree requirements.

(((~~(12)~~))) (10) $100,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the higher education coordinating board to convene interested parties from Snohomish, Island, and Skagit counties to consider the November 2007 site options and recommendations for a new campus of the University of Washington in Snohomish county. The three local communities shall develop a consensus recommendation on a single preferred site and present the recommendation to the higher education coordinating board. The higher education coordinating board shall then present the single preferred site recommendation to the appropriate legislative fiscal and policy committees by December 1, 2008.

Sec. 610. 2008 c 329 s 613 (uncodified) is amended to read as follows:

FOR THE HIGHER EDUCATION COORDINATING BOARD—FINANCIAL AID AND GRANT PROGRAMS

General Fund—State Appropriation (FY 2008) $163,286,000
General Fund—State Appropriation (FY 2009) . . . . . (((~~$188,998,000~~)))
$188,498,000
General Fund—Federal Appropriation $13,113,000
Education Legacy Trust Account—State
Appropriation $108,188,000
TOTAL APPROPRIATION . . . . . (((~~$473,585,000~~)))
$473,085,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $154,760,000 of the general fund—state appropriation for fiscal year 2008, $178,707,000 of the general fund—state appropriation for fiscal year 2009, $49,902,000 of the education legacy trust account appropriation for fiscal year 2008, $40,050,000 of the education legacy trust account appropriation for fiscal year 2009, and $2,886,000 of the general fund—federal appropriation are provided solely for student financial aid payments under the state need grant; the state work study program including a four percent administrative allowance; the Washington scholars program; and the Washington award for vocational excellence. All four programs shall increase grant awards sufficiently to offset the full cost of the resident undergraduate tuition increases authorized under this act.

(2) Within the funds appropriated in this section, eligibility for the state need grant shall be expanded to include students with family incomes at or below 70 percent of the state median family income, adjusted for family size. Awards for students with incomes between 66 percent and 70 percent of the state median shall be 50 percent of the award amount granted to those with incomes below 51 percent of the median.

(3) To the extent that the executive director determines that the agency will not award the full amount appropriated in subsection (1) of this section for a fiscal year, unexpended funds shall be transferred to the state education trust account established under RCW 28B.92.140 for purposes first of fulfilling the unfunded scholarship commitments that the board made under its federal GEAR UP Grant 1.

(4) $7,400,000 of the education legacy trust account appropriation is provided solely for investment to fulfill the scholarship commitments that the state incurs in accordance with Second Substitute Senate Bill No. 5098 (the college bound scholarship). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(5) $2,500,000 of the education legacy trust account—state appropriation is provided solely to expand the gaining early awareness and readiness for undergraduate programs project to at least 25 additional school districts.

(6) $1,000,000 of the education legacy trust account—state appropriation is provided solely to encourage more students to teach secondary mathematics and science. $500,000 of this amount is provided to increase the future teacher scholarship and conditional loan program by at least 35 students per year. $500,000 of this amount is provided to support state work study positions for students to intern in secondary math and science classrooms.

(7) $2,336,000 of the education legacy trust account—state appropriation for fiscal year 2009 is provided solely for implementation of Engrossed Substitute House Bill No. 1131 (passport to college). Funds are provided for student scholarships, and for incentive payments to the colleges they attend for individualized student support services which may include, but are not limited to, college and career advising, counseling, tutoring, costs incurred for students while school is not in session, personal expenses, health insurance, and emergency services. If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(8) $246,000 of the general fund—state appropriation for fiscal year 2008 and $246,000 of the general fund—state appropriation for fiscal year 2009 are for community scholarship matching grants and its administration. To be eligible for the matching grant, nonprofit groups organized under section 501(c)(3) of the federal internal revenue code must demonstrate they have raised at least $2,000 in new moneys for college scholarships after the effective date of this section. Groups may receive no more than one $2,000 matching grant per year and preference shall be given to groups affiliated with scholarship America. Up to a total of $46,000 per year of the amount appropriated in this section may be awarded to a nonprofit community organization to administer scholarship matching grants, with preference given to an organization affiliated with scholarship America.

(9) $75,000 of the general fund—state appropriation for fiscal year 2008 and $75,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for higher education student child care matching grants under chapter 28B.135 RCW.

(10) $500,000 of the general fund—state appropriation for fiscal year 2008 and $500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for implementation of Engrossed Substitute House Bill No. 1179 (state need grant). State need grants provided to students enrolled in just three to

five credit-bearing quarter credits, or the equivalent semester credits, shall not exceed the amounts appropriated in this subsection. By November 1 of each year, the board shall report to the office of financial management and to the operating budget committees of the house of representatives and senate on the number of eligible but unserved students enrolled in just three to five quarterly credits, or the semester equivalent, and the estimated cost of serving them. If the bill is not enacted by June 30, 2007, the amounts provided in this subsection shall lapse.

(11) $5,000,000 of the education legacy trust account appropriation is provided solely to implement Engrossed Second Substitute House Bill No. 1779 (GET ready for math and science). If the bill is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(12) $1,250,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the health professional scholarship and loan program. The funds provided in this subsection (a) shall be prioritized for health care deliver sites demonstrating a commitment to serving the uninsured; and (b) shall be allocated between loan repayments and scholarships proportional to current program allocations.

Sec. 611. 2008 c 329 s 614 (uncodified) is amended to read as follows:

FOR THE WORK FORCE TRAINING AND EDUCATION COORDINATING BOARD

General Fund—State Appropriation (FY 2008) $1,757,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$1,736,000~~))
$1,698,000
General Fund—Federal Appropriation . . . . . ((~~$53,996,000~~))
$53,995,000
TOTAL APPROPRIATION . . . . . ((~~$57,489,000~~))
$57,450,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $340,000 of the general fund—state appropriation for fiscal year 2008 and $340,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the board to:

(a) Allocate grants on a competitive basis to establish and support industry skill panels. Grant recipients shall provide an employer match of at least twenty-five percent, and identify work force strategies to benefit employers and workers across the industry; and

(b) Establish industry skill panel standards that identify the expectations for industry skill panel products and services.

(2) $53,000 of the general fund—state appropriation for fiscal year 2008 and $53,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to improve the oversight of private vocational and career schools.

(3) The appropriations in this section include specific funding to implement Substitute Senate Bill No. 5254 (industry skills panels) and Substitute Senate Bill No. 6261 (adult youth).

(4) The appropriations in this section include sufficient funds to implement section 2 of Engrossed Substitute Senate Bill No. 6295 (workplace e-learning).

Sec. 612. 2008 c 329 s 615 (uncodified) is amended to read as follows:

FOR THE SPOKANE INTERCOLLEGIATE RESEARCH AND TECHNOLOGY INSTITUTE

General Fund—State Appropriation (FY 2008) $1,718,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$1,745,000~~))
$1,668,000
TOTAL APPROPRIATION . . . . . ((~~$3,463,000~~))
$3,386,000

Sec. 613. 2008 c 329 s 616 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF EARLY LEARNING

General Fund—State Appropriation (FY 2008) $62,362,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$76,304,000~~))
$69,120,000
General Fund—Federal Appropriation $192,192,000
General Fund—Private/Local Appropriation $6,000
TOTAL APPROPRIATION . . . . . ((~~$330,864,000~~))
$323,680,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $47,919,000 of the general fund—state appropriation for fiscal year 2008 and $56,437,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for early childhood education and assistance program services.

(a) Of these amounts, $10,284,000 is a portion of the biennial amount of state matching dollars required to receive federal child care and development fund grant dollars.

(b) Within the amounts provided in this subsection (1), the department shall increase the number of children receiving early childhood education and assistance program services by 2,250 slots.

(c) Within the amounts provided in this subsection (1), the department shall increase the minimum provider per slot payment to $6,500 in fiscal year 2008. Any provider receiving slot payments higher than $6,500 shall receive a 2.0 percent vendor rate increase in fiscal year 2008. All providers shall receive a 2.0 percent vendor rate increase in fiscal year 2009.

(2) $775,000 of the general fund—state appropriation for fiscal year 2008 and ((~~$4,225,000~~)) $1,825,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to: (a) Develop a quality rating and improvement system; and (b) pilot the quality rating and improvement system in multiple locations. Four of the pilot sites are to be located within the following counties: Spokane, Kitsap, King, and Yakima. The department shall analyze and evaluate the pilot sites and report initial findings to the legislature by December 1, 2008. Prior to statewide implementation of the quality rating and improvement system, the department of early learning shall present the system to the legislature and the legislature shall formally approve the implementation of the system through the omnibus appropriations act or by statute or concurrent resolution.

(3) $850,000 of the general fund—state appropriation for fiscal year 2008 and $850,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for the department to contract for child care referral services.

(4) $1,200,000 of the general fund—state appropriation for fiscal year 2008 and $800,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to develop and provide culturally relevant supports for parents, family, and other caregivers. This includes funding for the department to conduct a random sample survey of parents to determine the types of early learning services and materials parents are interested in receiving from the state. The department shall report the findings to the appropriate policy and fiscal committees of the legislature by October 1, 2008.

(5) $250,000 of the general fund—state appropriation for fiscal year 2008 and $250,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a child care consultation pilot program linking child care providers with evidence-based and best practice resources regarding caring for infants and young children who present behavior concerns.

(6) $500,000 of the general fund—state appropriation for fiscal year 2008 and $500,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to expand the child care career and wage ladder program created by chapter 507, Laws of 2005.

(7) $172,000 of the general fund—state appropriation for fiscal year 2008 is provided solely for the department to purchase licensing capability from the department of social and health services through the statewide automated child welfare information system.

(8) $1,100,000 of the general fund—state appropriation for fiscal year 2008 and $1,100,000 of the general fund—state appropriation for fiscal year 2009 are provided solely for a childcare grant program for public community colleges and public universities. A community college or university that employs collectively bargained staff to operate childcare programs may apply for up to $25,000 per year from the department per each type of the following programs: Head start, childcare, early childhood assistance and education. The funding shall only be provided for salaries for collectively bargained employees.

(9) Beginning October 1, 2007, the department shall be the lead agency for and recipient of the federal child care and development fund grant. Amounts within this grant shall be used to fund child care licensing, quality initiatives, agency administration, and other costs associated with child care subsidies. The department shall transfer a portion of this grant to the department of social and health services to partially fund the child care subsidies paid by the department of social and health services on behalf of the department of early learning.

(10) Prior to the development of an early learning information system, the department shall submit to the education and fiscal committees of the legislature a completed feasibility study and a proposal approved by the department of information systems and the information services board. The department shall ensure that any proposal for the early learning information system includes the cost for modifying the system as a result of licensing rule changes and implementation of the quality rating and improvement system.

(11) ((~~$250,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for implementation of Second Substitute House Bill No. 3168 (Washington head start program). If the bill is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.~~

~~(12)~~))) The department, in conjunction with the early learning advisory council, shall report by June 30, 2009, to the governor and the appropriate committees of the legislature regarding the following:

(a) Administration of the state training and registry system, including annual expenditures, participants, and average hours of training provided per participant; and

(b) An evaluation of the child care resource and referral network in providing information to parents and training and technical assistance to child care providers.

(((~~(13)~~))) (12) The department shall use child care development fund money to satisfy the federal audit requirement of the improper payments act (IPIA) of 2002. In accordance with the IPIA's rules, the money spent on the audits will not count against the five percent state limit on administrative expenditures.

(((~~(14)~~))) (13) $150,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the department of early learning to work with the office of the superintendent of public instruction, and collaborate with thrive by five Washington, to study and make recommendations regarding the implementation of a statewide kindergarten entry assessment. The department and the office of the superintendent of public instruction shall jointly submit a report with recommendations for implementing the kindergarten entry assessment to the governor and the appropriate committees of the legislature by December 15, 2008. In the study and development of the recommendations, the department shall:

(a) Consult with early learning experts, including research and educator associations, early learning and kindergarten teachers, and Washington Indian tribes;

(b) Identify a preferred kindergarten entry assessment based on research and examples of other assessments, and which is sensitive to cultural and socioeconomic differences influencing the development of young children;

(c) Recommend a plan for the use of the assessment in a pilot phase and a voluntary use phase, and recommend a time certain when school districts must offer the assessment;

(d) Recommend how to report the results of the assessment to parents, the office of the superintendent of public instruction, and the department of early learning in a common format, and for a methodology for conducting the assessments;

(e) Analyze how the assessment could be used to improve instruction for individual students entering kindergarten and identify whether and how the assessment results could be used to improve the early learning and K-12 systems, including the transition between the systems;

(f) Identify the costs of the assessment, including the time required to administer the assessment; and

(g) Recommend how to ensure that the assessment shall not be used to screen or otherwise preclude children from entering kindergarten if they are otherwise eligible.

(((~~(15)~~))) (14) $120,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for encouraging private match investment for innovative, existing local early learning coalitions to achieve one or more of the following:

(a) Increase communities' abilities to implement their business plans for comprehensive local and regional early learning systems;

(b) Involve parents in their children's education;

(c) Enhance coordination between the early childhood and K-12 system; or

(d) Improve training and support for raising the level of child care givers' professional skills to ensure that children are healthy and ready to succeed in school and life.

Sec. 614. 2008 c 329 s 617 (uncodified) is amended to read as follows:

FOR THE STATE SCHOOL FOR THE BLIND

General Fund—State Appropriation (FY 2008) $5,969,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$6,105,000~~))
$6,069,000
General Fund—Private/Local Appropriation $1,561,000
TOTAL APPROPRIATION . . . . . ((~~$13,635,000~~))
$13,599,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $10,000 of the general fund—state appropriation for fiscal year 2008 and $40,000 of the general fund—state appropriation for fiscal year 2009 are provided solely to defend the state's interpretive position in the case of *Delyria & Koch v. Washington State School for the Blind*.

(2) $5,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for increasing salaries for certificated instructional staff by an average of one-half of one percent effective July 1, 2008.

Sec. 615. 2008 c 329 s 618 (uncodified) is amended to read as follows:

FOR THE STATE SCHOOL FOR THE DEAF

General Fund—State Appropriation (FY 2008) $8,858,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$8,915,000~~))
$8,764,000
General Fund—Private/Local Appropriation $316,000
TOTAL APPROPRIATION . . . . . ((~~$18,089,000~~))
$17,938,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $84,000 of the general fund—private/local appropriation for fiscal year 2009 is provided solely for the operation of the shared reading video outreach program. The school for the deaf shall provide this service to the extent it is funded by contracts with school districts and educational service districts.

(2) $9,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for increasing salaries for certificated instructional staff by an average of one-half of one percent effective July 1, 2008.

Sec. 616. 2008 c 329 s 619 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE ARTS COMMISSION

General Fund—State Appropriation (FY 2008) $2,548,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$2,541,000~~))
$2,454,000

General Fund—Federal Appropriation $1,382,000
General Fund—Private/Local Appropriation $154,000
TOTAL APPROPRIATION . . . . . ((~~$6,625,000~~))
$6,538,000

Sec. 617. 2008 c 329 s 620 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE HISTORICAL SOCIETY
General Fund—State Appropriation (FY 2008) $3,558,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$3,798,000~~))
$3,696,000
TOTAL APPROPRIATION . . . . . ((~~$7,356,000~~))
$7,254,000

The appropriations in this section are subject to the following conditions and limitations: $255,000 of the general fund—state appropriation for fiscal year 2009 is provided solely for the Washington state Holocaust education resource center for the purposes of preserving Washington's historical connection to the Holocaust and expanding understanding of the Holocaust and genocide. Grant moneys may be used to develop and disseminate education and multimedia curriculum resources; provide teacher training; acquire and maintain primary source materials and Holocaust artifacts; collect and preserve oral accounts from Washington state Holocaust survivors, liberators, and witnesses; and build organizational capacity.

Sec. 618. 2008 c 329 s 621 (uncodified) is amended to read as follows:

FOR THE EASTERN WASHINGTON STATE HISTORICAL SOCIETY
General Fund—State Appropriation (FY 2008) $1,918,000
General Fund—State Appropriation (FY 2009) . . . . . ((~~$2,069,000~~))
$2,016,000
TOTAL APPROPRIATION . . . . . ((~~$3,987,000~~))
$3,934,000

The appropriations in this section are subject to the following conditions and limitations: $88,000 of the general fund—state appropriation for fiscal year 2009 is provided solely to catalog the American Indian collection.

PART VII
SPECIAL APPROPRIATIONS

Sec. 701. 2007 c 522 s 709 (uncodified) is amended to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT—SEX OFFENDER SENTENCING IMPACT
General Fund—State Appropriation (FY 2008) $1,188,000
((~~General Fund—State Appropriation (FY 2009). . . . . $1,509,000~~
~~TOTAL APPROPRIATION . . . . . $2,697,000~~))

The appropriations in this section are subject to the following conditions and limitations: The appropriations are provided solely for distribution to counties to pay for the costs of implementing chapter 176, Laws of 2004, which makes amendments to the special sex offender sentencing alternative.

Sec. 702. 2007 c 522 s 715 (uncodified) is amended to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT—READING ACHIEVEMENT ACCOUNT

General Fund—State Appropriation (FY 2008) $525,000
((~~General Fund—State Appropriation (FY 2009). . . . . $525,000~~
~~TOTAL APPROPRIATION. . . . . $1,050,000~~))

The appropriation((~~s~~)) in this section ((~~are~~)) is subject to the following conditions and limitations: The appropriation((~~s are~~)) is provided solely for expenditure into the reading achievement account.

Sec. 703. 2008 c 329 s 708 (uncodified) is amended to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT—WATER QUALITY CAPITAL ACCOUNT

Water Quality Account—State Appropriation
(FY 2008). $19,274,000
Water Quality Account—State Appropriation
(FY 2009). . . . . ((~~$3,000,000~~))
$2,000,000
TOTAL APPROPRIATION . . . . . ((~~$22,274,000~~))
$21,274,000

The appropriations in this section ((~~is~~)) are subject to the following conditions and limitations: The appropriations ((~~is~~)) are provided solely for expenditure into the water quality capital account.

Sec. 704. 2008 c 3 s 4 (uncodified) is amended to read as follows:

(1) The sum of seven hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2008, from the general fund to the department of financial institutions for homeownership prepurchase outreach and education and postpurchase counseling and support.

(2) The sum of ((~~eight hundred~~)) seven hundred eighty-two thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 2009, from the general fund to the department of financial institutions for homeownership prepurchase outreach and education and postpurchase counseling and support.

NEW SECTION. **Sec. 705. AGENCY ALLOTMENT REDUCTIONS IN OTHER FUNDS.** The office of financial management shall reduce allotments for all agencies for salaries, wages, fringe benefits, personal service contracts, equipment, travel, and training by $13,305,000 from 2007-09 biennial appropriations or allotments to reflect the elimination of expenditures required by sections 1 through 9 of Engrossed Substitute Senate Bill No. 5460 (administrative cost of state government) as identified in LEAP document BT2-2009, a computerized tabulation developed by the legislative evaluation and accountability program committee on February 11, 2009. After notifying the legislative fiscal committees, the office of financial management may adjust on an exceptional basis the reduction amounts for particular agencies if required for the critically necessary work of any agency. The allotment reductions under this section shall be placed in unallotted status and remain unexpended.

PART VIII
OTHER TRANSFERS AND APPROPRIATIONS

Sec. 801. 2008 c 329 s 801 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—STATE REVENUES FOR DISTRIBUTION

General Fund Appropriation for fire insurance premium distributions $7,654,000

General Fund Appropriation for public utility district excise tax distributions $47,557,000

General Fund Appropriation for prosecuting attorney distributions. Of this amount, $903,000 is provided solely for the implementation of Substitute Senate Bill No. 6297 (prosecuting attorney salaries). If the bill is not enacted by June 30, 2008, the amount provided shall lapse. $4,902,000

General Fund Appropriation for boating safety and education distributions $4,400,000

General Fund Appropriation for other tax distributions $48,000

General Fund Appropriation for habitat conservation program distributions $1,245,000

Columbia River Water Delivery Account Appropriation for the Confederated Tribes of the Colville Reservation. This amount is provided solely for implementation of Engrossed Substitute Senate Bill No. 6874 (Columbia River water delivery). If the bill is not enacted by June 30, 2008, this amount shall lapse. $3,775,000

Columbia River Water Delivery Account Appropriation for the Spokane Tribe of Indians. This amount is provided solely for implementation of Engrossed Substitute Senate Bill No. 6874 (Columbia River water delivery). If the bill is not enacted by June 30, 2008, this amount shall lapse. $2,250,000

Death Investigations Account Appropriation for distribution to counties for publicly funded autopsies $2,192,000

Aquatic Lands Enhancement Account Appropriation for harbor improvement revenue distribution $148,000

Timber Tax Distribution Account Appropriation for distribution to "timber" counties $77,753,000

County Criminal Justice Assistance Appropriation $62,127,000

Municipal Criminal Justice Assistance Appropriation. $24,636,000
Liquor Excise Tax Account Appropriation for liquor excise tax distribution $49,397,000
Liquor Revolving Account Appropriation for liquor profits distribution $82,148,000
City-County Assistance Account Appropriation for local government financial assistance distribution; PROVIDED: That the legislature, in making this appropriation for distribution under the formula prescribed in RCW 43.08.290 for the 2007-09 biennium, ratifies and approves the prior distributions, as certified by the department of revenue to the state treasurer, made for the 2005-07 biennium from the appropriation in section 801, chapter 372, Laws of 2006 as amended by section 1701, chapter 522, Laws of 2007 . . . . . $29,865,000
Streamline Sales and Use Tax Account Appropriation for distribution to local taxing jurisdictions to mitigate the unintended revenue redistribution effect of the sourcing law changes. . . . . ((~~$31,600,000~~)) $22,980,000

TOTAL APPROPRIATION. . . . . ((~~$431,697,000~~)) $423,077,000

The total expenditures from the state treasury under the appropriations in this section shall not exceed the funds available under statutory distributions for the stated purposes.

Sec. 802. 2008 c 329 s 802 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—TRANSFERS.

State Treasurer's Service Account: For transfer to the state general fund, $10,000,000 for fiscal year 2008 and ((~~$21,000,000~~)) $31,000,000 for fiscal year 2009 . . . . . ((~~$31,000,000~~)) $41,000,000
Education Legacy Trust Account: For transfer to the state general fund for fiscal year 2009. . . . . $67,000,000
Pension Funding Stabilization Account: For transfer to the state general fund for fiscal year 2009 . . . . . $10,000,000
Economic Development Strategic Reserve Account: For transfer to the state general fund for fiscal year 2009 . . . . . $4,000,000
State Convention and Trade Center Operations Account: For transfer to the state general fund on June 30, 2009 . . . . . $5,000,000

State Convention and Trade Center Capital Account:
For transfer to the state general fund on
June 30, 2009 . . . . . $52,000,000
After the transfers in this section are made from the state convention and trade center operations and capital accounts, these accounts will have sufficient funds for: (1) A ten million dollar requirement for the retrofit of the museum of history and industry; (2) the requirements of RCW 67.40.040(5) and 67.40.040(6); and (3) a sufficient capital reserve. After the transfer is made, the capital reserve may be applicable for payment of debt service or operating shortfalls.

Department of Retirement Systems Expense Account:
For transfer to the state general fund for
fiscal year 2009 . . . . . ((~~$5,000,000~~))
$11,200,000

General Fund: For transfer to the water quality account, $12,200,000 for fiscal year 2008 and $12,201,000 for fiscal year 2009 . . . . . $24,401,000

Education Legacy Trust Account: For transfer to the student achievement account for fiscal year 2009 . . . . . $90,800,000

Drinking Water Assistance Account: For transfer to the drinking water assistance repayment account, an amount not to exceed $25,000,000

Public Works Assistance Account: For transfer to the drinking water assistance account, $7,200,000 for fiscal year 2008 and $3,600,000 for fiscal year 2009 . . . . . $10,800,000

Public Works Assistance Account: For transfer to the job development account, $25,000,000 for fiscal year 2008 and $25,000,000 for fiscal year 2009 . . . . . $50,000,000

State Toxics Control Account: For transfer to the oil spill prevention account for fiscal year 2009 . . . . . $2,400,000

Tobacco Settlement Account: For transfer to the health services account, in an amount not to exceed the actual amount of the annual base payment to the tobacco settlement account $168,111,000

Tobacco Settlement Account: For transfer to the life sciences discovery fund, in an amount not to exceed the actual amount of the strategic contribution supplemental payment to the tobacco settlement account $70,000,000

Health Services Account: For transfer to the water quality account, $3,942,500 for fiscal year 2008 and $3,942,500 for fiscal year 2009 . . . . . $7,885,000
Health Services Account: For transfer to the violence reduction and drug enforcement account, $3,466,000 for fiscal year 2008 and $3,466,000 for fiscal year 2009 . . . . . $6,932,000
Health Services Account: For transfer to the tobacco prevention and control account, $10,523,000 for fiscal year 2008 and $10,168,000 for fiscal year 2009 . . . . . $20,691,000
General Fund: For transfer to the streamline sales and use tax account for fiscal year 2009 . . . . . $31,600,000
General Fund: For transfer to the health services account for fiscal year 2009 . . . . . $53,000,000
Nisqually Earthquake Account: For transfer to the disaster response account for fiscal year 2008. . . . . $3,000,000
Public Safety and Education Account: For transfer to the state general fund for fiscal year 2009 . . . . . $6,000,000
Reading Achievement Account: For transfer to the state general fund, an amount not to exceed the actual balance of the reading achievement account. This transfer is intended to liquidate the reading achievement account $1,691,000
Family Leave Insurance Account: For transfer to the state general fund, an amount not to exceed the actual balance of the family leave insurance account on the effective date of this section. $4,458,000
Streamline Sales Tax Account: For transfer to the state general fund on June 30, 2009, an amount not to exceed the actual balance of the streamline sales tax account. $8,620,000
Savings Incentive Account: For transfer to the state general fund for fiscal year 2009 . . . . . $9,204,000
Education Savings Account: For transfer to the state general fund for fiscal year 2009 . . . . . $51,088,000

PART IX
MISCELLANEOUS

Sec. 901. RCW 28A.505.220 and 2008 c 170 s 401 are each amended to read as follows:

(1) Total distributions from the student achievement fund to each school district shall be based upon the average number of full-time equivalent students in the school district during the previous school year as reported to the office of the superintendent of public instruction by August 31st of the previous school year. The superintendent of public instruction shall ensure that moneys generated by skill center students are returned to skill centers.

(2) The allocation rate per full-time equivalent student shall be three hundred dollars in the 2005-06 school year, three hundred seventy-five dollars in the 2006-07 school year, and four hundred fifty dollars in the 2007-08 school year. For each subsequent school year, the amount allocated per full-time equivalent student shall be adjusted for inflation as defined in RCW 43.135.025(8). These allocations per full-time equivalent student from the student achievement fund shall be supported from the following sources:

(a) Distributions from state property tax proceeds deposited into the student achievement fund under RCW 84.52.068; and

(b) Distributions from the education legacy trust account created in RCW 83.100.230.

(3) Any funds deposited in the student achievement fund under RCW 43.135.045 shall be allocated to school districts on a one-time basis using a rate per full-time equivalent student. These funds are provided in addition to any amounts allocated in subsection (2) of this section.

(4) The school district annual amounts as defined in subsection (2) of this section shall be distributed on the monthly apportionment schedule as defined in RCW 28A.510.250.

(5) However, during the 2008-09 school year, the school district annual amounts as defined in this section shall be distributed as follows:

September:	9.0 percent;
October:	9.0 percent;
November:	5.5 percent;
December:	9.0 percent;
January:	9.0 percent;
February:	9.0 percent;
March:	9.0 percent;
April:	9.0 percent;
May:	5.5 percent;
June:	4.2 percent;
July:	11.8 percent; and
August:	10.0 percent.

Sec. 902. RCW 43.79.460 and 1998 c 302 s 1 are each amended to read as follows:

(1) The savings incentive account is created in the custody of the state treasurer. The account shall consist of all moneys appropriated to the account by the legislature. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures from the account.

(2) Within the savings incentive account, the state treasurer may create subaccounts to be credited with incentive savings attributable to individual state agencies, as determined by the office of financial management in consultation with the legislative fiscal committees. Moneys deposited in the subaccounts may be expended only on the authorization of the agency's executive head or designee and only for the purpose of one-time expenditures to improve the quality, efficiency, and effectiveness of services to customers of the state, such as one-time expenditures for employee training, employee incentives, technology improvements, new work processes, or performance measurement. Funds may not be expended from the account to establish new programs or services, expand

existing programs or services, or incur ongoing costs that would require future expenditures.

(3) For purposes of this section, "incentive savings" means state general fund appropriations that are unspent as of June 30th of a fiscal year, excluding any amounts included in across-the-board reductions under RCW 43.88.110 and excluding unspent appropriations for:

(a) Caseload and enrollment in entitlement programs, except to the extent that an agency has clearly demonstrated that efficiencies have been achieved in the administration of the entitlement program. "Entitlement program," as used in this section, includes programs for which specific sums of money are appropriated for pass-through to third parties or other entities;

(b) Enrollments in state institutions of higher education;

(c) A specific amount contained in a condition or limitation to an appropriation in the biennial appropriations act, if the agency did not achieve the specific purpose or objective of the condition or limitation;

(d) Debt service on state obligations; and

(e) State retirement system obligations.

(4) The office of ((~~fiscal [financial]~~)) financial management, after consulting with the legislative fiscal committees, shall report to the treasurer the amount of savings incentives achieved. By December 1, 1998, and each December 1st thereafter, the office of financial management shall submit a report to the fiscal committees of the legislature on the implementation of this section. The report shall (a) evaluate the impact of this section on agency reversions and end-of-biennium expenditure patterns, and (b) itemize agency expenditures from the savings recovery account. The office of financial management is relieved from having to submit a report by December 1, 2008.

(5) For fiscal year 2009, the legislature may transfer from the savings incentive account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent state general fund appropriations for fiscal year 2008.

Sec. 903. RCW 43.79.465 and 2004 c 275 s 64 are each amended to read as follows:

The education savings account is created in the state treasury. The account shall consist of all moneys appropriated to the account by the legislature.

(1) Ten percent of legislative appropriations to the education savings account shall be distributed as follows: (a) Fifty percent to the distinguished professorship trust fund under RCW 28B.76.565; (b) seventeen percent to the graduate fellowship trust fund under RCW 28B.76.610; and (c) thirty-three percent to the college faculty awards trust fund under RCW 28B.50.837.

(2) The remaining moneys in the education savings account may be appropriated solely for (a) common school construction projects that are eligible for funding from the common school construction account, (b) technology improvements in the common schools, ((~~and~~)) (c) during the 2001-03 fiscal biennium, technology improvements in public higher education institutions, and (d) during the 2007-2009 fiscal biennium, the legislature may transfer from the education savings account to the state general fund such amounts as reflect the excess fund balance of the account attributable to unspent state general fund appropriations for fiscal year 2008.

Sec. 904. RCW 43.79.485 and 2006 c 120 s 1 are each amended to read as follows:

(1) The reading achievement account is created in the custody of the state treasurer. The purposes of the account are to establish a depository for state and other funds made available for reading achievement, and to ensure that unspent amounts appropriated for reading achievement continue to be available for that purpose in future biennia.

(2) The director of early learning shall deposit in the account all appropriations to the department and nonstate moneys received by the department for reading achievement, including reading foundations and implementation of research-based reading models.

Moneys deposited in the account do not lapse at the close of the fiscal period for which they were appropriated. Both during and after the fiscal period in which moneys were deposited in the account, the director may expend moneys in the account only for the purposes for which they were appropriated, and the expenditures are subject to any other conditions or limitations placed on the appropriations.

(3) Expenditures from the account may be used only for reading achievement, including reading foundations, implementation of research-based reading models, and grants to school districts. <u>During the 2007-2009 fiscal biennium, the legislature may transfer from the reading achievement account to the state general fund such amounts as reflect the excess fund balance of the account.</u>

(4) Only the director of early learning 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.

Sec. 905. RCW 49.86.170 and 2007 c 357 s 19 are each amended to read as follows:

The family leave insurance account is created in the custody of the state treasurer. Expenditures from the account may be used only for the purposes of the family leave insurance program. Only the director of the department of labor and industries or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW. An appropriation is required for administrative expenses, but not for benefit payments. <u>During the 2007-2009 fiscal biennium, the legislature may transfer from the family leave insurance account to the state general fund such amounts as reflect the excess fund balance of the account.</u>

Sec. 906. RCW 50.16.010 and 2008 c 329 s 915 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, an administrative contingency fund, and a federal interest payment 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) 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;

(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) During the 2007-2009 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 the (i) 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 (ii) reemployment services such as business and project development assistance, local economic development capacity building, and local economic development financial assistance at the department of community, trade, and economic development, and the remaining appropriation 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.

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. 907. RCW 82.14.495 and 2007 c 6 s 902 are each amended to read as follows:

(1) The streamlined sales and use tax mitigation account is created in the state treasury. The state treasurer shall transfer into the account from the general fund amounts as directed in RCW 82.14.500. Expenditures from the account may be used only for the purpose of mitigating the negative fiscal impacts to local taxing jurisdictions as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020. During the 2007-2009 fiscal biennium, the legislature may transfer from the streamlined sales and use tax mitigation account to the state general fund such amounts as reflect the excess fund balance of the account.

(2) Beginning July 1, 2008, the state treasurer, as directed by the department, shall distribute the funds in the streamlined sales and use tax mitigation account to local taxing jurisdictions in accordance with RCW 82.14.500.

(3) The definitions in this subsection apply throughout this section and RCW 82.14.390 and 82.14.500.

(a) "Agreement" means the same as in RCW 82.32.020.

(b) "Local taxing jurisdiction" means counties, cities, transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under RCW 82.14.440, and regional transit authorities under chapter 81.112 RCW, that impose a sales and use tax.

(c) "Loss" or "losses" means the local sales and use tax revenue reduction to a local taxing jurisdiction resulting from the sourcing provisions in RCW ((~~82.14.020~~)) 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020.

(d) "Net loss" or "net losses" means a loss offset by any voluntary compliance revenue.

(e) "Voluntary compliance revenue" means the local sales tax revenue gain to each local taxing jurisdiction reported to the department from persons registering through the central registration system authorized under the agreement.

(f) "Working day" has the same meaning as in RCW 82.45.180.

Sec. 908. RCW 84.52.0531 and 2006 c 119 s 2 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) and (c) of this subsection minus (d) 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 (5) 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) 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 (5) 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 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 2011, 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) 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 84.52.068. The office of the superintendent of public instruction shall offset the amount added to a district's levy base pursuant to this subsection (4)(a) by any additional per student allocations included in a district's levy base pursuant to the enactment of an initiative to the people subsequent to June 10, 2004; and

(b) The difference between the allocations the district would have received the prior school year had RCW 28A.400.205 not been amended by chapter 20, Laws of 2003 1st sp. sess. and the allocations the district actually received the prior school year pursuant to RCW 28A.400.205. The office of the superintendent of public instruction shall offset the amount added to a district's levy base pursuant to this subsection (4)(b) by any additional salary increase allocations included in a district's levy base pursuant to the enactment of an initiative to the people subsequent to June 10, 2004.

(5) A district's maximum levy percentage shall be twenty-two percent in 1998 and twenty-four percent in 1999 and every year thereafter; plus, for qualifying districts, the grandfathered percentage determined as follows:

(a) For 1997, the difference between the district's 1993 maximum levy percentage and twenty percent; and

(b) For 1998 and thereafter, the percentage calculated as follows:

(i) Multiply the grandfathered percentage for the prior year times the district's levy base determined under subsection (3) of this section;

(ii) Reduce the result of (b)(i) of this subsection by any levy reduction funds as defined in subsection (6) of this section that are to be allocated to the district for the current school year;

(iii) Divide the result of (b)(ii) of this subsection by the district's levy base; and

(iv) Take the greater of zero or the percentage calculated in (b)(iii) of this subsection.

(6) "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.

(7) For the purposes of this section, "prior school year" means the most recent school year completed prior to the year in which the levies are to be collected.

(8) For the purposes of this section, "current school year" means the year immediately following the prior school year.

(9) Funds collected from transportation vehicle fund tax levies shall not be subject to the levy limitations in this section.

(10) The superintendent of public instruction shall develop rules and regulations and inform school districts of the pertinent data necessary to carry out the provisions of this section.

(11) 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. 909.** Section 908 of this act expires January 1, 2012.

NEW SECTION. **Sec. 910.** 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. 911.** 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.

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Passed by the House February 18, 2009.
Passed by the Senate February 13, 2009.
Approved by the Governor February 18, 2009.
Filed in Office of Secretary of State February 18, 2009.

CHAPTER 5

[Engrossed Substitute Senate Bill 5460]

ADMINISTRATIVE COST OF STATE GOVERNMENT

AN ACT Relating to reducing the administrative cost of state government during the 2007-2009 and 2009-2011 fiscal biennia; amending RCW 41.06.070, 41.06.133, 41.06.500, 43.03.030, and 43.03.040; creating new sections; and declaring an emergency.

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

Sec. 1. RCW 41.06.070 and 2002 c 354 s 209 are each amended to read as follows:

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

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

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

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

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

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

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

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

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

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

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

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

(j) Assistant attorneys general;

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

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

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

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

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

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

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

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

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

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

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

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

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

(x) All employees of the marine employees' commission;

(y) Staff employed by the department of community, trade, and economic development to administer energy policy functions and manage energy site evaluation council activities under RCW 43.21F.045(2)(m);

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

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

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial

responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

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

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

(3) In addition to the exemptions specifically provided by this chapter, the director of personnel may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the director of personnel stating the reasons for requesting such exemptions. The director of personnel shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the director determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the director of personnel shall grant the request and such determination shall be final as to any decision made before July 1, 1993. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor.

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

For the twelve months following the effective date of this section, a salary or wage increase shall not be granted to any position exempt from classification under this chapter.

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

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

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

Sec. 2. RCW 41.06.133 and 2002 c 354 s 204 are each amended to read as follows:

The director shall adopt rules, consistent with the purposes and provisions of this chapter and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

(1) The reduction, dismissal, suspension, or demotion of an employee;

(2) Training and career development;

(3) Probationary periods of six to twelve months and rejections of probationary employees, depending on the job requirements of the class, except that entry level state park rangers shall serve a probationary period of twelve months;

(4) Transfers;

(5) Promotional preferences;

(6) Sick leaves and vacations;

(7) Hours of work;

(8) Layoffs when necessary and subsequent reemployment, except for the financial basis for layoffs;

(9) The number of names to be certified for vacancies;

(10) Adoption and revision of a state salary schedule to reflect the prevailing rates in Washington state private industries and other governmental units. The rates in the salary schedules or plans shall be increased if necessary to attain comparable worth under an implementation plan under RCW 41.06.155 and, for institutions of higher education and related boards, shall be competitive for positions of a similar nature in the state or the locality in which an institution of higher education or related board is located. Such adoption and revision is subject to approval by the director of financial management in accordance with chapter 43.88 RCW;

(11) Increment increases within the series of steps for each pay grade based on length of service for all employees whose standards of performance are such as to permit them to retain job status in the classified service. For the twelve months following the effective date of this section, a salary or wage increase shall not be granted to any exempt position under this chapter;

(12) Optional lump sum relocation compensation approved by the agency director, whenever it is reasonably necessary that a person make a domiciliary move in accepting a transfer or other employment with the state. An agency must provide lump sum compensation within existing resources. If the person

receiving the relocation payment terminates or causes termination with the state, for reasons other than layoff, disability separation, or other good cause as determined by an agency director, within one year of the date of the employment, the state is entitled to reimbursement of the lump sum compensation from the person;

(13) Providing for veteran's preference as required by existing statutes, with recognition of preference in regard to layoffs and subsequent reemployment for veterans and their surviving spouses by giving such eligible veterans and their surviving spouses additional credit in computing their seniority by adding to their unbroken state service, as defined by the director, the veteran's service in the military not to exceed five years. For the purposes of this section, "veteran" means any person who has one or more years of active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government and who, upon termination of such service, has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge shall be given. However, the surviving spouse of a veteran is entitled to the benefits of this section regardless of the veteran's length of active military service. For the purposes of this section, "veteran" does not include any person who has voluntarily retired with twenty or more years of active military service and whose military retirement pay is in excess of five hundred dollars per month.

Rules adopted under this section by the director shall provide for local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the director.

Rules adopted by the director under this section may be superseded by the provisions of a collective bargaining agreement negotiated under RCW 41.80.001 and 41.80.010 through 41.80.130. The supersession of such rules shall only affect employees in the respective collective bargaining units.

Sec. 3. RCW 41.06.500 and 2002 c 354 s 243 are each amended to read as follows:

(1) Except as provided in RCW 41.06.070, notwithstanding any other provisions of this chapter, the director is authorized to adopt, after consultation with state agencies and employee organizations, rules for managers as defined in RCW 41.06.022. These rules shall not apply to managers employed by institutions of higher education or related boards or whose positions are exempt. The rules shall govern recruitment, appointment, classification and allocation of positions, examination, training and career development, hours of work, probation, certification, compensation, transfer, affirmative action, promotion, layoff, reemployment, performance appraisals, discipline, and any and all other personnel practices for managers. These rules shall be separate from rules adopted for other employees, and to the extent that the rules adopted under this section apply only to managers shall take precedence over rules adopted for other employees, and are not subject to review by the board.

(2) In establishing rules for managers, the director shall adhere to the following goals:

(a) Development of a simplified classification system that facilitates movement of managers between agencies and promotes upward mobility;

(b) Creation of a compensation system that provides flexibility in setting and changing salaries, and shall require review and approval by the director in the case of any salary changes greater than five percent proposed for any group of employees;

(c) Establishment of a performance appraisal system that emphasizes individual accountability for program results and efficient management of resources; effective planning, organization, and communication skills; valuing and managing workplace diversity; development of leadership and interpersonal abilities; and employee development;

(d) Strengthening management training and career development programs that build critical management knowledge, skills, and abilities; focusing on managing and valuing workplace diversity; empowering employees by enabling them to share in workplace decision making and to be innovative, willing to take risks, and able to accept and deal with change; promoting a workplace where the overall focus is on the recipient of the government services and how these services can be improved; and enhancing mobility and career advancement opportunities;

(e) Permitting flexible recruitment and hiring procedures that enable agencies to compete effectively with other employers, both public and private, for managers with appropriate skills and training; allowing consideration of all qualified candidates for positions as managers; and achieving affirmative action goals and diversity in the workplace;

(f) Providing that managers may only be reduced, dismissed, suspended, or demoted for cause; and

(g) Facilitating decentralized and regional administration.

(3) For the twelve months following the effective date of this section, a salary or wage increase shall not be granted to any position under this section.

Sec. 4. RCW 43.03.030 and 1965 c 8 s 43.03.030 are each amended to read as follows:

(1) Wherever the compensation of any appointive state officer or employee is fixed by statute, it may be hereafter increased or decreased in the manner provided by law for the fixing of compensation of other appointive state officers or employees; but this subsection shall not apply to the heads of state departments.

(2) Wherever the compensation of any state officer appointed by the governor, or of any employee in any office or department under the control of any such officer, is fixed by statute, such compensation may hereafter, from time to time, be changed by the governor, and he shall have power to fix such compensation at any amount not to exceed the amount fixed by statute.

(3) For the twelve months following the effective date of this section, a salary or wage increase shall not be granted to any position under this section.

Sec. 5. RCW 43.03.040 and 1993 sp.s. c 24 s 914 are each amended to read as follows:

The directors of the several departments and members of the several boards and commissions, whose salaries are fixed by the governor and the chief executive officers of the agencies named in RCW 43.03.028(2) as now or

hereafter amended shall each severally receive such salaries, payable in monthly installments, as shall be fixed by the governor or the appropriate salary fixing authority, in an amount not to exceed the recommendations of the committee on agency officials' salaries. ((~~Beginning July 1, 1993, through June 30, 1995, the salary paid to such directors and members of boards and commissions shall not exceed the amount paid as of April 1, 1993.~~)) For the twelve months following the effective date of this section, a salary or wage increase shall not be granted to any position under this section.

NEW SECTION. **Sec. 6.** STATE EMPLOYMENT. (1) From the effective date of this section until July 1, 2009, and consistent with the governor's directive dated August 4, 2008, state agencies of the legislative, executive, and judicial branches shall not establish new staff positions or fill vacant existing staff positions except as specifically authorized by this section.

(2) The following activities of state agencies are exempt from subsection (1) of this section:

(a) Direct custody, supervision, and patient care in corrections, juvenile rehabilitation, institutional care of veterans, the mentally ill, developmentally disabled, state hospitals, the special commitment center, and the schools for the blind and the deaf;

(b) Direct protective services to children and other vulnerable populations in the department of social and health services;

(c) Washington state patrol investigative services and field enforcement;

(d) Hazardous materials response and emergency cleanup;

(e) Emergency public health and patient safety response and the public health laboratory;

(f) Military operations and emergency management within the military department;

(g) Firefighting;

(h) Enforcement officers in the department of fish and wildlife, the liquor control board, the gambling commission, and the department of natural resources;

(i) Park rangers at the parks and recreation commission;

(j) Seasonal employment by natural resources agencies to the extent that employment levels do not exceed the prior fiscal year;

(k) Seasonal employment in the department of transportation maintenance programs to the extent that employment levels do not exceed the prior fiscal year;

(l) Employees hired on a seasonal basis by the department of agriculture for inspection and certification of agricultural products and for insect detection;

(m) Activities directly related to tax and fee collection, revenue generation, auditing, and recovery;

(n) In institutions of higher education, any positions directly related to academic programs, as well as positions not funded from state funds or tuition;

(o) Operations of the state lottery and liquor control board business enterprises;

(p) The unemployment insurance program of the employment security department; and

(q) Activities that are necessary to receive or maintain federal funds by the state.

(3) The exemptions specified in subsection (2) of this section do not require the establishment of new staff positions or the filling of vacant existing staff positions in the activities specified.

(4) Exceptions to this section may be granted under section 10 of this act.

NEW SECTION. **Sec. 7.** PERSONAL SERVICES CONTRACTS. From the effective date of this section until July 1, 2009, and consistent with the governor's directive dated August 4, 2008, state agencies of the legislative, executive, and judicial branches shall not enter into any contracts or other agreements for the acquisition of personal services not related to an emergency or other catastrophic event that requires government action to protect life or public safety. This section does not apply to personal services contracts or other agreements for the acquisition of personal services where the costs are funded exclusively from private or federal grants, where the costs are for tax and fee collection, where the costs are for revenue generation and auditing activities, where the costs are necessary to receive or maintain federal funds by the state, or, in institutions of higher education, where the costs are not funded from state funds or tuition. Exceptions to this section may be granted under section 10 of this act. This section does not apply to the unemployment insurance program of the employment security department.

NEW SECTION. **Sec. 8.** EQUIPMENT PURCHASES. From the effective date of this section until July 1, 2009, and consistent with the governor's directive dated August 4, 2008, state agencies of the legislative, executive, and judicial branches shall not enter into any contracts or other agreements for the acquisition of any item of equipment the cost of which exceeds five thousand dollars and is not related to an emergency or other catastrophic event that requires government action to protect life or public safety. Exceptions to this section may be granted under section 10 of this act. This section does not apply to the unemployment insurance program of the employment security department, to costs that are for tax and fee collection, for revenue generation and audit activities, or for receiving or maintaining federal funds by the state, or, in institutions of higher education, to costs not funded from state funds or tuition.

NEW SECTION. **Sec. 9.** STATE EMPLOYEE TRAVEL AND TRAINING. Consistent with the governor's directive dated August 4, 2008, state agencies of the legislative, executive, and judicial branches shall not make expenditures for the cost or reimbursement of out-of-state travel or out-of-state training by state employees where the travel or training is not related to (1) an emergency or other catastrophic event that requires government action to protect life or public safety, or (2) direct service delivery, and the travel or training occurs after the effective date of this section and before July 1, 2009. This section does not apply to travel expenditures when the costs are funded exclusively from private or federal grants. Exceptions to this section may be granted under section 10 of this act. This section does not apply to the unemployment insurance program of the employment security department, to costs that are for tax and fee collection, for revenue generation and audit activities, or for receiving or maintaining federal funds by the state, or, in institutions of higher education, to costs not funded from state funds or tuition.

NEW SECTION. **Sec. 10.** EXCEPTIONS. (1) Exceptions to sections 6 through 9 of this act may be granted for the critically necessary work of an agency as provided in this section.

(2) For agencies of the executive branch, the exceptions shall be subject to approval by the director of financial management. For agencies of the judicial branch, the exceptions shall be subject to approval of the chief justice of the supreme court. For the house of representatives and the senate, the exceptions shall be subject to approval of the chief clerk of the house of representatives and the secretary of the senate, respectively, under the direction of the senate committee on facilities and operations and the executive rules committee of the house of representatives. For other legislative agencies, the exceptions shall be subject to approval of both the chief clerk of the house of representatives and the secretary of the senate under the direction of the senate committee on facilities and operations and the executive rules committee of the house of representatives.

(3) Exceptions approved under subsection (2) of this section shall take effect no sooner than five business days following notification of the chair and ranking minority member of the ways and means committees in the house of representatives and the senate. The person approving exceptions under subsection (2) of this section shall send the exceptions to the legislature for consideration every thirty days from the effective date of this section, or earlier should volume or circumstances so necessitate.

NEW SECTION. **Sec. 11.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 12.** Captions used in this act are not any part of the law.

NEW SECTION. **Sec. 13.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate February 18, 2009.
Passed by the House February 13, 2009.
Approved by the Governor February 18, 2009.
Filed in Office of Secretary of State February 18, 2009.

CHAPTER 6

[House Bill 1113]

SCHOOL CONSTRUCTION ASSISTANCE GRANT PROGRAM—FINANCING

AN ACT Relating to financing the school construction assistance grant program; amending 2008 c 328 s 5001 (uncodified); adding a new chapter to Title 43 RCW; making an appropriation; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** For the purpose of providing funds to finance the school construction assistance grant program described and authorized by the legislature in the capital appropriations acts for the 2007-2009 and 2009-2011 fiscal biennia, and all costs incidental thereto, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the

sum of one hundred thirty-three million dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

NEW SECTION. **Sec. 2.** The proceeds from the sale of the bonds authorized in section 1 of this act shall be deposited in the state building construction account created by RCW 43.83.020. If the state finance committee deems it necessary to issue taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, the proceeds of such taxable bonds shall be transferred to the state taxable building construction account in lieu of any deposits otherwise provided by this section. The state treasurer shall submit written notice to the director of financial management if it is determined that any such transfer to the state taxable building construction account is necessary. Moneys in the account may be spent only after appropriation.

These proceeds shall be used exclusively for the purposes specified in this section and for the payment of expenses incurred in the issuance and sale of the bonds issued for the purposes of this section, and shall be administered by the office of financial management subject to legislative appropriation.

NEW SECTION. **Sec. 3.** (1) The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in this act.

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in section 1 of this act.

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of this act, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date.

NEW SECTION. **Sec. 4.** (1) Bonds issued under sections 1 through 3 of this act shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

NEW SECTION. **Sec. 5.** The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in section 1 of this act, and sections 2 and 3 of this act shall not be deemed to provide an exclusive method for the payment.

Sec. 6. 2008 c 328 s 5001 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION

School Construction Assistance Grants (08-4-200)

The appropriations in this section are subject to the following conditions and limitations:

(1) For state assistance grants for purposes of calculating square foot eligibility, kindergarten student headcount shall not be reduced by fifty percent.

(2) The legislature has made a commitment to phase in all-day kindergarten programs beginning with the 2007-08 school year. However, the legislature finds that one potential barrier to successful expansion of all-day kindergarten programs may be a lack of facilities that meet the requirements of an all-day kindergarten program. The office of the superintendent of public instruction, in consultation with the school facilities citizen advisory panel, shall examine alternatives for addressing school facilities needs for all-day kindergarten programs, including adapting existing unused space, creating innovative public-private partnerships and partnerships with early learning providers, shifting the location of current programs within a district or a school, and temporary, limited use of portables. The office of the superintendent of public instruction shall submit a report to the capital budget committee of the house of representatives and the ways and means committee of the senate by September 1, 2007, with recommendations on preferred alternatives and an analysis of the feasibility and cost of implementing the alternatives.

(3) Within the amounts appropriated in this section, the office of the superintendent of public instruction shall review and evaluate the cost and other implications of changing the current annual release cycle for the school construction assistance program. The office of the superintendent of public instruction shall prepare a report resulting from their review and evaluation by December 1, 2008. This report must include a specific plan for implementing the change in the 2009-2011 biennium.

Appropriation:

State Building Construction Account—State . . . . . ((~~$22,394,000~~)) $152,394,000

Common School Construction Account—State . . . . . ((~~$769,185,000~~)) $639,185,000

Common School Reimbursable Construction Account—State. $180,000

Subtotal Appropriation $791,759,000

Prior Biennia (Expenditures) $0

Future Biennia (Projected Costs). $3,495,689,000

TOTAL $4,287,448,000

NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act constitute a new chapter in Title 43 RCW.

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.

NEW SECTION. **Sec. 9.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 10.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House January 28, 2009.
Passed by the Senate February 11, 2009.
Approved by the Governor February 18, 2009.
Filed in Office of Secretary of State February 18, 2009.

CHAPTER 7

[House Bill 1066]

NONCHARTER CODE CITIES—FORM OF GOVERNMENT—SPECIAL ELECTIONS

AN ACT Relating to special elections for changing the form of government of a noncharter code city; amending RCW 35A.06.050; and declaring an emergency.

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

Sec. 1. RCW 35A.06.050 and 2004 c 268 s 2 are each amended to read as follows:

The proposal for abandonment of a plan of government as authorized in RCW 35A.06.030 and for adoption of the plan named in the resolution or petition shall be voted upon at the next general election in accordance with RCW 29A.04.330, or at a special election held prior to the next general election in accordance with the resolution of the legislative body. The ballot title and statement of the proposition shall be prepared by the city attorney as provided in RCW ((~~29.27.060 and~~)) 35A.29.120.

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

Passed by the House January 28, 2009.
Passed by the Senate February 11, 2009.
Approved by the Governor February 18, 2009.
Filed in Office of Secretary of State February 18, 2009.

CHAPTER 8

[Engrossed Substitute House Bill 1978]

TRANSPORTATION FUNDING—ECONOMIC STIMULUS

AN ACT Relating to economic stimulus transportation funding and appropriations; amending RCW 46.68.065, 46.68.220, and 47.60.645; amending 2008 c 121 ss 103, 201, 202, 203, 205, 206, 208, 209, 210, 211, 212, 213, 214, 215, 216, 218, 219, 221, 222, 223, 224, 225, 302, 303, 305, 306, 307, 308, 309, 310, 311, 401, 402, 403, 404, 405, 406, 407, and 605 (uncodified); adding a new section to chapter 46.68 RCW; adding new sections to 2007 c 518 (uncodified); creating new sections; repealing 2008 c 121 s 604 and 2007 c 518 s 713 (uncodified); repealing 2007 c 518 s 108 (uncodified); making appropriations and authorizing capital improvements; and declaring an emergency.

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

ECONOMIC STIMULUS FUNDING

NEW SECTION. **Sec. 1.** (1) The legislature finds that President Barack Obama and the 111th Congress have enacted the American Recovery and Reinvestment Act of 2009 in an effort to stimulate the American economy, create and save jobs, and speed recovery from one of the deepest economic recessions in recent history. The investment of federal funds will help alleviate some of the economic burdens the states face, and create jobs for the unemployed. The act includes $492 million in federal transportation funding for Washington state and local highway projects and $179 million for local transit agency improvement projects. In addition, the act includes over $11 billion in new funding for competitive national grant programs for highways of regional significance, ferries, and rail priorities. The legislature also finds that Washington state is well positioned to deliver infrastructure projects in one hundred twenty days, as is required for at least half of the state's share of federal stimulus highway funds, and expects to receive additional funds that other states are unable to use in this time frame. The legislature further finds that the state's work to date on projects funded through the "nickel" and "transportation partnership" funding acts mean that many regionally significant projects are poised to compete well for nationally available funds.

(2) Therefore, it is the intent of the legislature to revitalize Washington's economy and reduce the state's unemployment rate by quickly putting people to work around the state on projects that promote safety, relieve traffic congestion, and preserve long-term investments that will provide benefits into the future. Such projects will be constructed quickly and will generate a significant number of jobs, thereby strengthening Washington's economy and its families seeking work.

NEW SECTION. **Sec. 2. FOR THE DEPARTMENT OF TRANSPORTATION—AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.**

Motor Vehicle Account—Federal Appropriation $341,400,000

The appropriation in this section is subject to the following conditions and limitations:

(1) The entire appropriation in this section is provided solely for the projects and amounts listed in ARRA Washington State Project LEAP document 2009, as developed on February 24, 2009. Funds under this section may be reallocated among projects shown in the document to the extent that the department finds it necessary for the purposes of facilitating completion of the projects with the highest priority or to maintain maximum federal funds eligibility.

(2) To achieve the legislative objectives provided in section 1(2) of this act with respect to highway projects, it is the intent of the legislature that the appropriation in this section be used for: Transportation 2003 account (nickel account) projects and transportation partnership account (TPA) projects that would have otherwise been delayed due to decreased revenues, so as to advance project completion dates similar to those envisioned in the enacted 2008 legislative list of projects; projects that preserve or rehabilitate Washington state highways and roads; and projects that modify roadway alignments and conditions to create safer roads for the traveling public.

(3)(a) The department of transportation shall obligate at least fifty percent of the funds no later than one hundred twenty days after surface transportation program funds under the American Recovery and Reinvestment Act of 2009 have been apportioned to the states;

(b) The department shall obligate all funds no later than one year after surface transportation program funds under the American Recovery and Reinvestment Act of 2009 have been apportioned to the states;

(c) The department shall place the first priority for allocating funds on those projects listed as "First Tier" projects on ARRA Washington State Project LEAP document 2009, as developed on February 24, 2009. The department shall place the second priority on projects listed as "Second Tier" projects on the document; and

(d) Within each tier of projects on ARRA Washington State Project LEAP document 2009, as developed on February 24, 2009, the department shall place the highest priority for allocating funds on the transportation 2003 account (nickel account) projects and transportation partnership account (TPA) projects listed to advance their completion. The department shall prioritize funding for other projects within the tier according to how soon the contract for the project could be awarded.

(4) By June 30, 2009, the department of transportation shall report to the legislative standing committees on transportation and the office of financial management on the status of federal stimulus funds including, but not limited to, identifying the projects shown in ARRA Washington State Project LEAP document 2009, as developed on February 24, 2009, for which federal stimulus funding has already been obligated, the amount of federal recovery funds estimated to be obligated to the projects, and the completion status of each project. Subsequent status reports are due to the legislative standing committees on transportation and the office of financial management on August 31, 2009, and December 1, 2009.

NEW SECTION. **Sec. 3.** If the department of transportation receives additional funding pursuant to the American Recovery and Reinvestment Act of 2009, including funding redistributed from other states, the department shall apply such funds to projects on ARRA Washington State Project LEAP document 2009, as developed on February 24, 2009, as prioritized by section 2(3) (c) and (d) of this act. If the funds are in excess of the amounts shown on ARRA Washington State Project LEAP document 2009, as developed on February 24, 2009, additional funds must be applied to improvement, preservation, ferries, and rail capital projects identified in the LEAP transportation documents in the enacted 2009-11 omnibus transportation appropriations act. However, if the funds received may not be used for any of the purposes enumerated in this section, then the department may program the funds for other transportation-related activities. The department shall notify the legislative standing committees on transportation and the office of financial management of the amount of funds received and the projects receiving funding through this process.

NEW SECTION. **Sec. 4.** To the extent practicable, the department of transportation shall apply to the competitive grant programs created by the American Recovery and Reinvestment Act of 2009 for all transportation modes

including, but not limited to, rail, projects of regional significance, and ferries, as well as other grant programs created by the act that may provide funding for transportation-related activities. Concurrent with the submission of these applications, the department of transportation shall report on these applications to the legislative standing committees on transportation and the office of financial management.

NEW SECTION. **Sec. 5.** For the distribution of funds that are suballocated within the state pursuant to the American Recovery and Reinvestment Act of 2009 to areas of the state outside of the transportation management areas, the department of transportation shall convene a local oversight and accountability panel, which shall include representation from, at a minimum, the associations of Washington cities and counties, the Washington public ports association, and the transportation improvement board. The panel, chaired by the executive director of the transportation improvement board, shall ensure rapid project delivery and accountability for funds. The panel shall proceed with an expedited statewide process utilizing the metropolitan planning organization and county lead agency prioritized listing of local projects. The department shall monitor the projects selected to receive stimulus funding to ensure that Washington state is successful in obligating all of its funding.

NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act are for the period ending June 30, 2011.

GENERAL GOVERNMENT AGENCIES—OPERATING

Sec. 101. 2008 c 121 s 103 (uncodified) is amended to read as follows:

FOR THE MARINE EMPLOYEES COMMISSION

Puget Sound Ferry Operations Account—State Appropriation. . . . . ((~~$434,000~~)) $433,000

The appropriation in this section is subject to the following conditions and limitations: A maximum of $22,000 may be expended to pay the department of personnel for conducting the 2007 salary survey.

TRANSPORTATION AGENCIES—OPERATING

Sec. 201. 2008 c 121 s 201 (uncodified) is amended to read as follows:

FOR THE WASHINGTON TRAFFIC SAFETY COMMISSION

Highway Safety Account—State Appropriation $2,605,000
Highway Safety Account—Federal Appropriation . . . . . ((~~$15,845,000~~)) $15,844,000
School Zone Safety Account—State Appropriation. $3,376,000
TOTAL APPROPRIATION . . . . . ((~~$21,826,000~~)) $21,825,000

The appropriations in this section are subject to the following conditions and limitations: $76,000 of the school zone safety account—state appropriation is provided solely for contracting with the office of the superintendent of public instruction (OSPI) to conduct pilot programs in three school districts for road

safety education and training for children, in order to teach children safe walking, bicycling, and transit use behavior. The pilot projects shall be conducted during the 2008-09 academic year, and shall be modeled after a program and curriculum successfully implemented in the Spokane school district. Funds are provided for curriculum resources, bicycle purchases, teacher training, other essential services and equipment, and OSPI administrative expenses which may include contracting out pilot program administration. The participating school districts shall be located as follows: One in Grant county, one in Island county, and one in Kitsap county. The OSPI shall evaluate the pilot programs, and report to the transportation committees of the legislature no later than December 1, 2009, on the outcomes of the pilot programs. The report shall include a survey identifying barriers to, interest in, and the likelihood of students traveling by biking, walking, or transit both prior to and following completion of the pilot program.

Sec. 202. 2008 c 121 s 202 (uncodified) is amended to read as follows:

FOR THE COUNTY ROAD ADMINISTRATION BOARD

Rural Arterial Trust Account—State Appropriation $900,000
Motor Vehicle Account—State Appropriation . . . . . ((~~$2,058,000~~))
$2,057,000
County Arterial Preservation Account—State
Appropriation $1,388,000
TOTAL APPROPRIATION . . . . . ((~~$4,346,000~~))
$4,345,000

The appropriations in this section are subject to the following conditions and limitations: $481,000 of the county arterial preservation account—state appropriation is provided solely for continued development and implementation of a maintenance management system to manage county transportation assets.

Sec. 203. 2008 c 121 s 203 (uncodified) is amended to read as follows:

FOR THE TRANSPORTATION IMPROVEMENT BOARD

Urban Arterial Trust Account—State Appropriation $1,778,000
Transportation Improvement Account—State
Appropriation . . . . . ((~~$1,780,000~~))
$1,779,000
TOTAL APPROPRIATION . . . . . ((~~$3,558,000~~))
$3,557,000

Sec. 204. 2008 c 121 s 205 (uncodified) is amended to read as follows:

FOR THE JOINT TRANSPORTATION COMMITTEE

Motor Vehicle Account—State Appropriation . . . . . ((~~$2,513,000~~))
$2,512,000
Multimodal Transportation Account—State Appropriation $550,000
TOTAL APPROPRIATION . . . . . ((~~$3,063,000~~))
$3,062,000

The appropriations in this section are subject to the following conditions and limitations:

(1) ((~~$750,000~~)) $950,000 of the motor vehicle account—state appropriation is for establishing a work group to implement Engrossed

Substitute House Bill No. 2358 (regarding state ferries) and review other matters relating to Washington state ferries. The cochairs of the committee shall establish the work group comprising committee members or their designees, an appointee by the governor, and other stakeholders as appointed by the cochairs, to assist in the committee's work. The work group shall report on its tasks to the transportation committees of the legislature by December 2008. The work group is tasked with the following:

(a) Implementing the recommendations of Engrossed Substitute House Bill No. 2358 (regarding state ferries). As directed by Engrossed Substitute House Bill No. 2358, the committee work group shall participate in and provide a review of the following:

(i) The Washington transportation commission's development and interpretation of a survey of ferry customers;

(ii) The department of transportation's analysis and reestablishment of vehicle level of service standards. In reestablishing the standards, consideration must be given to whether boat wait is the appropriate measure;

(iii) The department's development of pricing policy proposals. In developing these policies, the policy, in effect on some routes, of collecting fares in only one direction must be evaluated to determine whether one-way fare pricing best serves the ferry system;

(iv) The department's development of operational strategies;

(v) The department's development of terminal design standards; and

(vi) The department's development of a long-range capital plan;

(b) Reviewing the following Washington state ferry programs:

(i) Ridership demand forecast;

(ii) Updated life cycle cost model, as directed by Engrossed Substitute House Bill No. 2358;

(iii) Administrative operating costs, nonlabor and nonfuel operating costs, Eagle Harbor maintenance facility program and maintenance costs, administrative and systemwide capital costs, and vessel preservation costs; and

(iv) The Washington state ferries' proposed capital cost allocation plan methodology, as described in Engrossed Substitute House Bill No. 2358;

(c) Making recommendations regarding:

(i) The most efficient timing and sizing of future vessel acquisitions beyond those currently authorized by the legislature. Vessel acquisition recommendations must be based on the ridership projections, level of service standards, and operational and pricing strategies reviewed by the committee and must include the impact of those recommendations on the timing and size of terminal capital investments and the state ferries' long range operating and capital finance plans; and

(ii) Capital financing strategies for consideration in the 2009 legislative session. This work must include confirming the department's estimate of future capital requirements based on a long range capital plan and must include the department's development of a plan for codevelopment and public private partnership opportunities at public ferry terminals; and

(d) Evaluate the capital cost allocation plan methodology developed by the department to implement Engrossed Substitute House Bill No. 2358.

(2) $250,000 of the motor vehicle account—state appropriation and $250,000 of the multimodal transportation account—state appropriation are for the continuing implementation of chapter 514, Laws of 2007.

(3) $300,000 of the multimodal transportation account—state appropriation is for implementing Substitute House Bill No. 1694 (coordinated transportation). If Substitute House Bill No. 1694 is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(4) $150,000 of the motor vehicle account—state appropriation is for the Puget Sound regional council to conduct a pilot program for multimodal concurrency analysis. This pilot program will analyze total trip needs for a regional growth center based on adopted land use plans, identify the number of trips which can be accommodated by planned roadway, transit service, and nonmotorized investments, and identify gaps for trips that cannot be served and strategies to fill those gaps. The purpose of this pilot is to demonstrate how this type of multimodal concurrency analysis can be used to broaden and strengthen local concurrency programs.

(5) $236,000 of the motor vehicle account—state appropriation is for a comprehensive analysis, as stated in Senate Bill No. 5689, of mid-term and long-term transportation funding mechanisms and methods. Elements of the study will include existing data and trends, policy objectives, performance and evaluation criteria, incremental transition strategies, and possibly, scaled testing. Baseline data and methods assessment must be concluded by December 31, 2009. Performance criteria must be developed by June 30, 2010, and recommended planning level alternative funding strategies must be completed by December 31, 2010.

Sec. 205. 2008 c 121 s 206 (uncodified) is amended to read as follows:

FOR THE TRANSPORTATION COMMISSION

Motor Vehicle Account—State Appropriation . . . . . ((~~$2,322,000~~)) $2,321,000

Multimodal Transportation Account—State Appropriation $112,000

TOTAL APPROPRIATION . . . . . ((~~$2,434,000~~)) $2,433,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $350,000 of the motor vehicle account—state appropriation is provided solely for the commission to conduct a survey of ferry customers as described in Engrossed Substitute House Bill No. 2358. Development and interpretation of the survey must be done with participation of the joint transportation committee work group established in section 205(1) of this act.

(2) The commission shall conduct a planning grade tolling study that is based on the recommended policies in the commission's comprehensive tolling study submitted September 20, 2006.

(3) Pursuant to RCW 43.135.055, during the 2007-09 fiscal biennium, the transportation commission shall establish, periodically review, and, if necessary, modify a schedule of toll charges applicable to the state route 167 high-occupancy toll lane pilot project, as required by RCW 47.56.403.

(4) Pursuant to RCW 43.135.055, during the 2007-09 fiscal biennium, the transportation commission shall periodically review, and, if necessary, modify

the schedule of toll charges applicable to the Tacoma Narrows bridge, taking into consideration the recommendations of the citizen advisory committee created by RCW 47.46.091.

(5) $205,000 of the motor vehicle account—state appropriation is provided solely for a study of potential revenue sources for the Washington state ferry system. The study must model and assess the revenue generating potentials of feasible alternative funding sources. The revenue forecasting models must be dynamic and ownership of these models must be retained by the commission. The commission shall develop revenue source recommendations that will generate revenue equal to or greater than the funding level identified by the ferries finance study of the joint transportation committee referenced in section 205 of this act, and shall report its recommendations to the transportation committees of the legislature by November 15, 2008.

Sec. 206. 2008 c 121 s 208 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE PATROL—FIELD OPERATIONS BUREAU

State Patrol Highway Account—State
Appropriation. . . . . ((~~$226,924,000~~))
$220,920,000

State Patrol Highway Account—Federal
Appropriation. $10,602,000

State Patrol Highway Account—Private/Local
Appropriation. $410,000

TOTAL APPROPRIATION . . . . . ((~~$237,936,000~~))
$231,932,000

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 shall 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.

(2) In addition to the user fees, the patrol shall transfer into the state patrol nonappropriated airplane revolving account under RCW 43.79.470 no more than the amount of appropriated state patrol highway account and general fund funding necessary to cover the costs for the patrol's use of the aircraft. The state patrol highway account and general fund—state funds shall be transferred proportionately in accordance with a cost allocation that differentiates between highway traffic enforcement services and general policing purposes.

(3) The 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 governor and transportation committees of the senate and house of representatives by September 30th of each year.

(4) ((~~$1,662,000 of the state patrol highway account—state appropriation is provided solely for the implementation of Substitute House Bill No. 1304 (commercial vehicle enforcement). If Substitute House Bill No. 1304 is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.~~

~~(5)~~)) During the 2007-2009 biennium, the Washington state patrol shall continue to perform traffic accident investigations on Thurston, Mason, and Lewis county roads when requested to do so by the respective county; however, the counties shall conduct traffic accident investigations on county roads beginning July 1, 2009.

(((~~(6) $100,000 of the state patrol highway account—state appropriation is provided solely for the implementation of Substitute House Bill No. 1417 (health benefits for surviving dependents). If Substitute House Bill No. 1417 is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.~~

~~(7) $3,300,000~~)) (5) $1,832,767 of the state patrol highway account—state appropriation is provided solely for the salaries and benefits associated with accretion in the number of troopers employed above 1,158 authorized commissioned troopers, or solely for training new cadets; however, the amount provided in this subsection is contingent on the Washington state patrol submitting a 2009-11 budget request that fully funds field force operations without reliance on a projected vacancy rate. The Washington state patrol shall perform a study with a final report due to the legislative transportation committees by December 1, 2008, on the advantages and disadvantages of staffing the commercial vehicle enforcement section with commissioned officers instead of commercial vehicle enforcement officers.

(8) By July 1, 2008, the Washington state patrol shall assign six additional troopers to the Monroe detachment from among troopers requesting transfer to Monroe or graduating cadet classes.

Sec. 207. 2008 c 121 s 209 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE PATROL—INVESTIGATIVE SERVICES BUREAU

State Patrol Highway Account—State Appropriation . . . . . ((~~$1,552,000~~)) $1,535,000

Sec. 208. 2008 c 121 s 210 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE PATROL—TECHNICAL SERVICES BUREAU

State Patrol Highway Account—State Appropriation . . . . . ((~~$102,726,000~~)) $98,873,000

State Patrol Highway Account—Private/Local Appropriation. $2,008,000

TOTAL APPROPRIATION . . . . . ((~~$104,734,000~~)) $100,881,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The Washington state patrol shall work with the risk management division in the office of financial management in compiling the Washington state patrol's data for establishing the agency's risk management insurance premiums to the tort claims account. The office of financial management and the

Washington state patrol shall submit a report to the legislative transportation committees by December 31st of each year on the number of claims, estimated claims to be paid, method of calculation, and the adjustment in the premium.

(2) ((~~$9,981,000 of the total appropriation is provided solely for automobile fuel in the 2007-2009 biennium.~~

~~(3) $7,461,000 of the total appropriation is provided solely for the purchase of pursuit vehicles.~~

~~(4) $6,328,000 of the total appropriation is provided solely for vehicle repair and maintenance costs of vehicles used for highway purposes.~~

~~(5) $384,000 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.~~

~~(6)~~)) The Washington state patrol may submit information technology related requests for funding only if the patrol has coordinated with the department of information services as required by section 602 of this act.

(((~~(7)~~)) (3) $630,000 of the total appropriation is provided solely for the ongoing software maintenance and technical support for the digital microwave system. The Washington state patrol shall coordinate with the other members of the Washington state interoperability executive committee to ensure compatibility between emergency communication systems.

NEW SECTION. **Sec. 209.** A new section is added to 2007 c 518 (uncodified) to read as follows:

FOR THE WASHINGTON STATE PATROL. The appropriations to the Washington state patrol in chapter 121, Laws of 2008 and this act must be expended for the programs and in the amounts specified in this act. However, after May 1, 2009, unless specifically prohibited, the state patrol may transfer state patrol highway account—state appropriations for the 2007-2009 fiscal biennium between operating programs after approval by the director of financial management. However, the state patrol shall not transfer state moneys that are provided solely for a specified purpose. The director of financial management shall notify the appropriate fiscal committees of the senate and house of representatives in writing prior to approving any allotment modifications or transfers under this section.

Sec. 210. 2008 c 121 s 211 (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. . . . . ((~~$3,898,000~~)) $3,865,000

Wildlife Account—State Appropriation . . . . . ((~~$830,000~~)) $819,000

Highway Safety Account—State Appropriation . . . . . ((~~$145,444,000~~)) $144,531,000

Highway Safety Account—Federal Appropriation $233,000

Motor Vehicle Account—State Appropriation . . . . . ((~~$78,235,000~~)) $77,030,000

Motor Vehicle Account—Private/Local Appropriation $1,372,000

Motor Vehicle Account—Federal Appropriation $1,354,000

Department of Licensing Services Account—State
Appropriation. . . . . ((~~$4,639,000~~))
$3,115,000
Washington State Patrol Highway Account—State
Appropriation. . . . . ((~~$1,145,000~~))
$625,000
TOTAL APPROPRIATION . . . . . ((~~$237,182,000~~))
$232,976,000

The appropriations in this section are subject to the following conditions and limitations:

(1) ((~~$2,941,000~~)) $2,933,000 of the highway safety account—state appropriation is provided solely for the implementation of Substitute House Bill No. 1267 (modifying commercial driver's license requirements). If Substitute House Bill No. 1267 is not enacted by June 30, 2007, the amount provided in this subsection shall lapse. The department shall informally report to the legislature by December 1, 2008, with measurable data indicating the department's progress in meeting its goal of improving public safety by improving the quality of the commercial driver's license testing process.

(2) ((~~$716,000~~)) $663,000 of the motorcycle safety education account—state appropriation is provided solely for the implementation of Senate Bill No. 5273 (modifying motorcycle driver's license endorsement and education provisions). If Senate Bill No. 5273 is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(3)(a) ((~~$12,422,000~~)) $10,685,000 of the highway safety account—state appropriation is provided solely for costs associated with the processing costs of issuing enhanced drivers' licenses and identicards.

(b) Of the amount provided in (a) of this subsection, up to $1,000,000 is for a statewide educational campaign, which must include coordination with existing public and private entities, to inform the Washington public of the benefits of the new enhanced drivers' licenses and identicards. Funds may be spent on educational campaigns only after the caseload for enhanced drivers' licenses and identicards falls below levels that can be reasonably processed by the department within the appropriation provided by this subsection. $300,000 of the $1,000,000 is for the department to partner with cross-border tourism businesses to create an educational campaign.

(c) Of the amount provided in (a) of this subsection, ((~~$10,722,000~~)) $8,985,000 is provided solely for costs associated with providing enhanced driver's license processing at 14 licensing services offices.

(d) Of the amount provided in (a) of this subsection, $700,000 is provided solely for costs associated with extending hours beyond current regular business hours at the 14 licensing service offices that provide enhanced driver's license processing services.

(4) ((~~$91,000~~)) $6,000 of the motor vehicle account—state appropriation and ((~~$152,000~~)) $10,000 of the highway safety account—state appropriation are provided solely for contracting with the office of the attorney general to investigate criminal activity uncovered in the course of the agency's licensing and regulatory activities. Funding is provided for the 2008 fiscal year. The department may request funding for the 2009 fiscal year if the request is

submitted with measurable data indicating the department's progress in meeting its goal of increased prosecution of illegal activity.

(5) $350,000 of the highway safety account—state appropriation is provided solely for the costs associated with the systems development of the interface that will allow insurance carriers and their agents real time, online access to drivers' records. If Substitute Senate Bill No. 5937 is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(6) ((~~$1,145,000~~)) $625,000 of the state patrol highway account—state appropriation is provided solely for the implementation of Substitute House Bill No. 1304 (modifying commercial motor vehicle carrier provisions). If Substitute House Bill No. 1304 is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(7) The department may submit information technology related requests for funding only if the department has coordinated with the department of information services as required by section 602 of this act.

(8) ((~~$116,000~~)) $81,000 of the motor vehicle account—state appropriation is provided solely for the department to prepare draft legislation that streamlines title and registration statutes to specifically address apparent conflicts, fee distribution, and other relevant issues that are revenue neutral and which do not change legislative policy. The department shall submit the draft legislation to the transportation committees of the legislature by the end of the biennium.

(9) $246,000 of the department of licensing services account—state appropriation is provided solely for the implementation of Substitute House Bill No. 3029 (secure vehicle licensing system). If Substitute House Bill No. 3029 is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(10) $200,000 of the highway safety account—state appropriation is provided solely for the implementation of Senate Bill No. 6885 (driving record abstracts). If Senate Bill No. 6885 is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(11) ((~~$417,000~~)) $413,000 of the highway safety account—state appropriation is provided solely for the implementation of Engrossed Second Substitute House Bill No. 3254 (ignition interlock drivers' license). If Engrossed Second Substitute House Bill No. 3254 is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(12) $100,000 of the department of licensing services account—state appropriation is provided solely for the implementation of Engrossed Second Substitute House Bill No. 2817 (contaminated vehicles). If Engrossed Second Substitute House Bill No. 2817 is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(13) The department shall investigate instituting a program whereby individual registered vehicle owners may have license plates tested for reflectivity to determine whether the department's requirement that the license plates be replaced after seven years can be waived for that particular set of license plates.

(14)(a) By November 1, 2009, the department of licensing, in consultation with the department of revenue, must analyze and plan for the transfer, by July 1, 2010, of the administration of fuel taxes imposed under chapters 82.36, 82.38, 82.41, and 82.42 RCW and other provisions of law from the department of licensing to the department of revenue. By November 1, 2009, the departments

must report findings and recommendations to the governor and the transportation and fiscal committees of the legislature.

(b) The analysis and planning directed under this subsection must include, but is not limited to, the following:

(i) Outreach to and solicitation of comment from parties affected by the fuel taxes, including taxpayers, industry associations, state and federal agencies, and Indian tribes, and from the transportation and fiscal committees of the legislature;

(ii) Identification and analysis of relevant factors including, but not limited to:

(A) Taxpayer reporting and payment processes;

(B) The international fuel tax agreement and the international registration program;

(C) Computer systems;

(D) Best management practices and efficiencies;

(E) Costs; and

(F) Personnel matters;

(iii) Development of recommended actions to accomplish the transfer; and

(iv) An implementation plan and schedule.

(c) The report must include draft legislation that transfers administration to the department of revenue on July 1, 2010, and amends existing law as needed.

NEW SECTION. **Sec. 211.** A new section is added to 2007 c 518 (uncodified) to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION. (1) The appropriations to the department of transportation in chapter 121, Laws of 2008 and this act shall be expended for the programs and in the amounts specified in this act. However, after May 1, 2009, unless specifically prohibited, the department may transfer state appropriations for the 2007-2009 fiscal biennium among operating programs after approval by the director of financial management. However, the department shall not transfer state moneys that are provided solely for a specified purpose.

(2) The department shall not transfer funds, and the director 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 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 shall 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.

Sec. 212. 2008 c 121 s 212 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—TOLL OPERATIONS AND MAINTENANCE—PROGRAM B

High-Occupancy Toll Lanes Account—State
Appropriation $2,253,000
Motor Vehicle Account—State Appropriation $600,000

Tacoma Narrows Toll Bridge Account—State
Appropriation. . . . . ((~~$28,322,000~~))
$27,626,000
TOTAL APPROPRIATION . . . . . ((~~$31,175,000~~))
$30,479,000

The appropriations in this section are subject to the following conditions and limitations:

(((~~(2)~~))) The department shall solicit private donations to fund activities related to the opening ceremonies of the Tacoma Narrows bridge project.

Sec. 213. 2008 c 121 s 213 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—INFORMATION TECHNOLOGY—PROGRAM C

Transportation Partnership Account—State
Appropriation. . . . . ((~~$5,892,000~~))
$5,142,000
Motor Vehicle Account—State Appropriation . . . . . ((~~$67,710,000~~))
$66,850,000
Motor Vehicle Account—Federal Appropriation . . . . . ((~~$1,096,000~~))
$856,000
Puget Sound Ferry Operations Account—State
Appropriation. $9,143,000
Multimodal Transportation Account—State
Appropriation. $363,000
Transportation 2003 Account (Nickel Account)—State
Appropriation. . . . . ((~~$5,337,000~~))
$4,587,000
TOTAL APPROPRIATION . . . . . ((~~$89,541,000~~))
$86,941,000

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 information services to ensure that (a) 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) The department shall provide updated information on six project milestones for all active projects, funded in part or in whole with 2005 transportation partnership account funds or 2003 nickel account funds, on a quarterly basis in the transportation executive information system (TEIS). The department shall also provide updated information on six project milestones for projects, funded with preexisting funds and that are agreed to by the legislature, office of financial management, and the department, on a quarterly basis in TEIS.

(3) ((~~$3,300,000 of the motor vehicle account—state appropriation is provided solely for preliminary work needed to transition the department to the~~

~~state government network. In collaboration with the department of information services the department shall complete an inventory of the current network infrastructure, develop an implementation plan for transition to the state government network, improve security, and initiate connection to the state government network.~~

~~(4)~~)) $1,000,000 of the motor vehicle account—state appropriation, ((~~$5,892,000~~)) $5,142,000 of the transportation partnership account—state appropriation, and ((~~$5,337,000~~)) $4,587,000 of the transportation 2003 account (nickel account)—state appropriation are provided solely for the department to develop a project management and reporting system which is a collection of integrated tools for capital construction project managers to use to perform all the necessary tasks associated with project management. The department shall integrate commercial off-the-shelf software with existing department systems and enhanced approaches to data management to provide web-based access for multi-level reporting and improved business workflows and reporting. Beginning September 1, 2007, and on a quarterly basis thereafter, the department shall report to the office of financial management and the transportation committees of the legislature on the status of the development and integration of the system. The first report shall include a detailed work plan for the development and integration of the system including timelines and budget milestones. At a minimum the ensuing reports shall indicate the status of the work as it compares to the work plan, any discrepancies, and proposed adjustments necessary to bring the project back on schedule or budget if necessary.

(((~~(5)~~))) (4) The department may submit information technology related requests for funding only if the department has coordinated with the department of information services as required by section 602 of this act.

(((~~(6)~~))) (5) $1,600,000 of the motor vehicle account—state appropriation is provided solely for the critical application assessment implementation project. The department shall submit a progress report on the critical application assessment implementation project to the house of representatives and senate transportation committees on or before December 1, 2007, and December 1, 2008, with a final report on or before June 30, 2009.

Sec. 214. 2008 c 121 s 214 (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 . . . . . ((~~$33,982,000~~)) $33,988,000

Sec. 215. 2008 c 121 s 215 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—AVIATION—PROGRAM F

Aeronautics Account—State Appropriation . . . . . ((~~$7,866,000~~)) $7,659,000
Aeronautics Account—Federal Appropriation $2,150,000
Multimodal Transportation Account—State Appropriation $631,000
TOTAL APPROPRIATION . . . . . ((~~$10,647,000~~)) $10,440,000

The appropriations in this section are subject to the following conditions and limitations: The entire multimodal transportation account—state appropriation and ((~~$400,000~~)) $350,000 of the aeronautics account—state appropriation are provided solely for the aviation planning council as provided for in RCW 47.68.410.

Sec. 216. 2008 c 121 s 216 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—PROGRAM DELIVERY MANAGEMENT AND SUPPORT—PROGRAM H

Transportation Partnership Account—State Appropriation. $2,422,000
Motor Vehicle Account—State Appropriation . . . . . ((~~$52,275,000~~)) $50,425,000
Motor Vehicle Account—Federal Appropriation $500,000
Multimodal Transportation Account—State Appropriation. $250,000
Transportation 2003 Account (Nickel Account)—State Appropriation. $2,422,000
TOTAL APPROPRIATION . . . . . ((~~$57,869,000~~)) $56,019,000

The appropriations in this section are subject to the following conditions and limitations: $2,422,000 of the transportation partnership account appropriation and $2,422,000 of the transportation 2003 account (nickel account)—state appropriation are provided solely for consultant contracts to assist the department in the delivery of the capital construction program by identifying improvements to program delivery, program management, project controls, program and project monitoring, forecasting, and reporting. The consultants shall work with the department of information services in the development of the project management and reporting system.

The consultants shall provide an updated copy of the capital construction strategic plan to the legislative transportation committees and to the office of financial management on June 30, 2008, and each year thereafter.

The department shall coordinate its work with other budget and performance efforts, including Roadmap, the findings of the critical applications modernization and integration strategies study, including proposed next steps, and the priorities of government process.

The department shall report to the transportation committees of the house of representatives and senate, and the office of financial management, by December 31, 2007, on the implementation status of recommended capital budgeting and reporting options. Options must include: Reporting against legislatively-established project identification numbers and may include recommendations for reporting against other appropriate project groupings; measures for reporting progress, timeliness, and cost which create an incentive for the department to manage effectively and report its progress in a transparent manner; and criteria and process for transfers of funds among projects.

Sec. 217. 2008 c 121 s 218 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—HIGHWAY MAINTENANCE—PROGRAM M

Motor Vehicle Account—State Appropriation . . . . . ((~~$331,342,000~~)) $350,320,000
Motor Vehicle Account—Federal Appropriation . . . . . ((~~$5,000,000~~)) $25,000,000
Motor Vehicle Account—Private/Local Appropriation $5,797,000
TOTAL APPROPRIATION . . . . . ((~~$342,139,000~~)) $381,117,000

The appropriations in this section are subject to the following conditions and limitations:

(1) If portions of the appropriations in this section are required to fund maintenance work resulting from major disasters not covered by federal emergency funds such as fire, flooding, and major slides, supplemental appropriations must be requested to restore state funding for ongoing maintenance activities.

(2) 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 into unallotted status. This exchange shall not affect the amount of funding available for snow and ice removal.

(3) The department shall request an unanticipated receipt for any private or local funds received for reimbursements of third party damages that are in excess of the motor vehicle account—private/local appropriation.

(4) $5,000,000 of the motor vehicle account—federal appropriation is provided for unanticipated federal funds that may be received during the 2007-09 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.

(5) Funding is provided for maintenance on the state system to deliver service level targets as listed in LEAP Transportation Document 2007-C, as developed April 20, 2007. In delivering the program and aiming for these targets, the department should concentrate on the following areas:

(a) Eliminating the number of activities delivered in the "f" level of service at the region level; and

(b) Evaluating, analyzing, and potentially redistributing resources within and among regions to provide greater consistency in delivering the program statewide and in achieving overall level of service targets.

(6) The department may work with the department of corrections to utilize corrections crews for the purposes of litter pickup on state highways.

(7) $650,000 of the motor vehicle account—state appropriation is provided solely for increased asphalt costs.

(8) The department shall prepare a comprehensive listing of maintenance backlogs and related costs and report to the office of financial management and the transportation committees of the legislature by December 31, 2008.

(9) ((~~$76,026,000~~)) $92,526,000 of the motor vehicle account—state appropriation is for snow and ice related expenses, within which ((~~is a~~)) are one-time increases of ((~~$3,250,000~~)) $17,250,000 provided solely for extraordinary snow and ice removal expenses and $2,500,000 provided solely for winter storm damage repair costs incurred during the winters of 2007-08 and 2008-09.

Sec. 218. 2008 c 121 s 219 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—TRAFFIC OPERATIONS—PROGRAM Q—OPERATING

Motor Vehicle Account—State Appropriation . . . . . ((~~$51,340,000~~)) $51,354,000

Motor Vehicle Account—Federal Appropriation $2,050,000

Motor Vehicle Account—Private/Local Appropriation $127,000

TOTAL APPROPRIATION . . . . . ((~~$53,517,000~~)) $53,531,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $654,000 of the motor vehicle account—state appropriation is provided solely for the department to time state-owned and operated traffic signals. This funding may also be used to program incident, emergency, or special event signal timing plans.

(2) $346,000 of the motor vehicle account—state appropriation is provided solely for the department to implement a pilot tow truck incentive program. The department may provide incentive payments to towing companies that meet clearance goals on accidents that involve heavy trucks.

(3) $6,800,000 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 January 1, 2008, and January 1, 2009, 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.

(4) The department, in consultation with the Washington state patrol, may conduct a pilot program for the patrol to issue infractions based on information from automated traffic safety cameras in roadway construction zones on state highways when workers are present.

(a) In order to ensure adequate time in the 2007-09 biennium to evaluate the effectiveness of the pilot program, any projects authorized by the department must be authorized by December 31, 2007.

(b) The department shall use the following guidelines to administer the program:

(i) 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;

(ii) 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;

(iii) Notices of infractions must be mailed to the registered owner of a vehicle within fourteen days of the infraction occurring;

(iv) 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;

(v) For purposes of the 2007-09 biennium pilot project, 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 3.46.120, 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3). However, the amount of the fine issued for an infraction generated through the use of an automated traffic safety camera 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;

(vi) If a notice of infraction is sent to the registered owner and the registered owner is a rental car business, the infraction will 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; and

(vii) By June 30, 2009, the department shall provide a report to the legislature regarding the use, public acceptance, outcomes, and other relevant issues regarding the pilot project.

(5) The traffic signal operations along 164th Street SE at the intersections of Mill Creek Boulevard and SR 527 should be optimized to minimize vehicle delay on both corridors based on traffic volumes and not only on functional classification or designation.

Sec. 219. 2008 c 121 s 221 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—TRANSPORTATION PLANNING, DATA, AND RESEARCH—PROGRAM T

Motor Vehicle Account—State Appropriation . . . . . ((~~$27,757,000~~)) $27,264,000

Motor Vehicle Account—Federal Appropriation . . . . . ((~~$19,163,000~~)) $18,932,000

Multimodal Transportation Account—State Appropriation $1,760,000

Multimodal Transportation Account—Federal Appropriation $2,809,000

Multimodal Transportation Account—Private/Local Appropriation $100,000

TOTAL APPROPRIATION . . . . . ((~~$51,589,000~~)) $50,865,000

The appropriations in this section are subject to the following conditions and limitations:

(1) $1,559,000 of the motor vehicle account—state appropriation is provided solely for costs incurred for the 2007 regional transportation investment district election.

(2) $800,000 of the multimodal transportation account—state appropriation is provided solely for a transportation demand management program, developed by the Whatcom council of governments, to further reduce drive-alone trips and maximize the use of sustainable transportation choices. The community-based program must focus on all trips, not only commute trips, by providing education, assistance, and incentives to four target audiences: (a) Large work sites; (b) employees of businesses in downtown areas; (c) school children; and (d) residents of Bellingham.

(3) ((~~$320,000~~)) $77,000 of the motor vehicle account—state appropriation and ((~~$128,000~~)) $47,000 of the motor vehicle account—federal appropriation are provided solely for development of a freight database to help guide freight investment decisions and track project effectiveness. The database will be based on truck movement tracked through geographic information system technology. TransNow will contribute an additional $192,000 in federal funds which are not appropriated in the transportation budget. The department shall work with the freight mobility strategic investment board to implement this project.

(4) By December 1, 2008, the department shall require confirmation from jurisdictions that plan under the growth management act, chapter 36.70A RCW, and that receive state transportation funding under this act, that the jurisdictions have adopted standards for access permitting on state highways that meet or exceed department standards in accordance with RCW 47.50.030. The objective of this subsection is to encourage local governments, through the receipt of state transportation funding, to adhere to best practices in access control applicable to development activity significantly impacting state transportation facilities. By January 1, 2009, the department shall submit a report to the appropriate committees of the legislature detailing the progress of the local jurisdictions in adopting the highway access permitting standards.

(5) ((~~$150,000 of the motor vehicle account—federal appropriation is provided solely for the costs to develop an electronic map-based computer application that will enable law enforcement officers and others to more easily locate collisions and other incidents in the field.~~

~~(6)~~)) The department shall add a position within the freight systems division to provide expertise regarding the trucking aspects of the state's freight system.

((~~(7)~~)) (6) The department shall evaluate the feasibility of developing a freight corridor bypass from Everett to Gold Bar on US 2, including a connection to SR 522. US 2 is an important freight corridor, and is an alternative route for I-90. Congestion, safety issues, and flooding concerns have all contributed to the need for major improvements to the corridor. The evaluation shall consider the use of toll lanes for the project. The department must report to the transportation committees of the legislature by December 1, 2007, on its analysis and recommendations regarding the benefit of a freight corridor and the potential use of freight toll lanes to improve safety and congestion in the corridor.

(((~~(8)~~))) (7) The department shall work with the department of ecology, the county road administration board, and the transportation improvement board to develop model procedures and municipal and state rules in regard to maximizing the use of recycled asphalt on road construction and preservation projects. The department shall report to the joint transportation committee by December 1, 2008, with recommendations on increasing the use of recycled asphalt at the state and local level.

(((~~(9)~~))) (8) $140,000 of the multimodal transportation account—state appropriation is provided solely for a full-time employee to develop vehicle miles traveled and other greenhouse gas emissions benchmarks as described in Engrossed Second Substitute House Bill No. 2815. If Engrossed Second Substitute House Bill No. 2815 is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

(((~~(10)~~))) (9) $80,000 of the motor vehicle account—state appropriation is provided solely to study the feasibility of a new interchange on interstate 5 between the city of Rochester and Harrison Avenue.

(((~~(11)~~))) (10) $100,000 of the multimodal transportation account—state appropriation is provided solely to support the commuter rail study between eastern Snohomish county and eastern King county as defined in Substitute House Bill No. 3224. Funds are provided to the Puget Sound regional council for one time only. If Substitute House Bill No. 3224 is not enacted by June 30, 2008, the amount provided in this subsection shall lapse.

Sec. 220. 2008 c 121 s 222 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—CHARGES FROM OTHER AGENCIES—PROGRAM U

Motor Vehicle Account—State Appropriation . . . . . (((~~$66,102,000~~)) $60,507,000

Motor Vehicle Account—Federal Appropriation $400,000

Multimodal Transportation Account—State Appropriation $259,000

TOTAL APPROPRIATION . . . . . (((~~$66,761,000~~)) $61,166,000

The appropriations in this section are subject to the following conditions and limitations:

(1) (((~~$36,665,000~~))) $29,958,000 of the motor vehicle fund—state appropriation is provided solely for the liabilities attributable to the department of transportation. The office of financial management 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) FOR PAYMENT OF OFFICE OF FINANCIAL MANAGEMENT DIVISION OF RISK MANAGEMENT FEES $1,520,000

(b) FOR PAYMENT OF COSTS OF THE OFFICE OF THE STATE AUDITOR. $1,153,000

(c) FOR PAYMENT OF COSTS OF DEPARTMENT OF GENERAL ADMINISTRATION FACILITIES AND SERVICES AND CONSOLIDATED

MAIL SERVICES. $4,859,000
(d) FOR PAYMENT OF COSTS OF THE DEPARTMENT OF PERSONNEL $7,593,000
(e) FOR PAYMENT OF SELF-INSURANCE LIABILITY PREMIUMS AND ADMINISTRATION. . . . . ((~~$36,665,000~~)) $29,958,000
(f) FOR PAYMENT OF THE DEPARTMENT OF GENERAL ADMINISTRATION CAPITAL PROJECTS SURCHARGE $1,838,000
(g) FOR ARCHIVES AND RECORDS MANAGEMENT $677,000
(h) FOR OFFICE OF MINORITIES AND WOMEN BUSINESS ENTERPRISES $1,042,000
(i) FOR USE OF FINANCIAL SYSTEMS PROVIDED BY THE OFFICE OF FINANCIAL MANAGEMENT $1,266,000
(j) FOR POLICY ASSISTANCE FROM THE DEPARTMENT OF INFORMATION SERVICES . . . . . ((~~$945,000~~)) $944,000
(k) FOR LEGAL SERVICE PROVIDED BY THE ATTORNEY GENERAL'S OFFICE $9,045,000
(l) FOR LEGAL SERVICE PROVIDED BY THE ATTORNEY GENERAL'S OFFICE FOR THE SECOND PHASE OF THE BOLDT LITIGATION . . . . . ((~~$158,000~~)) $271,000

(3) $1,000,000 of the motor vehicle account—state appropriation is provided solely for the purposes of settling all claims that were found against the state in the verdict and judgment issued in the case of *Marable v. Nitchman* (WSF), United States District Court, Western District of Washington, Cause No. 05-01270MJP.

Sec. 221. 2008 c 121 s 223 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—PUBLIC TRANSPORTATION—PROGRAM V

Regional Mobility Grant Program Account—State Appropriation. . . . . ((~~$40,000,000~~)) $12,732,000
Multimodal Transportation Account—State Appropriation. . . . . ((~~$85,601,000~~)) $80,583,000
Multimodal Transportation Account—Federal Appropriation. $2,582,000
Multimodal Transportation Account—Private/Local Appropriation. $659,000
TOTAL APPROPRIATION . . . . . ((~~$128,842,000~~)) $96,556,000

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 amount provided in this subsection is provided solely for grants to nonprofit providers of special needs transportation. Grants for nonprofit providers shall 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 amount provided in this subsection 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 shall be prorated based on the amount expended for demand response service and route deviated service in calendar year 2005 as reported in the "Summary of Public Transportation - 2005" 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 multimodal transportation 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 - 2005 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.

(b) $8,500,000 of the multimodal transportation 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) $8,600,000 of the multimodal transportation account—state appropriation is provided solely for a vanpool grant program for: (a) Public transit agencies to add vanpools; and (b) incentives for employers to increase employee vanpool use. The grant program for public transit agencies will cover capital costs only; no operating costs for public transit agencies are eligible for funding under this grant program. No additional employees may 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. Additional criteria for selecting grants must include leveraging funds other than state funds.

(4) ((~~$40,000,000~~)) $12,732,000 of the regional mobility grant program account—state appropriation is provided solely for the regional mobility grant projects identified on the LEAP Transportation Document 2007-B as developed April 20, 2007. 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, shall 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 available to the office of transit mobility shall be used only to fund projects on the LEAP Transportation Document 2007-B as developed April 20, 2007. The department shall provide annual status reports on December 15, 2007, and December 15, 2008, to the

office of financial management and the transportation committees of the legislature regarding the projects receiving the grants.

(5) ((~~$17,168,087~~)) $12,150,087 of the multimodal transportation account—state appropriation is reappropriated and provided solely for the regional mobility grant projects identified on the LEAP Transportation Document 2006-D, regional mobility grant program projects as developed March 8, 2006. 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 available to the office of transit mobility shall be used only to fund projects on the LEAP Transportation Document 2007-B as developed April 20, 2007, or the LEAP Transportation Document 2006-D as developed March 8, 2006.

(6) $200,000 of the multimodal transportation account—state appropriation is provided solely for the department to study and then develop pilot programs aimed at addressing commute trip reduction strategies for K-12 students and for college and university students. The department shall submit to the legislature by January 1, 2009, a summary of the program results and recommendations for future student commute trip reduction strategies. The pilot programs are described as follows:

(a) The department shall consider approaches, including mobility education, to reducing and removing traffic congestion in front of schools by changing travel behavior for elementary, middle, and high school students and their parents; and

(b) The department shall design a program that includes student employment options as part of the pilot program applicable to college and university students.

(7) $2,400,000 of the multimodal account—state appropriation is provided solely for establishing growth and transportation efficiency centers (GTEC). Funds are appropriated for one time only. The department shall provide in its annual report to the legislature an evaluation of the GTEC concept and recommendations on future funding levels.

(8) $381,000 of the multimodal transportation account—state appropriation is provided solely for the implementation of Substitute House Bill No. 1694 (reauthorizing the agency council on coordinated transportation). If Substitute House Bill No. 1694 is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(9) $504,000 of the multimodal transportation account—private/local appropriation is provided solely for the implementation of Senate Bill No. 5084 (updating rail transit safety plans). If Senate Bill No. 5084 is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(10) $60,000 of the multimodal transportation account—state appropriation is provided solely for low-income car ownership programs. The department shall collaborate with interested regional transportation planning organizations and metropolitan planning organizations to determine the effectiveness of the programs at providing transportation solutions for low-income persons who depend upon cars to travel to their places of employment.

(11) $1,000,000 of the multimodal transportation account—state appropriation is provided solely for additional funding for the trip reduction

performance program, including telework enhancement projects. Funds are appropriated for one time only.

(12) $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.

(13) $150,000 of the multimodal transportation account—state appropriation is provided solely as a grant for a telework pilot project to be developed, administered, and monitored by the Kitsap regional coordinating council. Funds are appropriated for one time only. The primary purposes of the pilot project are to educate employers about telecommuting, develop telework policies and resources for employers, and reduce traffic congestion by encouraging teleworking in the workplace. As part of the pilot project, the council shall recruit public and private sector employer participants throughout the county, identify telework sites, develop an employer's toolkit consisting of teleworking resources, and create a telecommuting template that may be applied in other communities. The council shall submit to the legislature by July 1, 2009, a summary of the program results and any recommendations for future telework strategies.

Sec. 222. 2008 c 121 s 224 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—MARINE—PROGRAM X

Puget Sound Ferry Operations Account—State
Appropriation. . . . . ((~~$426,761,000~~))
$441,485,000

Multimodal Transportation Account—State
Appropriation. . . . . ((~~$1,914,000~~))
$3,035,000

TOTAL APPROPRIATION . . . . . ((~~$428,675,000~~))
$444,520,000

The appropriations in this section are subject to the following conditions and limitations:

(1) ((~~$90,299,000~~)) $96,443,000 of the Puget Sound ferry operations—state appropriation is provided solely for auto ferry vessel operating fuel in the 2007-2009 biennium.

(2) The Washington state ferries must work with the department's information technology division to implement an electronic fare system, including the integration of the regional fare coordination system (smart card). Each December and June, semiannual updates must be provided to the transportation committees of the legislature concerning the status of implementing and completing this project, with updates concluding the first December after full project implementation.

(3) The Washington state ferries shall continue to provide service to Sidney, British Columbia.

(4) $1,914,000 of the multimodal transportation account—state appropriation is provided solely to provide passenger-only ferry service. The ferry system shall continue passenger-only ferry service from Vashon Island to Seattle through June 30, 2008. Ferry system management shall continue to implement its agreement with the inlandboatmen's union of the pacific and the

international organization of masters, mates and pilots providing for part-time passenger-only work schedules.

(5) ((~~$932,000~~)) $674,000 of the Puget Sound ferries operations account—state appropriation is provided solely for compliance with department of ecology rules regarding the transfer of oil on or near state waters. Funding for compliance with on-board fueling rules is provided for the 2008 fiscal year. The department may request funding for the 2009 fiscal year if the request is submitted with an alternative compliance plan filed with the department of ecology, as allowed by rule.

(6) ((~~$1,116,000~~)) $1,006,000 of the Puget Sound ferry operations account—state appropriation is provided solely for ferry security operations necessary to comply with the ferry security plan submitted by the Washington state ferry system to the United States coast guard. The department shall track security costs and expenditures. Ferry security operations costs shall not be included as part of the operational costs that are used to calculate farebox recovery.

(7) $378,000 of the Puget Sound ferry operations account—state appropriation is provided solely to meet the United States coast guard requirements for appropriate rest hours between shifts for vessel crews on the Bainbridge to Seattle and Edmonds to Kingston ferry routes.

(8) $694,000 of the Puget Sound ferries operating account—state appropriation is provided solely for implementing Engrossed Substitute House Bill No. 2358 as follows:

(a) The department shall allow the joint transportation committee work group established in section 205(1) of this act to participate in the following elements as they are described in Engrossed Substitute House Bill No. 2358:

(i) Development and implementation of a survey of ferry customers;

(ii) Analysis and reestablishment of vehicle level of service standards. In reestablishing the standards, consideration shall be given to whether boat wait is the appropriate measure. The level of service standard shall be reestablished in conjunction with or after the survey has been implemented;

(iii) Development of pricing policy proposals. In developing these policies, the policies, in effect on some routes, of collecting fares in only one direction shall be evaluated to determine whether one-way fare pricing best serves the ferry system. The pricing policy proposals must be developed in conjunction with or after the survey has been implemented;

(iv) Development of operational strategies. The operational strategies shall be reestablished in conjunction with the survey or after the survey has been implemented;

(v) Development of terminal design standards. The terminal design standards shall be finalized after the provisions of subsections (a)(i) through (iv) and subsection (b) of this section have been developed and reviewed by the joint transportation committee; and

(vi) Development of a capital plan. The capital plan shall be finalized after terminal design standards have been developed by the department and reviewed by the joint transportation committee.

(b) The department shall develop a ridership demand forecast that shall be used in the development of a long-range capital plan. If more than one forecast is developed they must be reconciled.

(c) The department shall update the life cycle cost model to meet the requirements of Engrossed Substitute House Bill No. 2358 no later than August 1, 2007.

(d) The department shall develop a cost allocation methodology proposal to meet the requirements described in Engrossed Substitute House Bill No. 2358. The proposal shall be completed and presented to the joint transportation committee no later than August 1, 2007.

(9) $200,000 of the Puget Sound ferry operations account—state appropriation is provided solely for the initial acquisition of transportation worker identification credentials required by the United States department of homeland security for unescorted access to secure areas of ferries and terminals.

(10) The legislature finds that a rigorous incident investigation process is an essential component of marine safety. The department is directed to review its accident and incident investigation procedures and report the results of its review with any proposals for changes to the legislature by November 1, 2008.

(11) The department shall allow the use, by two separate drivers, of fare media allowing for multiple discounted vehicle trips aboard Washington state ferries vessels.

((~~(13)~~)) (12) While developing fare and pricing policy proposals, the department may consider the desirability of reasonable fares for persons using the ferry system to commute daily to work and other frequent users who live in ferry-dependent communities.

Sec. 223. 2008 c 121 s 225 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—OPERATING

Multimodal Transportation Account—State

Appropriation. . . . . ((~~$37,010,000~~)) $35,096,000

The appropriation in this section is subject to the following conditions and limitations:

(1) The department shall publish a final long-range plan for Amtrak Cascades by September 30, 2007. By December 31, 2008, the department shall submit to the office of financial management and the transportation committees of the legislature a midrange plan for Amtrak Cascades that identifies specific steps the department would propose to achieve additional service beyond current levels.

(2)(a) ((~~$29,091,000~~)) $28,577,000 of the multimodal transportation account—state appropriation is provided solely for the Amtrak service contract and Talgo maintenance contract associated with providing and maintaining the state-supported passenger rail service. Upon completion of the rail platform project in the city of Stanwood, the department shall provide daily Amtrak Cascades service to the city.

(b) The department shall negotiate with Amtrak and Burlington Northern Santa Fe to adjust the Amtrak Cascades schedule to leave Bellingham at a significantly earlier hour.

(c) When Amtrak Cascades expands the second roundtrip between Vancouver, B.C. and Seattle, the department shall negotiate for the second roundtrip to leave Bellingham southbound no later than 8:30 a.m.

(3) No Amtrak Cascade runs may be eliminated.

(4) $40,000 of the multimodal transportation account—state appropriation is provided solely for the produce railcar program. The department is encouraged to implement the produce railcar program by maximizing private investment.

(5) The department shall begin planning for a third roundtrip Cascades train between Seattle and Vancouver, B.C. by 2010.

TRANSPORTATION AGENCIES—CAPITAL

Sec. 301. 2008 c 121 s 302 (uncodified) is amended to read as follows:

FOR THE COUNTY ROAD ADMINISTRATION BOARD

Rural Arterial Trust Account—State Appropriation. $64,000,000

Motor Vehicle Account—State Appropriation . . . . . ((~~$2,370,000~~))
$1,555,000

County Arterial Preservation Account—State
Appropriation. . . . . ((~~$32,641,000~~))
$31,541,000

TOTAL APPROPRIATION . . . . . ((~~$99,011,000~~))
$97,096,000

The appropriations in this section are subject to the following conditions and limitations:

(1) ((~~$2,370,000~~)) $1,555,000 of the motor vehicle account—state appropriation may be used for county ferry projects as set forth in RCW 47.56.725(4).

(2) The appropriations contained in this section include funding to counties to assist them in efforts to recover from ((~~winter storm and flood damage~~)) federally declared emergencies, by providing capitalization advances and local match for federal emergency funding as determined by the county road administration board. The county road administration board shall specifically identify any such selected projects and shall include information concerning them in its next annual report to the legislature.

Sec. 302. 2008 c 121 s 303 (uncodified) is amended to read as follows:

FOR THE TRANSPORTATION IMPROVEMENT BOARD

Small City Pavement and Sidewalk Account—State
Appropriation. $5,900,000

Urban Arterial Trust Account—State Appropriation . . . . . ((~~$126,600,000~~))
$106,600,000

Transportation Improvement Account—State
Appropriation. . . . . ((~~$87,143,000~~))
$77,495,000

TOTAL APPROPRIATION . . . . . ((~~$219,643,000~~))
$189,995,000

((~~The appropriations in this section are subject to the following conditions and limitations:~~

~~(1) The transportation improvement account—state appropriation includes up to $7,143,000 in proceeds from the sale of bonds authorized in RCW 47.26.500.~~

~~(2) The urban arterial trust account—state appropriation includes up to $15,000,000 in proceeds from the sale of bonds authorized in Substitute House Bill No. 2394. If Substitute House Bill No. 2394 is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.~~))

Sec. 303. 2008 c 121 s 305 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—PROGRAM D (DEPARTMENT OF TRANSPORTATION-ONLY PROJECTS)—CAPITAL

Motor Vehicle Account—State Appropriation . . . . . ((~~$6,255,000~~))
$6,265,000

The appropriation in this section is subject to the following conditions and limitations:

(1) $584,000 of the motor vehicle account—state appropriation is for statewide administration.

(2) $803,000 of the motor vehicle account—state appropriation is for regional minor projects.

(3) $568,000 of the motor vehicle account—state appropriation is for the Olympic region headquarters property payments.

(4) By September 1, 2007, the department shall submit to the transportation committees of the legislature predesign plans, developed using the office of financial management's predesign process, for all facility replacement projects to be proposed in the facilities 2008 budget proposal.

(5) $1,600,000 of the motor vehicle account—state appropriation is for site acquisition for the Tri-cities area maintenance facility.

(6) $2,700,000 of the motor vehicle account—state appropriation is for site acquisition for the Vancouver light industrial facility.

(7) The department shall work with the office of financial management and staff of the transportation committees of the legislature to develop a statewide inventory of all department-owned surplus property that is suitable for development for department facilities or that should be sold. By December 1, 2008, the department shall report to the joint transportation committee on the findings of this study.

(8) $10,000 of the motor vehicle account—state appropriation is provided solely for reconstruction of the Wandermere facility that was destroyed in the 2008-09 winter storms.

Sec. 304. 2008 c 121 s 306 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—IMPROVEMENTS—PROGRAM I

Transportation Partnership Account—State Appropriation. . . . . ((~~$1,109,593,000~~))
$900,809,000

Motor Vehicle Account—State Appropriation . . . . . ((~~$87,210,000~~))
$67,416,000

Motor Vehicle Account—Federal Appropriation . . . . . ((~~$457,580,000~~)) $538,126,000
Motor Vehicle Account—Private/Local Appropriation. . . . . ((~~$64,487,000~~)) $65,902,000
Special Category C Account—State Appropriation . . . . . ((~~$29,125,000~~)) $29,772,000
((~~Multimodal Transportation Account—Federal Appropriation. . . . . $86,100,000~~))
Tacoma Narrows Toll Bridge Account—State Appropriation. . . . . ((~~$32,277,000~~)) $26,045,000
Transportation 2003 Account (Nickel Account)—State Appropriation. . . . . ((~~$1,147,529,000~~)) $1,052,094,000
Freight Mobility Multimodal Account—State Appropriation. . . . . ((~~$208,000~~)) $189,000
TOTAL APPROPRIATION . . . . . ((~~$3,014,109,000~~)) $2,680,353,000

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 2008-1, Highway Improvement Program (I) as developed March 10, 2008. ((~~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.~~)) Federal funds may be transferred between programs I and P.

(2) The department shall not commence construction on any part of the state route number 520 bridge replacement and HOV project until a record of decision has been reached providing reasonable assurance that project impacts will be avoided, minimized, or mitigated as much as practicable to protect against further adverse impacts on neighborhood environmental quality as a result of repairs and improvements made to the state route 520 bridge and its connecting roadways, and that any such impacts will be addressed through engineering design choices, mitigation measures, or a combination of both. The requirements of this section shall not apply to off-site pontoon construction supporting the state route number 520 bridge replacement and HOV project.

(3) Within the amounts provided in this section, ((~~$1,895,000~~)) $11,363 of the transportation partnership account—state appropriation, ((~~$2,147,000~~)) $505,099 of the motor vehicle account—federal appropriation, and ((~~$10,331,000~~)) $11,031,179 of the transportation 2003 account (nickel account)—state appropriation are for project 109040T as identified in the LEAP transportation document referenced in subsection (1) of this section: I-90/Two Way Transit-Transit and HOV Improvements - Stage 1. Expenditure of the

funds on construction is contingent upon revising the access plan for Mercer Island traffic such that Mercer Island traffic will have access to the outer roadway high occupancy vehicle (HOV) lanes during the period of operation of such lanes following the removal of Mercer Island traffic from the center roadway and prior to conversion of the outer roadway HOV lanes to high occupancy toll (HOT) lanes. Sound transit may only have access to the center lanes when alternative R8A is complete.

(4) The Tacoma Narrows toll bridge account—state appropriation includes up to ((~~$18,000,000~~)) $26,045,000 in proceeds from the sale of bonds authorized by RCW 47.10.843.

(5) The funding described in this section includes ((~~$36,693,000~~)) $46,693,000 of the transportation 2003 account (nickel account)—state appropriation ((~~and $208,000~~)), $188,357 of the freight mobility multimodal account—state appropriation, and $20,000 of the motor vehicle account—private/local appropriation, which are for the SR 519 project identified as project number 851902A in the LEAP Transportation Document referenced in subsection (1) of this section. The total project is expected to cost no more than ((~~$74,400,000~~)) $84,467,000 including ((~~$10,610,000~~)) $10,792,000 in contributions from project partners, including Burlington Northern Santa Fe railroad.

(6) To promote and support community-specific noise reduction solutions, the department shall:

(a) Prepare a draft directive that establishes how each community's priorities and concerns may be identified and addressed in order to allow consideration of a community's preferred methods of advanced visual shielding and aesthetic screening, for the purpose of improving the noise environment of major state roadway projects in locations that do not meet the criteria for standard noise barriers. The intent is for these provisions to be supportable by existing project budgets. The directive shall also include direction on the coordination and selection of visual and aesthetic options with local communities. The draft directive shall be provided to the standing transportation committees of the legislature by January 2008; and

(b) Pilot the draft directive established in (a) of this subsection in two locations along major state roadways. If practicable, the department should begin work on the pilot projects while the directive is being developed. One pilot project shall be located in Clark county on a significant capacity improvement project. The second pilot project shall be located in urban King county, which shall be on a corridor highway project through mixed land use areas that is nearing or under construction. The department shall provide a written report to the standing transportation committees of the legislature on the findings of the Clark county pilot project by January 2009, and the King county pilot project by January 2010. Based on results of the pilot projects, the department shall update its design manual, environmental procedures, or other appropriate documents to incorporate the directive.

(7) If the "Green Highway" provisions of Engrossed Second Substitute House Bill No. 1303 (cleaner energy) are enacted, the department shall erect signs on the interstate highways included in those provisions noting that these interstates have been designated "Washington Green Highways."

(8) If on the I-405/I-90 to SE 8th Street Widening project the department finds that there is an alternative investment to preserve reliable rail accessibility to major manufacturing sites within the I-405 corridor that are less expensive than replacing the Wilburton Tunnel, the department may enter into the necessary agreements to implement that alternative provided that costs remain within the approved project budget.

(9) The department shall apply for surface transportation program (STP) 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 SR 518, SR 519, SR 520, and Alaskan Way Viaduct projects.

(10) $250,000 of the motor vehicle account—state appropriation and $226,000 of the motor vehicle account—federal appropriation are provided solely for an inland pacific hub study to develop an inland corridor for the movement of freight and goods to and through eastern Washington; and $500,000 of the motor vehicle account—state appropriation is provided solely for the SR3/SR16 corridor study to plan and prioritize state and local improvements needed over the next 10-20 years to support safety, capacity development, and economic development within the corridor.

(11) The department shall, on a quarterly basis beginning July 1, 2007, provide to the office of financial management and the legislature reports providing the status on each active project funded in part or whole by the transportation 2003 account (nickel account) or the transportation partnership account. Funding provided at a programmatic level for transportation partnership account and transportation 2003 account (nickel account) projects relating to bridge rail, guard rail, fish passage barrier removal, and roadside safety projects should be reported on a programmatic basis. Projects within this programmatic level funding should be completed on a priority basis and scoped to be completed within the current programmatic budget. Other projects may be reported on a programmatic basis. The department shall work with the office of financial management and the transportation committees of the legislature to agree on report formatting and elements. Elements shall include, but not be limited to, project scope, schedule, and costs. The department shall also provide the information required under this subsection on a quarterly basis via the transportation executive information systems (TEIS).

(12) The department shall apply for the competitive portion of federal transit administration funds for eligible transit-related costs of the SR 520 bridge replacement and HOV project. The federal funds described in this subsection shall not include those federal transit administration funds distributed by formula.

(13) Funding provided by this act for the Alaskan Way Viaduct project shall not be spent for preliminary engineering, design, right-of-way acquisition, or construction on the project if completion of the project would more likely than not reduce the capacity of the facility. Capacity shall be measured by including the consideration of the efficient movement of people and goods on the facility.

(14) The governor shall convene a collaborative process involving key leaders to determine the final project design for the Alaskan Way Viaduct.

(a) The process shall be guided by the following common principles: Public safety must be maintained; the final project shall meet both capacity and mobility needs; and taxpayer dollars must be spent responsibly.

(b) The state's project expenditures shall not exceed $2,800,000,000.

(c) A final design decision shall be made by December 31, 2008.

(15) During the 2007-09 biennium, the department shall proceed with a series of projects on the Alaskan Way Viaduct that are common to any design alternative. Those projects include relocation of two electrical transmission lines, Battery Street tunnel upgrades, seismic upgrades from Lenora to the Battery Street tunnel, viaduct removal from Holgate to King Street, and development of transit enhancements and other improvements to mitigate congestion during construction.

(16) The transportation 2003 account (nickel account)—state appropriation includes up to ((~~$874,610,000~~)) $740,839,000 in proceeds from the sale of bonds authorized by RCW 47.10.861.

(17) The transportation partnership account—state appropriation includes up to ((~~$900,000,000~~)) $642,100,000 in proceeds from the sale of bonds authorized in RCW 47.10.873.

(18) The special category C account—state appropriation includes up to $21,497,000 in proceeds from the sale of bonds authorized in Substitute House Bill No. 2394. If Substitute House Bill No. 2394 is not enacted by June 30, 2007, the amount provided in this subsection shall lapse.

(19) $4,500,000 of the motor vehicle account—federal appropriation is provided solely for cost increases on the SR 304/Bremerton tunnel project.

(20) $2,071,000 of the motor vehicle account—federal appropriation is provided solely for initial design and right of way work on a new southbound SR 509 to eastbound SR 518 freeway-to-freeway elevated ramp.

(21) $500,000 of the motor vehicle account—federal appropriation to the SR 543/I-5 to Canadian border project is provided solely for retaining wall facia improvements.

(22) ((~~$950,000~~)) $846,700 of the motor vehicle account—federal appropriation and ((~~$24,000~~)) $17,280 of the motor vehicle account—state appropriation are provided solely for the Westview school noise wall.

(23) ((~~$1,600,000~~)) $1,567,600 of the motor vehicle account—state appropriation is provided solely for two noise walls on SR 161 in King county.

(24) ((~~$20,000~~)) $10,640 of the motor vehicle account—state appropriation and ((~~$280,000~~)) $252,300 of the motor vehicle account—federal appropriation are provided solely for interchange design and planning work on US 12 at A street and tank farm road.

(25) The funding described in this section includes ((~~$19,939,000~~)) $19,928,000 of the transportation partnership account—state appropriation, ((~~$29,000~~)) $26,000 of the motor vehicle account—state appropriation, ((~~$308,000~~)) $6,747,000 of the motor vehicle account—private/local appropriation, and ((~~$17,900,000~~)) $17,821,000 of the motor vehicle account—federal appropriation for the I-5/Columbia river crossing/Vancouver project. The funding described in this subsection includes up to $15,000,000 awarded to Washington and Oregon jointly through the U.S. department of transportation corridors of the future program in the 2007 federal highway authority discretionary fund allocations.

(26) The department shall study any outstanding issues, including financial issues that may apply to the I-5/Columbia river crossing/Vancouver project. The department's efforts must include an analysis of current bi-state efforts in

planning, coordination, and funding for the project; opportunities for the joining of state and local government agencies and the private sector in a strong partnership that contributes to the completion of the project; and opportunities to work with the congressional delegations of Oregon and Washington to provide federal funding and other assistance that will advance this project of national and regional significance.

(27) ((~~$1,500,000~~)) $1,928,232 of the motor vehicle account—federal appropriation ((~~and $4,908,000~~)), $2,611,000 of the transportation partnership account—state appropriation, and $14,682 of the transportation 2003 account (nickel account)—state appropriation are provided solely for project 109040Q as identified in the LEAP transportation document in subsection (1) of this section: I-90/Two-Way Transit-Transit and HOV Improvements, Stages 2 and 3. Of these amounts, up to $550,000 of the transportation partnership account—state appropriation is to provide funding for an independent technical review, overseen by the joint transportation committee, of light rail impacts on the Interstate 90 - Homer Hadley Floating Bridge. The technical review shall complement sound transit's current and planned engineering design work to expand light rail in the central Puget Sound region. The department shall coordinate its work with sound transit and seek contributions from sound transit for the review.

(28) ((~~$1,400,000~~)) $800,000 of the motor vehicle account—state appropriation is provided solely for safety improvements on US Highway 2 between Monroe and Gold Bar. Additional project funding of ((~~$8,600,000~~)) $9,200,000 is assumed in the 2009-2011 biennium, bringing the total project funding to $10,000,000. This high priority safety project will provide safety enhancements on US Highway 2 between Gold Bar and Monroe, such as a passing lane or interchange/turning lane improvements. The department shall seek input from the US Highway 2 safety coalition to select projects that will help reduce fatalities on this corridor.

(29) ((~~$2,267,000~~)) $1,663,700 of the motor vehicle account—federal appropriation, ((~~$218,500~~)) $234,000 of the motor vehicle account—state appropriation, and $1,500,000 of the motor vehicle account—private/local appropriation are provided solely for installing centerline rumble strips and related improvements on US Highway 2 between Monroe and Sultan. The section of US Highway 2 from Monroe to Deception Creek has a high frequency of centerline crossover collisions. By installing centerline rumble strips, the project will reduce the risk of crossover collisions. This project will also place shoulder rumble strips between Monroe and Sultan.

(30) ((~~$1,500,000~~)) $688,000 of the motor vehicle account—state appropriation is provided solely for the SR 28/E End of the George Sellar bridge (202802V) for the purpose of funding a pedestrian tunnel connection. This funding is provided in anticipation of a federal grant specific to this project, which, if received, must be used to reimburse the state funding provided in this subsection.

(31) For the period of preconstruction tolling on the state route 520 bridge, the department shall develop improvements of traffic flow from the eastern Lake Washington shoreline to 108th avenue northeast in Bellevue including:

(a) Near-term, low-cost enhancements which relocate the high-occupancy vehicle lanes to the inside of the alignment; and

(b) A plan for an accelerated improvement project for the construction of median flyer stops, reconfiguration of interchanges, addition of direct access ramps, community enhancement lids, and pedestrian/bike path connections.
The department shall report to the joint transportation committee by September 1, 2008, on the short-term low-cost improvement plans and include in their budget submittal to the office of financial management a proposal for the accelerated improvement project.

Sec. 305. 2008 c 121 s 307 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—PRESERVATION—PROGRAM P

Transportation Partnership Account—State Appropriation. . . . . ((~~$181,666,000~~)) $181,316,000
Motor Vehicle Account—State Appropriation . . . . . ((~~$86,540,000~~)) $94,784,000
Motor Vehicle Account—Federal Appropriation . . . . . ((~~$463,338,000~~)) $462,427,000
Motor Vehicle Account—Private/Local Appropriation . . . . . ((~~$18,138,000~~)) $19,049,000
Transportation 2003 Account (Nickel Account)—State Appropriation. . . . . ((~~$11,136,000~~)) $15,399,000
Puyallup Tribal Settlement Account—State Appropriation. . . . . ((~~$12,500,000~~)) $6,000,000
TOTAL APPROPRIATION . . . . . ((~~$773,318,000~~)) $778,975,000

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 2008-1, Highway Preservation Program (P) as developed March 10, 2008. ((~~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.~~)) Federal funds may be transferred between programs I and P.

(2) $287,000 of the motor vehicle account—federal appropriation and $11,000 of the motor vehicle account—state appropriation are provided solely for the department to determine the most cost efficient way to replace the current Keller ferry. Options reviewed shall not include an expansion of the current capacity of the Keller ferry.

(3) $5,308,000 of the transportation partnership account—state appropriation is provided solely for the purposes of settling all identified and potential claims from the Lower Elwha Klallam Tribe related to the construction of a graving dock facility on the graving dock property. In the matter of *Lower Elwha Klallam Tribe et al v. State et al,* Thurston county superior court, cause

no. 05-2-01595-8, the Lower Elwha Klallam Tribe and the state of Washington entered into a settlement agreement that settles all claims related to graving dock property and associated construction and releases the state from all claims related to the construction of the graving dock facilities. The expenditure of this appropriation is contingent on the conditions and limitations set forth in subsections (a) and (b) of this subsection.

(a) $2,000,000 of the transportation partnership account—state appropriation is provided solely for the benefit of the Lower Elwha Klallam Tribe to be disbursed by the department in accordance with terms and conditions of the settlement agreement.

(b) $3,308,000 of the transportation partnership account—state appropriation is provided solely for the department's remediation work on the graving dock property in accordance with the terms and conditions of the settlement agreement.

(4) The department shall apply for surface transportation program (STP) 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 SR 518, SR 519, SR 520, and Alaskan Way Viaduct projects.

(5) The department shall, on a quarterly basis beginning July 1, 2007, provide to the office of financial management and the legislature reports providing the status on each active project funded in part or whole by the transportation 2003 account (nickel account) or the transportation partnership account. Funding provided at a programmatic level for transportation partnership account projects relating to seismic bridges should be reported on a programmatic basis. Projects within this programmatic level funding should be completed on a priority basis and scoped to be completed within the current programmatic budget. Other projects may be reported on a programmatic basis. The department shall work with the office of financial management and the transportation committees of the legislature to agree on report formatting and elements. Elements shall include, but not be limited to, project scope, schedule, and costs. The department shall also provide the information required under this subsection on a quarterly basis via the transportation executive information systems (TEIS).

(6) 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.

(7) $13,257,000 of the motor vehicle account—federal appropriation and $5,000,000 of the motor vehicle account—state appropriation are for expenditures on damaged state roads due to flooding, mudslides, rock fall, or other unforeseen events.

(8) ((~~$188,000~~)) $213,000 of the motor vehicle account—state appropriation, ((~~$28,749,000~~)) $52,930,000 of the motor vehicle account—federal appropriation, and ((~~$105,653,000~~)) $117,544,000 of the transportation partnership account—state appropriation are provided solely for the Hood Canal bridge project.

(9) ((~~$12,500,000~~)) $6,000,000 of the Puyallup tribal settlement account—state appropriation is provided solely for mitigation costs associated with the

Murray Morgan/11th Street Bridge demolition. The department may negotiate with the city of Tacoma for the purpose of transferring ownership of the Murray Morgan/11th Street Bridge to the city. If the city agrees to accept ownership of the bridge, the department may use the Puyallup tribal settlement account appropriation and other appropriated funds for bridge rehabilitation, bridge replacement, bridge demolition, and related mitigation. In no event shall the department's participation exceed $39,953,000. No funds may be expended unless the city of Tacoma agrees to take ownership of the bridge in its entirety and provides that the payment of these funds extinguishes any real or implied agreements regarding future bridge expenditures.

(10) Within the amounts provided in this section, $190,000 of the motor vehicle account—state appropriation is provided solely for rehabilitation of the SR 532/84th Ave NW bridge deck. It is the intent of the legislature that an additional $1,510,000 will be provided in the 2009-11 omnibus transportation appropriations act to complete this project.

Sec. 306. 2008 c 121 s 308 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—TRAFFIC OPERATIONS—PROGRAM Q—CAPITAL

Motor Vehicle Account—State Appropriation . . . . . ((~~$9,462,000~~)) $7,588,000
Motor Vehicle Account—Federal Appropriation . . . . . ((~~$15,951,000~~)) $14,809,000
Motor Vehicle Account—Private/Local Appropriation $74,000
TOTAL APPROPRIATION . . . . . ((~~$25,487,000~~)) $22,471,000

The appropriations in this section are subject to the following conditions and limitations: The motor vehicle account—state appropriation includes ((~~$8,959,335~~)) $7,085,335 provided solely for state matching funds for federally selected competitive grant or congressional earmark projects. These moneys shall be placed into reserve status until such time as federal funds are secured that require a state match.

Sec. 307. 2008 c 121 s 309 (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 . . . . . ((~~$142,250,000~~)) $105,182,000
Puget Sound Capital Construction Account—Federal Appropriation . . . . . ((~~$45,259,000~~)) $40,174,000
Puget Sound Capital Construction Account—Private/Local Appropriation $2,089,000
Multimodal Transportation Account—State Appropriation $4,100,000
Transportation 2003 Account (Nickel Account)—State Appropriation . . . . . ((~~$59,469,000~~)) $38,402,000

TOTAL APPROPRIATION . . . . . ((~~$253,167,000~~)) $189,947,000

The appropriations in this section are subject to the following conditions and limitations:

(1) ((~~$36,500,000~~)) $27,380,000 of the Puget Sound capital construction account—state appropriation is provided solely for project 944470A as identified in the LEAP Transportation Document 2008-1, Ferries Construction Program (W) as developed March 10, 2008, for the construction of ((~~three~~)) one marine vessel((~~s~~)) to replace the steel electric auto ferry vessels. The document includes a total of ((~~$84,500,000~~)) $76,930,000 for ((~~these~~)) this replacement vessel((~~s~~)).

(2) ((~~$21,460,823~~)) $17,812,000 of the Puget Sound capital construction account—state appropriation, $4,100,000 of the multimodal transportation account—state appropriation, $5,410,000 of the transportation 2003 account (nickel account)—state appropriation, ((~~$4,490,000~~)) $1,002,000 of the Puget Sound capital construction account—federal appropriation, and $2,089,000 of the Puget Sound capital construction account—private/local appropriation are provided solely for the terminal projects listed:

(a) Anacortes ferry terminal - utilities work; ((~~right-of-way purchase for a holding area during construction;~~)) and completion of design and permitting on the terminal building, pick-up and drop-off sites, and pedestrian and bicycle facilities;

(b) Bainbridge Island ferry terminal - environmental planning and a traffic signalization project in the vicinity of SR 305 Harborview drive;

(c) Bremerton ferry terminal - overhead loading control system and moving the terminal agent's office;

(d) Clinton ferry terminal - septic system replacement;

(e) Edmonds ferry terminal - right-of-way acquisition costs, federal match requirements, and removal of Unocal Pier;

(f) Friday Harbor ferry terminal - parking resurfacing;

(g) Keystone and Port Townsend ferry terminals - route environmental planning;

(h) Kingston ferry terminal - transfer span retrofit and overhead vehicle holding control system modifications;

(i) Mukilteo ferry terminal - right-of-way acquisition, archaeological studies, environmental planning, and additional vehicle holding;

(j) Orcas ferry terminal - dolphin replacement;

(k) Port Townsend ferry terminal - wingwall replacement((~~, interim holding, tie-up slip,~~)) and initial reservation system;

(l) Seattle ferry terminal - environmental planning, coordination with local jurisdictions, coordination with highway projects, and contractor payment for automated re-entry gates;

(m) Southworth ferry terminal - ((~~federal grant to~~)) conduct preliminary studies and planning for ((~~a 2nd~~)) second operating slip; and

(n) Vashon Island and Seattle ferry terminals - modify the passenger-only facilities.

(3) ((~~$46,020,666~~)) $31,036,000 of the transportation 2003 account (nickel account)—state appropriation and $3,750,000 of the Puget Sound capital

construction account—federal appropriation are provided solely for the procurement of up to three 144-vehicle auto-passenger ferry vessels.

(4) ((~~$18,716,000~~)) $5,867,000 of the Puget Sound capital construction account—state appropriation is provided solely for the Eagle Harbor maintenance facility preservation project. These funds may not be used for relocating any warehouses not currently on the Eagle Harbor site.

(5) The department shall research an asset management system to improve Washington state ferries' management of capital assets and the department's ability to estimate future preservation needs. The department shall report its findings regarding a new asset management system to the governor and the transportation committees of the legislature no later than January 15, 2008.

(6) The department shall sell the M.V. Chinook and M.V. Snohomish passenger-only fast ferries as soon as practicable and deposit the proceeds of the sales into the passenger ferry account created in RCW 47.60.645. Once the department ceases to provide passenger-only ferry service, the department shall sell the M.V. Kalama and M.V. Skagit passenger-only ferries and deposit the proceeds of the sales into the passenger ferry account created in RCW 47.60.645.

(7) The department shall, on a quarterly basis beginning July 1, 2007, provide to the office of financial management and the legislature reports providing the status on each project listed in this section and in the project lists submitted pursuant to this act and on any additional projects for which the department has expended funds during the 2007-09 fiscal biennium. Elements shall include, but not be limited to, project scope, schedule, and costs. The department shall also provide the information required under this subsection via the transportation executive information systems (TEIS).

(8) $1,105,000 of the Puget Sound capital construction account—state appropriation and ((~~$8,038,000~~)) $1,956,000 of the transportation 2003 account (nickel account)—state appropriation are provided solely for a dolphin replacement project at the Vashon Island ferry terminal. The department shall submit a predesign study to the joint transportation committee before beginning design or construction of this project.

(9) The department of transportation is authorized to sell up to ((~~$105,000,000~~)) $68,178,000 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.

(10) The department shall review the costs and benefits of continued use of the primavera scheduling system in the Washington state ferries marine division and include that review with its 2009-2011 budget submittal.

(11) The department shall review staffing in its capital engineering divisions to ensure core competency in, and a focus on, terminal and vessel preservation, with staffing sufficient to implement the preservation program in the capital plan. Until the completion of the capital plan, the department shall maintain capital staffing levels at or below the level of staffing on January 1, 2008.

(12) The department shall sell, be in the process of selling, or otherwise dispose of the four steel electric auto-ferry vessels in the most cost effective way practicable no later than June 1, 2008.

Sec. 308. 2008 c 121 s 310 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—CAPITAL

((~~Essential Rail Assistance Account—State Appropriation . . . . . .$500,000~~))

Transportation Infrastructure Account—State Appropriation. . . . . ((~~$1,713,000~~)) $1,580,000

((~~Transportation Infrastructure Account—Federal Appropriation. . . . . .$787,000~~))

Multimodal Transportation Account—State Appropriation. . . . . ((~~$165,512,000~~)) $104,564,000

Multimodal Transportation Account—Federal Appropriation. . . . . ((~~$33,906,000~~)) $20,165,000

Multimodal Transportation Account—Private/Local Appropriation. . . . . ((~~$2,659,000~~)) $363,000

TOTAL APPROPRIATION . . . . . ((~~$205,077,000~~)) $126,672,000

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 ((~~fund,~~)) project((~~, and amount~~)) in LEAP Transportation Document 2008-1, Rail Capital Program (Y) as developed March 10, 2008. ((~~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.~~))

(b) Within the amounts provided in this section, ((~~$1,713,000~~)) $1,080,000 of the transportation infrastructure account—state appropriation ((~~and $787,000 of the transportation infrastructure account—federal appropriation are~~)) is for low-interest loans for rail capital projects through the freight rail investment bank program. The department shall issue a call for projects based upon the legislative priorities specified in subsection (7)(a) of this section. Application must be received by the department by October 1, 2008. By November 1, 2008, the department shall submit a prioritized list of recommended projects to the office of financial management and the transportation committees of the legislature. The department shall award low-interest loans to the port of Moses Lake in the amount of ((~~$213,000~~)) $150,000, and based upon the prioritized list of rail capital projects most recently submitted to the legislature pursuant to this subsection, as follows: Port of Benton County ($250,000); Port of Everett ($250,000); ((~~Central Terminals, LLC ($250,000);~~)) Tacoma Rail—Maintenance Facility ($250,000); ((~~NW Container Service ($250,000); Port of Chehalis ($250,000); Ballard Terminal Railroad ($250,000); Eastern Washington Gateway Railroad ($36,875);~~)) Spokane County ((~~($250,000)~~)) ($150,000); Tacoma Rail—Locomotive Idling ((~~($250,000)~~)) ($30,000).

(c) Within the amounts provided in this section, $2,561,000 of the multimodal transportation account—state appropriation is for statewide - emergent freight rail assistance projects as listed in LEAP Transportation Document 2008-1, Rail Capital Program (Y) as developed March 10, 2008. ((~~However, the department shall perform a cost/benefit analysis of the projects according to the legislative priorities specified in subsection (7)(a) of this section, and shall give priority to the following projects: Rail - Tacoma rail yard switching upgrades ($500,000); Rail - Port of Ephrata spur rehabilitation ($127,000); Rail - Lewis and Clark rail improvements ($1,100,000); Rail - Port of Grays Harbor rail access improvements ($543,000); and Rail - Port of Longview rail loop construction ($291,000). If the relative cost of any of the six projects identified in this subsection (1)(c) is not substantially less than the public benefits to be derived from the project, then the department shall not assign the funds to the project, and instead shall use those funds toward those projects identified by the department in the attachments to the "Washington State Department of Transportation FREIGHT RAIL ASSISTANCE FUNDING PROGRAM: 2007-2009 Prioritized Project List and Program Update" dated December 2006 for which the proportion of public benefits to be gained compared to the cost of the project is greatest.~~))

(d) Within the amounts provided in this section, $339,000 of the multimodal transportation account—state appropriation is for rescoping and completion of required environmental documents for the Kelso to Martin's Bluff - 3rd Mainline and Storage Tracks project. The rescoped project may include funds that are committed to the project by local or private funding partners. However, the rescoped project must be capable of being completed with not more than $49,470,000 in future state funding, inclusive of inflation costs. Subject to this funding constraint, the rescoped project must maximize capacity improvements along the rail mainline.

(e) Within the amounts provided in this section, $3,600,000 of the multimodal transportation account—state appropriation is for work items on the Palouse River and Coulee City Railroad lines.

(2) The multimodal transportation account—state appropriation includes up to ((~~$144,500,000~~)) $91,000,000 in proceeds from the sale of bonds authorized by RCW 47.10.867.

(3) The department is directed to seek the use of unprogrammed federal rail crossing funds to be expended in lieu of or in addition to state funds for eligible costs of projects in Program Y, including, but not limited to the "Tacoma — bypass of Pt. Defiance" project.

(4) If new federal funding for freight or passenger rail is received, the department shall consult with the transportation committees of the legislature and the office of financial management prior to spending the funds on existing or additional projects.

(5) The department shall sell any ancillary property, acquired when the state purchased the right-of-ways to the PCC rail line system, to a lessee of the ancillary property who is willing to pay fair market value for the property. The department shall deposit the proceeds from the sale of ancillary property into the transportation infrastructure account.

(6)(a) The department shall develop and implement the benefit/impact evaluation methodology recommended in the statewide rail capacity and needs

study finalized in December 2006. The benefit/impact evaluation methodology shall be developed using the following priorities, 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.

(b) The department shall convene a work group to collaborate on the development of the benefit/impact analysis method to be used in the evaluation. The work group must include, at a minimum, the freight mobility strategic investment board, the department of agriculture, and representatives from the various users and modes of the state's rail system.

(c) The department shall use the benefit/impact analysis and priorities in (a) of this subsection when submitting requests for state funding for rail projects. The department shall develop a standardized format for submitting requests for state funding for rail projects that includes an explanation of the analysis undertaken, and the conclusions derived from the analysis.

(d) The department and the freight mobility strategic investment board shall collaborate to submit a report to the office of financial management and the transportation committees of the legislature by September 1, 2008, listing proposed freight highway and rail projects. The report must describe the analysis used for selecting such projects, as required by this act for the department and as required by chapter 47.06A RCW for the board. When developing its list of proposed freight highway and rail projects, the freight mobility strategic investment board shall use the priorities identified in (a) of this subsection to the greatest extent possible.

(7) The department shall apply at the earliest possible date for grants, pursuant to the new competitive intercity rail grant program announced by the federal railroad administration on February 19, 2008, for any projects that may qualify for such federal grants and are currently identified on the project list referenced in subsection (1)(a) of this section.

(8) Up to $8,500,000 of any underexpenditures of state funding designated on the project list referenced in subsection (1)(a) of this section for the "Vancouver-Rail Bypass and W 39th Street Bridge" project may be used to upgrade, to class 2 condition, track owned by Clark county between Vancouver and Battle Ground.

(9) Up to $400,000 of the multimodal transportation account—state appropriation is contingent upon the port of Chehalis submitting a full copy of the FEMA application packet to the department in order to assist the department in verifying the scope of the repairs and the rail transportation value of the project identified on the project list referenced in subsection (1)(a) of this section as "Port of Chehalis-Track Rehabilitation" (F01002A).

(10) $500,000 of the transportation infrastructure account—state appropriation is provided solely for grants to any intergovernmental entity or local rail district to which the department of transportation assigns the

management and oversight responsibility for the business and economic development elements of existing operating leases on the Palouse River and Coulee City (PCC) rail lines. The PCC rail line system is made up of the CW, P&L, and PV Hooper rail lines. Business and economic development elements include such items as levels of service and business operating plans, but shall not include the state's oversight of railroad regulatory compliance, rail infrastructure condition, or real property management issues. The PCC rail system must be managed in a self-sustaining manner and best efforts shall be used to ensure that it does not require state capital or operating subsidy beyond the level of state funding expended on it to date. The assignment of the stated responsibilities to an intergovernmental entity or rail district shall be on such terms and conditions as the department of transportation and the intergovernmental entity or rail district mutually agree. The grant funds may be used only to refurbish the rail lines. It is the intent of the legislature to make the funds appropriated in this section available as grants to an intergovernmental entity or local rail district for the purposes stated in this section at least until June 30, 2012, and to reappropriate as necessary any portion of the appropriation in this section that is not used by June 30, 2009.

Sec. 309. 2008 c 121 s 311 (uncodified) is amended to read as follows:

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 . . . . . ((~~$12,378,000~~)) $5,630,000

Transportation Partnership Account—State Appropriation . . . . . ((~~$3,906,000~~)) $2,543,000

Motor Vehicle Account—State Appropriation . . . . . ((~~$12,870,000~~)) $7,545,000

Motor Vehicle Account—Federal Appropriation . . . . . ((~~$63,823,000~~)) $30,916,000

Freight Mobility Multimodal Account—State Appropriation . . . . . ((~~$12,750,000~~)) $4,848,000

Freight Mobility Multimodal Account—Private/Local Appropriation . . . . . ((~~$3,755,000~~)) $750,000

Multimodal Transportation Account—Federal Appropriation . . . . . ((~~$4,224,000~~)) $3,520,000

Multimodal Transportation Account—State Appropriation . . . . . ((~~$32,134,000~~)) $17,517,000

Transportation 2003 Account (Nickel Account)—State Appropriation. . . . . ((~~$2,721,000~~)) $2,012,000
Passenger Ferry Account—State Appropriation. . . . . ((~~$8,500,000~~)) $2,879,000
TOTAL APPROPRIATION . . . . . ((~~$158,870,000~~)) $79,969,000

The appropriations in this section are subject to the following conditions and limitations:

(1) The department shall, on a quarterly basis, provide status reports to the legislature on the delivery of projects as outlined in the project lists incorporated in this section. For projects funded by new revenue in the 2003 and 2005 transportation packages, reporting elements shall include, but not be limited to, project scope, schedule, and costs. Other projects may be reported on a programmatic basis. The department shall also provide the information required under this subsection on a quarterly basis via the transportation executive information system (TEIS).

(2) ((~~$8,500,000~~)) $2,879,000 of the passenger ferry account—state appropriation is provided solely for near and long-term costs of capital improvements in a business plan approved by the governor for passenger ferry service.

(3) The department shall seek the use of unprogrammed federal rail crossing funds to be expended in lieu of or in addition to state funds for eligible costs of projects in local programs, program Z capital.

(4) The department shall apply for surface transportation program (STP) 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.

(5) Federal funds may be transferred from program Z to programs I and P and state funds shall 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 shall 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, 2007, and December 1, 2008.

(6) The city of Winthrop may utilize a design-build process for the Winthrop bike path project. Of the amount appropriated in this section for this project, $500,000 of the multimodal transportation account—state appropriation is contingent upon the state receiving from the city of Winthrop $500,000 in federal funds awarded to the city of Winthrop by its local planning organization.

(7) ((~~$11,591,224~~)) $4,052,968 of the multimodal transportation account—state appropriation((~~, $8,640,239 of the motor vehicle account federal appropriation,~~)) and ((~~$4,000,000~~)) $3,412,837 of the motor vehicle account—federal appropriation are provided solely for the pedestrian and bicycle safety program projects and safe routes to schools program projects identified in the LEAP Transportation Document 2007-A, pedestrian and bicycle safety program

projects and safe routes to schools program projects as developed April 20, 2007, and the 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, shall 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.

(8) ((~~Up to a maximum of $5,000,000 of the multimodal transportation account—state appropriation and up to a maximum of $2,000,000 of the motor vehicle account—federal appropriation are reappropriated for the pedestrian and bicycle safety program projects and safe routes to schools program projects identified in the 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, shall 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.~~

~~(9)~~)) $3,500,000 of the multimodal transportation account—federal appropriation is provided solely for the Museum of Flight pedestrian bridge safety project.

((~~(10) $250,000~~)) (9) $100,000 of the multimodal transportation account—state appropriation is provided solely for the icicle rail station in Leavenworth.

((~~(11)~~)) (10) $1,500,000 of the motor vehicle account—state appropriation is provided solely for the Union Gap city road project.

((~~(12)~~)) (11) $250,000 of the motor vehicle account—state appropriation is provided solely for the Saltwater state park bridge project and off-site traffic control costs.

((~~(13)~~)) (12) $1,000,000 of the motor vehicle account—state appropriation and ((~~$4,688,000~~)) $5,374,000 of the motor vehicle account—federal appropriation are provided solely for the coal creek parkway project.

((~~(14) $250,000~~)) (13) $150,790 of the multimodal transportation account—state appropriation is provided solely for a streetcar feasibility study in downtown Spokane.

((~~(15)~~)) (14) $500,000 of the motor vehicle account—((~~federal~~)) state appropriation is provided solely for slide repairs completed during 2007 and 2008 at or in the vicinity of marine view drive bridge on Marine View Drive and on Des Moines Memorial Drive in Des Moines.

((~~(16) $1,100,000~~)) (15) $225,000 of the motor vehicle account—state appropriation is provided solely for local road improvements that connect to the

I-82 valley mall boulevard project (5082010). ((~~Planned funding of an additional $2,000,000 shall be made available to this project in the 2009-11 biennium.~~

~~(17) $2,400,000 of the motor vehicle account—state appropriation is provided solely for completion of the riverside avenue extension project in the city of Spokane.~~

~~(18)~~)) It is the intent of the legislature that an additional $2,875,000 will be provided in the 2009-11 omnibus transportation appropriations act to complete this project.

(16) For the 2007-09 project appropriations, unless otherwise provided in this act, the director of financial management may authorize a transfer of appropriation authority between projects managed by the freight mobility strategic investment board, in order for the board to manage project spending and efficiently deliver all projects in the respective program.

TRANSFERS AND DISTRIBUTIONS

Sec. 401. 2008 c 121 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 Appropriation . . . . . ((~~$544,061,000~~)) $515,861,000

Ferry Bond Retirement Account Appropriation $37,380,000

Transportation Improvement Board Bond Retirement Account—State Appropriation . . . . . ((~~$26,822,000~~)) $26,462,000

Nondebt-Limit Reimbursable Account Appropriation . . . . . ((~~$13,059,000~~)) $8,248,000

Transportation Partnership Account—State Appropriation. . . . . ((~~$1,823,000~~)) $2,223,000

Motor Vehicle Account—State Appropriation . . . . . ((~~$457,000~~)) $301,000

Transportation Improvement Account—State Appropriation $68,000

Multimodal Transportation Account—State Appropriation. . . . . ((~~$675,000~~)) $337,000

Transportation 2003 Account (Nickel Account)—State Appropriation. . . . . ((~~$2,003,000~~)) $2,503,000

Urban Arterial Trust Account—State Appropriation $113,000

Special Category C Account Appropriation . . . . . ((~~$99,000~~)) $78,000

TOTAL APPROPRIATION . . . . . ((~~$626,560,000~~)) $593,574,000

Sec. 402. 2008 c 121 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

Transportation Partnership Account—State Appropriation. . . . . ((~~$243,000~~)) $369,000

Motor Vehicle Account—State Appropriation . . . . . ((~~$61,000~~)) $49,000

Transportation Improvement Account—State Appropriation $5,000

Multimodal Transportation Account—State Appropriation . . . . . ((~~$90,000~~)) $55,000

Transportation 2003 Account (Nickel Account)—State Appropriation. . . . . ((~~$267,000~~)) $406,000

Urban Arterial Trust Account—State Appropriation $38,000

Special Category C Account—State Appropriation $13,000

TOTAL APPROPRIATION . . . . . ((~~$717,000~~)) $935,000

Sec. 403. 2008 c 121 s 403 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR MVFT BONDS AND TRANSFERS

Motor Vehicle Account—State Reappropriation:

For transfer to the Tacoma Narrows Toll Bridge Account. . . . . ((~~$19,133,000~~)) $12,717,000

The department of transportation is authorized to sell up to ((~~$18,000,000~~)) $12,717,000 in bonds authorized by RCW 47.10.843 for the Tacoma Narrows bridge project. Proceeds from the sale of the bonds shall be deposited into the motor vehicle account. The department of transportation shall inform the treasurer of the amount to be deposited.

NEW SECTION. **Sec. 404.** A new section is added to 2007 c 518 (uncodified) to read as follows:

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. $68,178,000

The state treasurer is authorized to sell up to $68,178,000 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.

Sec. 405. 2008 c 121 s 404 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—STATE REVENUES FOR DISTRIBUTION

Motor Vehicle Account Appropriation for
motor vehicle fuel tax distributions to cities
and counties . . . . . ((~~$501,783,827~~))
$491,628,000

Sec. 406. 2008 c 121 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 . . . . . ((~~$902,982,000~~))
$854,291,000

Sec. 407. 2008 c 121 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 . . . . . ((~~$445,345,000~~))
$480,666,000

Sec. 408. 2008 c 121 s 407 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—ADMINISTRATIVE TRANSFERS

(1) Recreational Vehicle Account—State
Appropriation: For transfer to the Motor Vehicle
Account—State $4,505,000

(2) License Plate Technology Account—State
Appropriation: For transfer to the Multimodal Transportation
Account—State $4,500,000

(3) Motor Vehicle Account—State Appropriation:
For transfer to the High-Occupancy Toll Lanes Operations—
State Account $3,000,000

(4) ((~~Motor Vehicle Account—State Appropriation:
For transfer to the Puget Sound Capital Construction
Account—State . . . . . $20,000,000~~
~~(5)~~)) Multimodal Transportation Account—State
Appropriation: For transfer to the Puget Sound
Ferry Operations Account—State . . . . . ((~~$66,000,000~~))
$88,000,000

(((~~(6)~~))) (5) Advanced Right-of-Way Revolving Account—State
Appropriation: For transfer to the Motor Vehicle
Account—State . . . . . ((~~$30,000,000~~))
$24,000,000

(((~~(7)~~))) (6) Waste Tire Removal Account—State Appropriation:
For transfer to the Motor Vehicle Account—State $5,600,000

(((~~(8) Motor Vehicle Account—State Appropriation:
For transfer to the Puget Sound Ferry Operations Account—
State . . . . . $3,000,000~~
~~(9) Multimodal Transportation Account—State~~

~~Appropriation: For transfer to the Transportation Infrastructure Account—State . . . . . $6,600,000~~
~~(10)~~)) (7) Highway Safety Account—State Appropriation: For transfer to the Multimodal Transportation Account—State . . . . . ((~~$9,500,000~~)) $14,000,000

(((~~(11) Urban Arterial Trust Account—State Appropriation: For transfer to the Small City Pavement and Sidewalk Account—State . . . . . $1,400,000~~))

(8) Motor Vehicle Account—State Appropriation: For transfer to the State Patrol Highway Account—State $4,000,000

(9) Motorcycle Safety Education Account—State Appropriation: For transfer to the Multimodal Transportation Account—State $2,500,000

(10) Department of Licensing Services Account—State Appropriation: For transfer to the Motor Vehicle Account—State $3,000,000

(11) Motor Vehicle Account—State Appropriation: For transfer to the Special Category C Account—State $2,000,000

(12) Passenger Ferry Account—State Appropriation: For transfer to the Multimodal Transportation Account—State $1,121,000

(13) Multimodal Transportation Account—State Appropriation: For transfer to the Puget Sound Capital Construction Account—State $12,000,000

(14) Transportation Partnership Account—State Appropriation: For transfer to the Transportation 2003 Account (Nickel Account)—State $30,000,000

The transfers identified in this section are subject to the following conditions and limitations: The amount transferred in subsection (3) of this section may be spent only on "highway purposes" as that term is construed in Article II, section 40 of the Washington state Constitution.

MISCELLANEOUS 2007-09 BIENNIUM

Sec. 501. 2008 c 121 s 605 (uncodified) is amended to read as follows:

SPECIAL APPROPRIATIONS TO THE GOVERNOR—INSURANCE ACCOUNTING SYSTEM

Aeronautics Account—State Appropriation $2,000
State Patrol Highway Account—State Appropriation $338,000
Puget Sound Capital Construction Account—State Appropriation $24,000
Transportation Partnership Account—State Appropriation $44,000
Highway Safety Account—State Appropriation $120,000
Motor Vehicle Account—State Appropriation $882,000
Puget Sound Ferry Operating Account—State Appropriation $294,000
Urban Arterial Trust Account—State Appropriation $2,000
Transportation Improvement Account—State Appropriation $2,000

Department of Licensing Services Account—State
Appropriation. $2,000
Multimodal Transportation Account—State Appropriation $12,000
Tacoma Narrows Bridge Toll Account—State Appropriation $10,000
Transportation 2003 Account (Nickel Account)—State
Appropriation. $120,000
TOTAL APPROPRIATION $1,852,000

The appropriations in this section are subject to the following conditions and limitations: The appropriations in this section fund various state transportation agencies to support the state insurance accounting system. ((~~From the applicable accounts, the office of financial management shall reduce allotments to the respective agencies by an amount that conforms with the insurance accounting system special appropriations enacted in the 2008 supplemental omnibus appropriations act, Engrossed Substitute House Bill No. 2687 (chapter . . ., Laws of 2008). The allotment reductions under this section shall be placed in reserve status and remain unexpended.~~)) The appropriations in this section are provided solely for expenditure into the health care authority administrative account.

Sec. 502. RCW 46.68.065 and 2001 c 285 s 1 are each amended to read as follows:

There is hereby created the motorcycle safety education account in the highway safety fund of the state treasury, to the credit of which shall be deposited all moneys directed by law to be credited thereto. All expenses incurred by the director of the department of licensing in administering RCW 46.20.505 through 46.20.520 shall be borne by appropriations from this account, and moneys deposited into this account shall be used only for the purposes authorized in RCW 46.20.505 through 46.20.520. During the 2007-2009 fiscal biennium, the legislature may transfer from the motorcycle safety education account such amounts as reflect the excess fund balance of the account.

Sec. 503. RCW 46.68.220 and 1992 c 216 s 5 are each amended to read as follows:

The department of licensing services account is created in the motor vehicle fund. All receipts from service fees received under RCW 46.01.140(4)(b) shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for information and service delivery systems for the department, and for reimbursement of county licensing activities. During the 2007-2009 fiscal biennium, the legislature may transfer from the department of licensing services account such amounts as reflect the excess fund balance of the account.

Sec. 504. RCW 47.60.645 and 2008 c 45 s 2 are each amended to read as follows:

There is hereby established in the transportation fund the passenger ferry account. Money in the account shall be used for operating or capital grants for ferry systems as provided in chapters 36.54, 36.57A, and 53.08 RCW. Moneys in the account shall be expended with legislative appropriation. During the 2007-2009 fiscal biennium, the legislature may transfer from the passenger ferry account such amounts as reflect the excess fund balance of the account.

NEW SECTION. **Sec. 505.** A new section is added to chapter 46.68 RCW to read as follows:

During the 2007-2009 fiscal biennium, the legislature may transfer from the transportation partnership account to the transportation 2003 account (nickel account) such amounts as reflect the excess fund balance of the transportation partnership account.

NEW SECTION. **Sec. 506.** 2008 c 121 s 604 and 2007 c 518 s 713 (uncodified) are each repealed.

NEW SECTION. **Sec. 507.** 2007 c 518 s 108 (uncodified) is repealed.

NEW SECTION. **Sec. 508.** 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. 509.** 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.

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CHAPTER 9

[Substitute House Bill 2061]

PUBLIC DEPOSITARIES—COMMISSION—POWERS—REQUIREMENTS

AN ACT Relating to the modernization and clarification of the powers of the public deposit protection commission in regard to banks, savings banks, and savings associations as public depositaries; amending RCW 39.58.010, 39.58.040, 39.58.050, 39.58.060, 39.58.100, 39.58.103, 39.58.105, 39.58.108, 39.58.130, 39.58.135, 39.58.140, and 39.58.750; adding new sections to chapter 39.58 RCW; adding a new section to chapter 43.08 RCW; creating a new section; repealing RCW 39.58.065; and declaring an emergency.

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

Sec. 1. RCW 39.58.010 and 1996 c 256 s 1 are each amended to read as follows:

In this chapter, unless the context otherwise requires:

(1) "Public funds" means moneys under the control of a treasurer, the state treasurer, or custodian belonging to, or held for the benefit of, the state or any of its political subdivisions, public corporations, municipal corporations, agencies, courts, boards, commissions, or committees, including moneys held as trustee, agent, or bailee belonging to, or held for the benefit of, the state or any of its political subdivisions, public corporations, municipal corporations, agencies, courts, boards, commissions, or committees;

(2) "Public depositary" means a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has been approved by the commission to hold public deposits, and which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability((: ~~Addition of the word "bank" denotes a bank, trust company, or national banking association and the word "thrift" denotes a savings association or savings bank~~));

(3) "Loss" means the issuance of an order by a regulatory or supervisory authority or a court of competent jurisdiction (a) restraining a public depositary from making payments of deposit liabilities or (b) appointing a receiver for a public depositary;

(4) "Commission" means the Washington public deposit protection commission created under RCW 39.58.030;

(5) "Eligible collateral" means securities which are enumerated in RCW 39.58.050 (5) and (6) as eligible collateral for public deposits;

(6) ((~~The~~)) "Maximum liability," ((~~of a~~)) with reference to a public depositary's liability under this chapter for loss per occurrence by another public depositary, on any given date means:

(a) A sum equal to ten percent of (((~~(a)~~)):

(i) All uninsured public deposits held by ((~~the qualified~~)) a public depositary ((~~on~~)) that has not incurred a loss by the then most recent commission report date((~~, or~~

~~(b)~~)); or

(ii) The average of the balances of said uninsured public deposits on the last four immediately preceding reports required pursuant to RCW 39.58.100, whichever amount is greater((~~, less any assessments paid to the commission pursuant to this chapter since the then most recent commission report date~~)); or

(b) Such other sum or measure as the commission may from time to time set by resolution according to criteria established by rule, consistent with the commission's broad administrative discretion to achieve the objective of RCW 39.58.020.

As long as the uninsured public deposits of a public depositary are one hundred percent collateralized by eligible collateral as provided for in RCW 39.58.050, the "maximum liability" of a public depositary that has not incurred a loss may not exceed the amount set forth in (a) of this subsection.

This definition of "maximum liability" does not limit the authority of the commission to adjust the collateral requirements of public depositaries pursuant to RCW 39.58.040;

(7) "Public funds available for investment" means such public funds as are in excess of the anticipated cash needs throughout the duration of the contemplated investment period;

(8) "Investment deposits" means time deposits, money market deposit accounts, and savings deposits of public funds available for investment;

(9) "Treasurer" ((~~shall~~)) means ((~~the state treasurer,~~)) a county treasurer, a city treasurer, a treasurer of any other municipal corporation, and any other custodian of public funds, except the state treasurer;

(10) "Financial institution" means any national or state chartered commercial bank or trust company, savings bank, or savings association, or branch or branches thereof, located in this state and lawfully engaged in business;

(11) "Commission report" means a formal accounting rendered by all public depositaries to the commission in response to a demand for specific information made by the commission detailing pertinent affairs of each public depositary as of the close of business on a specified date, which is the "commission report date." "Commission report due date" is the last day for the timely filing of a commission report;

(12) "Director of the department of financial institutions" means the Washington state director of the department of financial institutions;

(13) "Net worth" of a public depositary means (a) the equity capital as reported to its primary regulatory authority on the quarterly report of condition or statement of condition, or other required report required by its primary regulatory authority or federal deposit insurer, and may include capital notes and debentures which are subordinate to the interests of depositors, or (b) equity capital adjusted by rule or resolution of the commission after consultation with the director of the department of financial institutions;

(14) "Depositary pledge agreement" means a tripartite agreement executed by the commission with a financial institution and its designated trustee. Such agreement shall be approved by the directors or the loan committee of the financial institution and shall continuously be a record of the financial institution. New securities may be pledged under this agreement in substitution of or in addition to securities originally pledged without executing a new agreement;

(15) "Trustee" means a third-party safekeeping agent which has completed a depositary pledge agreement with a public depositary and the commission. Such third-party safekeeping agent may be the federal reserve bank of San Francisco, the federal home loan bank of Seattle, ((~~the trust department of the public depositary,~~)) or such other third-party safekeeping agent approved by the commission;

(16) "Capitalization" means the measure or measures of capitalization, other than net worth, of a depositary applying for designation as or operating as a public depositary pursuant to this chapter, based upon regulatory standards of financial institution capitalization adopted by rule or resolution of the commission after consultation with the director of the department of financial institutions;

(17) "Collateral" means the particular assets pledged as security to insure payment or performance of the obligations under this chapter as enumerated in RCW 39.58.050;

(18) "Liquidity" means the measure or measures of liquidity of a depositary applying for designation as or operating as a public depositary pursuant to this chapter, based upon regulatory standards of financial institution liquidity adopted by rule or resolution of the commission after consultation with the director of the department of financial institutions;

(19) "Public deposit" means public funds on deposit with a public depositary;

(20)"State public depositary" means a Washington state-chartered financial institution that is authorized as a public depositary under this chapter;

(21) "State treasurer" means the treasurer of the state of Washington.

Sec. 2. RCW 39.58.040 and 1996 c 256 s 3 are each amended to read as follows:

The commission shall have the power and broad administrative discretion:

(1) To make and enforce regulations necessary and proper to the full and complete performance of its functions under this chapter;

(2) To require any public depositary to furnish such information dealing with public deposits and the exact status of its capitalization, collateral, liquidity, and net worth as the commission shall request((~~. Any public depositary which~~

~~refuses or neglects to give promptly and accurately or to allow verification of any information so requested shall no longer be a public depositary and shall be excluded from the right to receive or hold public deposits until such time as the commission shall acknowledge that such depositary has furnished the information requested~~));

(3) To take such action as it deems best for the protection, collection, compromise or settlement of any claim arising in case of loss;

(4) To ((~~prescribe regulations, subject to this chapter, fixing~~)) fix by rule or resolution, consistent with this chapter, the requirements for initial and continued qualification of financial institutions as public depositaries on the basis of a depositary's financial condition, including its capitalization, collateral, liquidity, and net worth, and fixing other terms and conditions consistent with this chapter, under which public deposits may be received and held;

(5) To make and enforce ((~~regulations~~)) rules setting forth criteria ((~~establishing minimum standards for the financial condition of bank and thrift depositaries and, if the minimum~~)) for the establishment by policy of standards governing matters that are subject to the commission's powers to fix requirements, terms, and conditions under subsection (4) of this section for a public depositary, and, if these standards are not met, providing for additional collateral or other conditional or unconditional requirements or restrictions ((~~regarding~~)) applicable to the public depositary's right to receive or hold public deposits;

(6) To require additional or different types and amounts of collateral, or to restrict a public depositary's right to receive or hold public deposits if the standards for the financial condition of public depositaries are not met;

(((~~(6)~~))) (7) To fix the official date on which any loss shall be deemed to have occurred taking into consideration the orders, rules, and regulations of the supervisory authority of a public depositary's primary regulatory authority and federal deposit insurer as they affect the failure or inability of a public depositary to repay public deposits in full; ((~~and (7)~~)))

(8) In case loss occurs in more than one public depositary, to determine the allocation and time of payment of any sums due to public depositors under this chapter; and

(9) To make and enforce sanctions against a public depositary for noncompliance with the provisions of this chapter and rules or policies of the commission.

NEW SECTION. **Sec. 3.** A new section is added to chapter 39.58 RCW to read as follows:

For the purposes of this chapter, the commission shall include all public depositaries in a single public depositary pool. All public depositaries, as defined in RCW 39.58.010, shall be treated uniformly by the commission without regard to distinctions in the nature of its financial institution charter.

Sec. 4. RCW 39.58.050 and 1996 c 256 s 4 are each amended to read as follows:

(1) Every public depositary shall complete a depositary pledge agreement with the commission and a trustee, and shall at all times maintain, segregated from its other assets, eligible collateral in the form of securities enumerated in this section having a value at least equal to its maximum liability and as

otherwise prescribed in this chapter. Such collateral shall be segregated by deposit with the depositary's trustee and shall be clearly designated as security for the benefit of public depositors under this chapter.

(2) Securities eligible as collateral shall be valued at market value, and the total market value of securities pledged in accordance with this chapter shall not be reduced by withdrawal or substitution of securities except by prior authorization, in writing, by the commission.

(3) The public depositary shall have the right to make substitutions of an equal or greater amount of such collateral at any time.

(4) The income from the securities which have been segregated as collateral shall belong to the public depositary without restriction.

(5) Each of the following enumerated classes of securities, providing there has been no default in the payment of principal or interest thereon, shall be eligible to qualify as collateral:

(a) Certificates, notes or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States;

(b) State, county, municipal, or school district bonds or warrants of taxing districts of the state of Washington or any other state of the United States, provided that such bonds and warrants shall be only those found to be within the limit of indebtedness prescribed by law for the taxing district issuing them and to be general obligations;

(c) The obligations of any United States government-sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

(d) Bonds, notes, letters of credit, or other securities or evidence of indebtedness constituting the direct and general obligation of a federal home loan bank or federal reserve bank;

(e) Revenue bonds of this state or any authority, board, commission, committee, or similar agency thereof, and any municipality or taxing district of this state;

(f) Direct and general obligation bonds and warrants of any city, town, county, school district, port district, or other political subdivision of any state, having the power to levy general taxes, which are payable from general ad valorem taxes;

(g) Bonds issued by public utility districts as authorized under the provisions of Title 54 RCW, as now or hereafter amended;

(h) Bonds of any city of the state of Washington for the payment of which the entire revenues of the city's water system, power and light system, or both, less maintenance and operating costs, are irrevocably pledged, even though such bonds are not general obligations of such city;

(6) In addition to the securities enumerated in this section, every public depositary may also segregate such bonds, securities, and other obligations as are designated to be authorized security for public deposits under the laws of this state.

(7) The commission may ((~~at any time or times declare any particular security as ineligible to qualify~~)) determine by rule or resolution whether any security, whether or not enumerated in this section, is or shall remain eligible as

collateral when in the commission's judgment it is ((~~deemed~~)) desirable or necessary to do so.

Sec. 5. RCW 39.58.060 and 1996 c 256 s 5 are each amended to read as follows:

When the commission determines that a loss has occurred in a ((~~bank~~)) public depositary, it shall as soon as possible make payment to the proper public officers of all funds subject to such loss, pursuant to the following procedures:

(1) For the purposes of determining the sums to be paid, the director of the department of financial institutions or the receiver shall, within twenty days after issuance of a restraining order or taking possession of any ((~~bank~~)) public depositary, ascertain the amount of public funds on deposit therein as disclosed by its records and the amount thereof covered by deposit insurance and ((~~certify~~)) provide written verification of the amounts thereof to the commission and each ((~~such~~)) public depositor;

(2) Within ten days after receipt of ((~~such certification~~)) written verification, each ((~~such~~)) public depositor shall furnish to the commission verified statements of its deposits in ((~~such bank~~)) the public depositary, including the uninsured and uncollateralized status of the public deposits, as disclosed by its records;

(3) Upon receipt of ((~~such certificate~~)) written verification and statements, the commission shall ascertain and fix the amount of ((~~such~~)) the public deposits, net after deduction of any amount received from deposit insurance and held collateral, and, after determining and declaring the apparent net loss, assess the same against all ((~~then bank~~)) public depositaries, as follows: First, against the public depositary in which the loss occurred, to the extent of the full value of collateral segregated pursuant to this chapter; second, against all other ((~~bank~~)) public depositaries pro rata in proportion to the maximum liability of each ((~~such~~)) depositary as it existed on the date of loss;

(4) Assessments made by the commission shall be payable on the second business day following demand, and in case of the failure of any public depositary so to pay, the commission shall ((~~forthwith~~)) take possession of the securities segregated as collateral by ((~~such~~)) the depositary pursuant to this chapter and liquidate the same for the purpose of paying such assessment;

(5) Upon receipt of ((~~such~~)) the assessment payments, the commission shall reimburse the public depositors of the public depositary in which the loss occurred to the extent of the depositary's net deposit liability to them;

(6) Any owner of public deposits receiving assessment proceeds shall provide a receivership certificate to the commission.

NEW SECTION. **Sec. 6.** RCW 39.58.065 (Loss in a thrift public depositary—Procedure for payment) and 1996 c 256 s 6 & 1983 c 66 s 10 are each repealed.

Sec. 7. RCW 39.58.100 and 1996 c 256 s 11 are each amended to read as follows:

(1) On or before each commission report due date, each public depositary shall render to the commission a written report, certified under oath, indicating the total amount of public funds on deposit held by it, the uninsured amount of those funds, the net worth of the depositary, and the amount and nature of eligible collateral then segregated for the benefit of the commission.

(2) The commission may instruct the director of the department of financial institutions to examine and thereafter certify as to the accuracy of any statement to the commission by any state public depositary, or to provide such other examination report information or data as may be required by the commission. The type, content, and frequency of the reports may be determined by the director of the department of financial institutions, consistent with the requirements of the commission as defined by rule.

Sec. 8. RCW 39.58.103 and 1983 c 66 s 13 are each amended to read as follows:

Each public depositary shall notify the commission in writing within ((~~five working days~~)) forty-eight hours, or by close of business of the next business day thereafter, of the happening of an event which causes its net worth to be reduced by an amount greater than ten percent of the amount shown as its net worth on the most recent report submitted pursuant to RCW 39.58.100.

Sec. 9. RCW 39.58.105 and 1996 c 256 s 12 are each amended to read as follows:

(1) The commission may require the state auditor or the director of the department of financial institutions, to the extent of their respective authority under applicable federal and Washington state law, to thoroughly investigate and report to it concerning the condition of any financial institution which makes application to become a public depositary, and may also as often as it deems necessary require the state auditor or the director of the department of financial institutions, to the extent of their respective authority under applicable federal and Washington state law, to make such investigation and report concerning the condition of any financial institution which has been designated as a public depositary. The expense of all such investigations or reports shall be borne by the financial institution examined.

(2) In lieu of any such investigation or report, the commission may rely upon information made available to it or the director of the department of financial institutions by the office of the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, the federal reserve board, ((~~or~~)) any state ((~~bank or thrift~~)) financial institutions regulatory agency, or any successor state or federal financial institutions regulatory agency, and any such information or data received by the commission shall be kept and maintained in the same manner and have the same protections as examination reports received by the commission from the director of the department of financial institutions pursuant to RCW 30.04.075(2)(h) and 32.04.220(2)(h).

(3) The director of the department of financial institutions shall in addition advise the commission of any action he or she has directed any state public depositary to take which will result in a reduction of greater than ten percent of the net worth of such depositary as shown on the most recent report it submitted pursuant to RCW 39.58.100.

Sec. 10. RCW 39.58.108 and 1996 c 256 s 13 are each amended to read as follows:

Any financial institution may become ((~~a~~)), and thereafter operate as, a public depositary upon approval by the commission and segregation of collateral in the manner as set forth in this chapter, and ((~~upon~~)) subject to compliance with all rules ((~~as promulgated~~)) and policies adopted by the commission. ((~~For the~~

~~first twelve-month period following qualification as a public depositary, the~~)) A public depositary shall at all times pledge and segregate eligible securities in an amount ((~~equal to not less than ten percent of all public funds on deposit in the depositary~~)) established by the commission by rule or noticed resolution.

Sec. 11. RCW 39.58.130 and 1996 c 256 s 14 are each amended to read as follows:

A treasurer ((~~is~~)) and the state treasurer are authorized to deposit in a public depositary any public funds available for investment and secured by collateral in accordance with the provisions of this chapter, and receive interest thereon. The authority provided by this section is additional to any authority now or hereafter provided by law for the investment or deposit of public funds by any such treasurer: PROVIDED, That in no case shall the aggregate of demand and investment deposits of public funds by any such treasurer in any one public depositary exceed at any time the net worth of that depositary. If a public depositary's net worth is reduced, a treasurer and the state treasurer may allow public funds on deposit in excess of the reduced net worth to remain until maturity upon pledging by the depositary of eligible securities valued at market value in an amount at least equal to the amount of the excess deposits. The collateral shall be segregated as provided in RCW 39.58.050. If the additional securities required by this section are not pledged by the depositary, the depositary shall permit withdrawal prior to maturity by the treasurer of deposits, including accrued interest, in accordance with applicable statutes and governmental regulations.

Sec. 12. RCW 39.58.135 and 1996 c 256 s 15 are each amended to read as follows:

Notwithstanding RCW 39.58.130, (1) aggregate deposits received by a public depositary from all ((~~public~~)) treasurers and the state treasurer shall not exceed at any time one hundred fifty percent of the value of the depositary's net worth, nor (2) shall the aggregate deposits received by any public depositary exceed thirty percent of the total aggregate deposits of all public treasurers in all depositaries as determined by the public deposit protection commission. However, a public depositary may receive deposits in excess of the limits provided in this section if eligible securities, as prescribed in RCW 39.58.050, are pledged as collateral in an amount equal to one hundred percent of the value of deposits received in excess of the limitations prescribed in this section.

Sec. 13. RCW 39.58.140 and 1996 c 256 s 16 are each amended to read as follows:

When deposits are made in accordance with this chapter, a treasurer and the state treasurer shall not be liable for any loss thereof resulting from the failure or default of any public depositary without fault or neglect on his or her part or on the part of his or her assistants or clerks.

Sec. 14. RCW 39.58.750 and 1996 c 256 s 17 are each amended to read as follows:

Notwithstanding any provision of law to the contrary, the state treasurer or any ((~~county, city, or other municipal~~)) treasurer or other custodian of public funds may receive, disburse, or transfer public funds under his or her jurisdiction by means of wire or other electronic communication in accordance with accounting standards established by the state auditor under RCW 43.09.200 with

regard to ((~~municipal~~)) treasurers of municipalities or other custodians or by the office of financial management under RCW 43.88.160 in the case of the state treasurer and other state custodians to safeguard and insure accountability for the funds involved.

NEW SECTION. **Sec. 15.** A new section is added to chapter 39.58 RCW to read as follows:

If a depositary neglects or refuses to promptly and accurately furnish, or to allow verification of, any required information requested by the commission or by the director of the department of financial institutions when acting on behalf of the commission pursuant to this chapter, or if a public depositary otherwise fails to comply with this chapter or any rules or policies of the commission, the commission may at its option deny or revoke the authority of such depositary to act as a public depositary pursuant to this chapter, or otherwise suspend such depositary from receiving or holding public deposits until such time as the depositary receives the information or complies with the commission's rules and policies. The commission shall have the authority to assess by rule costs for a depositary's noncompliance with this chapter and rules and resolutions adopted pursuant to this chapter.

NEW SECTION. **Sec. 16.** A new section is added to chapter 39.58 RCW to read as follows:

The commission may by resolution delegate all of its authority to the state treasurer except rule making.

NEW SECTION. **Sec. 17.** A new section is added to chapter 39.58 RCW to read as follows:

The liability of a public depositary under this chapter shall not be altered by any merger, takeover, or acquisition, except to the extent that such liability is assumed by agreement or operation of law by the successor entity or resulting financial institution.

NEW SECTION. **Sec. 18.** A new section is added to chapter 43.08 RCW to read as follows:

By December 1, 2009, and each December 1st thereafter, the office of the state treasurer shall report to the legislature actions taken by the public deposit protection commission and the state treasurer regarding public deposit protection.

NEW SECTION. **Sec. 19.** The code reviser shall alphabetize and renumber the definitions in RCW 39.58.010.

NEW SECTION. **Sec. 20.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 3, 2009.

Passed by the Senate March 4, 2009.

Approved by the Governor March 6, 2009.

Filed in Office of Secretary of State March 9, 2009.

CHAPTER 10

[Substitute Senate Bill 5130]

PUBLIC RECORDS—ACCESS—INMATES

AN ACT Relating to access to public records by persons serving criminal sentences in correctional facilities; adding a new section to chapter 42.56 RCW; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 42.56 RCW to read as follows:

(1) The inspection or copying of any nonexempt public record by persons serving criminal sentences in state, local, or privately operated correctional facilities may be enjoined pursuant to this section.

(a) The injunction may be requested by: (i) An agency or its representative; (ii) a person named in the record or his or her representative; or (iii) a person to whom the requests specifically pertains or his or her representative.

(b) The request must be filed in: (i) The superior court in which the movant resides; or (ii) the superior court in the county in which the record is maintained.

(c) In order to issue an injunction, the court must find that:

(i) The request was made to harass or intimidate the agency or its employees;

(ii) Fulfilling the request would likely threaten the security of correctional facilities;

(iii) Fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or

(iv) Fulfilling the request may assist criminal activity.

(2) In deciding whether to enjoin a request under subsection (1) of this section, the court may consider all relevant factors including, but not limited to:

(a) Other requests by the requestor;

(b) The type of record or records sought;

(c) Statements offered by the requestor concerning the purpose for the request;

(d) Whether disclosure of the requested records would likely harm any person or vital government interest;

(e) Whether the request seeks a significant and burdensome number of documents;

(f) The impact of disclosure on correctional facility security and order, the safety or security of correctional facility staff, inmates, or others; and

(g) The deterrence of criminal activity.

(3) The motion proceeding described in this section shall be a summary proceeding based on affidavits or declarations, unless the court orders otherwise. Upon a showing by a preponderance of the evidence, the court may enjoin all or any part of a request or requests. Based on the evidence, the court may also enjoin, for a period of time the court deems reasonable, future requests by:

(a) The same requestor; or

(b) An entity owned or controlled in whole or in part by the same requestor.

(4) An agency shall not be liable for penalties under RCW 42.56.550(4) for any period during which an order under this section is in effect, including during an appeal of an order under this section, regardless of the outcome of the appeal.

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

Passed by the Senate March 20, 2009.
Passed by the House March 18, 2009.
Approved by the Governor March 20, 2009.
Filed in Office of Secretary of State March 23, 2009.

CHAPTER 11

[Engrossed Substitute Senate Bill 5344]

EMERGENCY RESPONSE—TOWING VESSELS—NEAH BAY

AN ACT Relating to providing emergency response towing vessels; amending RCW 88.46.130, 88.46.010, and 90.56.500; adding new sections to chapter 88.46 RCW; creating new sections; and providing expiration dates.

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

NEW SECTION. **Sec. 1.** (1) The legislature finds that the northern coast of the Olympic Peninsula and Washington's west coast from Cape Flattery south to Cape Disappointment:

(a) Possess uniquely rich and highly vulnerable biological, marine, and cultural resources supporting some of the nation's most valuable commercial, sport, and tribal fisheries;

(b) Sustain endangered species and numerous species of vulnerable marine mammals; and

(c) Are internationally recognized through extraordinary designations including a world heritage site, a national park, a national marine sanctuary, national wildlife refuges, a maritime area off-limits to shipping, and tribal lands and fishing areas of federally recognized coastal Indian tribes.

(2) The legislature further finds that these coasts are periodically beset by severe storms with dangerously high seas and by strong currents, obscuring fog, and other conditions that imperil vessels and crews. When vessels suffer damage or founder, the coasts are likewise imperiled, particularly if oil is spilled into coastal waters. Oil spills pose great potential risks to treasured resources.

(3) The legislature further finds that Washington has maintained an emergency response tug at Neah Bay since 1999 to protect state waters from maritime casualties and resulting oil spills. The tug is necessary because of the peculiarities of local waters that call for special precautionary measures. The tug has demonstrated its necessity and capability by responding to forty-two vessels in need of assistance. State funding for the tug is scheduled to end June 30, 2009.

(4) The legislature intends that the maritime industry should provide and fully fund at least one year-round emergency response tug at Neah Bay, with necessary logistical and operational support, and that any tug provided by the maritime industry pursuant to this act should meet or exceed technical performance requirements specified in the state's fiscal year 2009 contract for the Neah Bay emergency response tug.

Sec. 2. RCW 88.46.130 and 1991 c 200 s 426 are each amended to read as follows:

(1) By July 1, 2010, the owner or operator of a covered vessel transiting to or from a Washington port through the Strait of Juan de Fuca, except for transits extending no further west than Race Rocks light, shall establish and fund an emergency response system ((~~for the Strait of Juan de Fuca shall be established by July 1, 1992~~)) that provides for an emergency response towing vessel to be stationed at Neah Bay. ((~~In establishing the emergency response system, the administrator shall consider the recommendations of the regional marine safety committees. The administrator shall also consult with the province of British Columbia regarding its participation in the emergency response system.~~))

(2) Any emergency response towing vessel provided under this section must:

(a) Be available to serve vessels in distress in the Strait of Juan de Fuca and off of the western coast of the state from Cape Flattery light in Clallam county south to Cape Disappointment light in Pacific county; and

(b) Meet the requirements specified in section 3 of this act.

(3) In addition to meeting requirements specified in RCW 88.46.060, contingency plans for covered vessels operating in the Strait of Juan de Fuca must provide for the emergency response system required by this section. Documents describing how compliance with this section will be achieved must be submitted to the department by December 1, 2009. An initial contingency plan submitted to the department after December 1, 2009, must be accompanied by documents demonstrating compliance with this section.

(4) The requirements of this section are met if:

(a) Owners or operators of covered vessels provide an emergency response towing vessel that complies with subsection (2) of this section; or

(b) The United States government implements a system of protective measures that the department determines to be substantially equivalent to the requirements of this section as long as the emergency response towing vessel required by this section is stationed at Neah Bay.

NEW SECTION. **Sec. 3.** A new section is added to chapter 88.46 RCW to read as follows:

(1) An emergency response towing vessel that is a part of the emergency response system required by RCW 88.46.130 must be stationed at Neah Bay and be available to respond to vessel emergencies. The towing vessel must be able to satisfy the following minimum planning standards:

(a) Be underway within twenty minutes of a decision to deploy;

(b) Be able to deploy at any hour of any day to provide emergency assistance within the capabilities of the minimum planning standards and be safely manned to remain underway for at least forty-eight hours;

(c) In severe weather conditions, be capable of making up to, stopping, holding, and towing a drifting or disabled vessel of one hundred eighty thousand metric dead weight tons;

(d) In severe weather conditions, be capable of holding position within one hundred feet of another vessel;

(e) Be equipped with and maneuverable enough to effectively employ a ship anchor chain recovery hook and line throwing gun;

(f) Be capable of a bollard pull of at least seventy short tons; and

(g) Be equipped with appropriate equipment for:

(i) Damage control patching;

(ii) Vessel dewatering;

(iii) Air safety monitoring; and

(iv) Digital photography.

(2) The requirements of this section may be fulfilled by one or more private organizations or nonprofit cooperatives providing umbrella coverage under contract to single or multiple covered vessels.

(3)(a) The department must be authorized to contract with the emergency response towing vessel, at the discretion of the department, in response to a potentially emerging maritime casualty or as a precautionary measure during severe storms. All instances of use by the department must be paid for by the department.

(b) Covered vessels that are required to provide an emergency response towing vessel under RCW 88.46.130 may not restrict the emergency response towing vessel from responding to distressed vessels that are not covered vessels.

(4) Nothing in this section limits the ability of a covered vessel to contract with an emergency response towing vessel with capabilities that exceed the minimum capabilities provided for a towing vessel in this section.

(5) The covered vessel owner or operator shall submit a written report to the department as soon as practicable regarding an emergency response system deployment, including photographic documentation determined by the department to be of adequate quality. The report must provide a detailed description of the incident necessitating a response and the actions taken to render assistance under the emergency response system.

NEW SECTION. **Sec. 4.** A new section is added to chapter 88.46 RCW to read as follows:

(1) It is the intent of the legislature to provide the various components of the maritime industry with the tools necessary to satisfy the requirements of RCW 88.46.130 in the most cost-effective manner. In doing, the legislature encourages, but does not mandate, the maritime industry to unite behind their mutual interests and responsibilities and identify or form a single umbrella organization that allows all affected covered vessels to equitably share the costs inherent in the implementation of RCW 88.46.130.

(2) The legislature further finds that, given the broad range of covered vessel types and sizes, an equitable sharing of the costs of implementing RCW 88.46.130 will likely mean that not all covered vessels will be responsible for providing the same amount of funding. Any umbrella organization that is identified or formed to satisfy the requirements of this act should consider the multitude of factors that comprise the risk of vessel emergencies and the likelihood of initiating a response from the emergency response vessel required by RCW 88.46.130.

(3) The legislature intends to provide the authority for any operator of a covered vessel that feels as though an umbrella organization that is identified, formed, or proposed for formation does not equitably share the costs of compliance with RCW 88.46.130 with the covered vessel in question, or the class of vessel to which the covered vessel belongs, to either contract directly with an adequate emergency response vessel or form or join a discreet umbrella organization representing the appropriate segment of the maritime industry. However, if the operator of a covered vessel chooses not to join a proposed or existing umbrella organization, or finds that negotiations leading to the

formation of an umbrella organization are not progressing in an adequate manner, the legislature requests, but does not require, that the vessel operator contact the department and provide official notice of their concern as to how the umbrella group in question failed in establishing an equitable cost-share strategy.

(4) The department shall collect and maintain all notices received under this section and shall summarize any reports received by the operators of covered vessels and report the summation to the appropriate committees of the legislature upon request by a legislative committee.

NEW SECTION. **Sec. 5.** (1) Designated representatives of the owners and operators of all classes of covered vessels shall negotiate, given the intent of section 4 of this act, a system to determine the equitable apportionment of costs of the emergency response system required by this act.

(2) Participants to the negotiations shall provide interim progress reports to the appropriate committees of the legislature by October 31, 2009, and again by December 1, 2009, the latter date coinciding with the deadline for contingency plans for covered vessels operating in the Strait of Juan de Fuca to provide for the emergency response system required by RCW 88.46.130. These reports shall provide available information relating to:

(a) The anticipated average annual cost of providing the emergency response system;

(b) The methodology for determining the anticipated average annual cost for each class of covered vessel, including:

(i) A system for crediting enhanced navigational or structural characteristics;

(ii) Appropriate limits on total cost for vessels that frequently transit the Strait of Juan de Fuca, except for transits extending no further west than Race Rocks light; and

(iii) Consideration of current economic conditions; and

(c) Any impediment to equitable apportionment of costs.

(3) As used in this section, "class of covered vessel" means:

(a) Oil tankers;

(b) Tank barges;

(c) Tug and oil barge combinations;

(d) Cargo vessels;

(e) Passenger vessels; and

(f) Other covered vessels.

(4) If the representatives designated under this section to participate in negotiations fail to achieve the goals of this section or otherwise choose not to report the outcomes to the legislature, the department of ecology shall, by December 1, 2009, deliver the summation of any reports received under section 4 of this act.

(5) This section expires June 30, 2010.

NEW SECTION. **Sec. 6.** A new section is added to chapter 88.46 RCW to read as follows:

(1) As part of reviewing contingency plans submitted under RCW 88.46.130, the department may determine the adequacy of the emergency response system required in RCW 88.46.130 through practice drills that test

compliance with the requirements of section 3 of this act. Practice drills may be conducted without prior notice.

(2) Each successful response to a vessel emergency may be considered by the department to satisfy a drill covering this portion of a covered vessel's contingency plan.

(3) Drills of the emergency response system required in RCW 88.46.130 must emphasize the system's ability to respond to a potentially worst case vessel emergency scenario.

Sec. 7. RCW 88.46.010 and 2007 c 347 s 5 are each amended to read as follows:

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

(1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering (a) the additional protection provided by the measures; (b) the technological achievability of the measures; and (c) the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration (a) processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development, and (b) processes that are currently in use. In determining what is best achievable technology, the director shall consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, of three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(4) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(5) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

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

(7) "Director" means the director of the department of ecology.

(8) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(9)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or (v) marine fuel outlet that does not dispense more than three

thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(10) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Oil" or "oils" means oil of any kind that is liquid at atmospheric temperature and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(18) "Race Rocks light" means the nautical landmark located southwest of the city of Victoria, British Columbia.

(19) "Severe weather conditions" means observed nautical conditions with sustained winds measured at forty knots and wave heights measured between twelve and eighteen feet.

(20) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(((~~(19)~~))) (21) "Spill" means an unauthorized discharge of oil into the waters of the state.

(((~~(20)~~))) (22) "Strait of Juan de Fuca" means waters off the northern coast of the Olympic Peninsula seaward of a line drawn from New Dungeness light in Clallam county to Discovery Island light on Vancouver Island, British Columbia, Canada.

(23) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(((~~(21)~~))) (24) "Vessel emergency" means a substantial threat of pollution originating from a covered vessel, including loss or serious degradation of propulsion, steering, means of navigation, primary electrical generating capability, and seakeeping capability.

(25) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(((~~(22)~~))) (26) "Worst case spill" means: (a) In the case of a vessel, a spill of the entire cargo and fuel of the vessel complicated by adverse weather conditions; and (b) in the case of an onshore or offshore facility, the largest foreseeable spill in adverse weather conditions.

NEW SECTION. **Sec. 8.** (1) The director of the department of ecology, or the director's designee, shall initiate discussions with the director's equivalent position in the government for the Canadian province of British Columbia to explore options for Washington and British Columbia to share the marine response assets required under this act.

(2) Any progress or outcomes from the discussions initiated under this section must be reported to the appropriate committees of the legislature no later than January 1, 2011.

(3) This section expires July 31, 2011.

Sec. 9. RCW 90.56.500 and 1991 c 200 s 805 are each amended to read as follows:

(1) The state oil spill response account is created in the state treasury. All receipts from RCW 82.23B.020(1) shall be deposited in the account. All costs reimbursed to the state by a responsible party or any other person for responding to a spill of oil shall also be deposited in the account. Moneys in the account shall be spent only after appropriation. The account is subject to allotment procedures under chapter 43.88 RCW.

(2) The account shall be used exclusively to pay for:

(a) The costs associated with the response to spills of crude oil or petroleum products into the navigable waters of the state; and

(b) The costs associated with the department's use of the emergency response towing vessel as described in section 3 of this act.

(3) Payment of response costs under subsection (2)(a) of this section shall be limited to spills which the director has determined are likely to exceed fifty thousand dollars.

(4) Before expending moneys from the account, the director shall make reasonable efforts to obtain funding for response costs under subsection (2) of

this section from the person responsible for the spill and from other sources, including the federal government.

(5) Reimbursement for response costs shall be allowed only for costs which are not covered by funds appropriated to the agencies responsible for response activities. Costs associated with the response to spills of crude oil or petroleum products shall include:

(((~~(1)~~))) (a) Natural resource damage assessment and related activities;

(((~~(2)~~))) (b) Spill related response, containment, wildlife rescue, cleanup, disposal, and associated costs;

(((~~(3)~~))) (c) Interagency coordination and public information related to a response; and

(((~~(4)~~))) (d) Appropriate travel, goods and services, contracts, and equipment.

NEW SECTION. **Sec. 10.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the Senate March 20, 2009.
Passed by the House March 18, 2009.
Approved by the Governor March 24, 2009.
Filed in Office of Secretary of State March 24, 2009.

CHAPTER 12

[Engrossed Substitute Senate Bill 5595]

MOTOR VEHICLE FRANCHISES—TERMINATION, CANCELLATION, OR RENEWAL

AN ACT Relating to the termination, cancellation, or nonrenewal of franchises between new motor vehicle dealers and manufacturers; amending RCW 46.96.080; and declaring an emergency.

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

Sec. 1. RCW 46.96.080 and 1989 c 415 s 8 are each amended to read as follows:

(1) Upon the termination, cancellation, or nonrenewal of a franchise ((~~by the manufacturer under this chapter~~)), the manufacturer shall pay the new motor vehicle dealer, at a minimum:

(a) Dealer cost plus any charges by the manufacturer for distribution, delivery, and taxes, less all allowances paid or credited to the dealer by the manufacturer, of unused, undamaged, and unsold new motor vehicles in the new motor vehicle dealer's inventory that were acquired from the manufacturer or another new motor vehicle dealer of the same line make in the ordinary course of business within the previous twelve months;

(b) Dealer cost for all unused, undamaged, and unsold supplies, parts, and accessories in original packaging, except that in the case of sheet metal, a comparable substitute for original packaging may be used, if the supply, part, or accessory was acquired from the manufacturer or from another new motor vehicle dealer ceasing operations as a part of the new motor vehicle dealer's initial inventory as long as the supplies, parts, and accessories appear in the manufacturer's current parts catalog, list, or current offering;

(c) Dealer cost for all unused, undamaged, and unsold inventory, whether vehicles, parts, or accessories, the purchase of which was required by the manufacturer;

(d) The fair market value of each undamaged sign owned by the new motor vehicle dealer that bears a common name, trade name, or trademark of the manufacturer, if acquisition of the sign was recommended or required by the manufacturer and the sign is in good and usable condition less reasonable wear and tear, and has not been depreciated by the dealer more than fifty percent of the value of the sign;

(e) The fair market value of all equipment, furnishings, and special tools owned or leased by the new motor vehicle dealer that were acquired from the manufacturer or sources approved by the manufacturer and that were recommended or required by the manufacturer and are in good and usable condition, less reasonable wear and tear. However, if the equipment, furnishings, or tools are leased by the new motor vehicle dealer, the manufacturer shall pay the new motor vehicle dealer such amounts that are required by the lessor to terminate the lease under the terms of the lease agreement; and

(f) The cost of transporting, handling, packing, and loading of new motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings.

To the extent the franchise agreement provides for payment or reimbursement to the new motor vehicle dealer in excess of that specified in this section, the provisions of the franchise agreement shall control.

(2)(a) For the nonrenewal or termination of a franchise that is implemented as a result of the sale of assets or stock of the motor vehicle dealer, the party purchasing the assets or stock of the motor vehicle dealer may negotiate for the purchase or other transfer of some or all unused, undamaged, and unsold new motor vehicles in the selling new motor vehicle dealer's inventory that were acquired from the manufacturer or another new motor vehicle dealer of the same line make in the ordinary course of business within the previous twelve months.

(b) For the nonrenewal or termination of a franchise that is implemented as a result of the sale of assets or stock of the motor vehicle dealer, this section does not prohibit a manufacturer from negotiating with the purchasing party for the purchase or other transfer of some or all unused, undamaged, and unsold new motor vehicles in the selling new motor vehicle dealer's inventory that were acquired from the manufacturer or another new motor vehicle dealer of the same line make in the ordinary course of business within the previous twelve months.

(c) A manufacturer's obligation under (a) of this subsection extends only to vehicles not purchased or otherwise transferred to the party purchasing the assets or stock of the motor vehicle dealer.

(3) The manufacturer shall pay the new motor vehicle dealer the sums specified in subsection (1) of this section within ninety days after the ((~~tender of the property~~)) termination, cancellation, or nonrenewal of the franchise, if the new motor vehicle dealer has clear title to the property or can provide clear title to the property upon payment by the manufacturer and is in a position to convey that title to the manufacturer.

(4) In the case of motor homes, this section applies only to manufacturer-initiated termination, cancellation, or nonrenewal of a franchise.

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

Passed by the Senate March 5, 2009.
Passed by the House March 18, 2009.
Approved by the Governor March 25, 2009.
Filed in Office of Secretary of State March 26, 2009.

CHAPTER 13

[Senate Bill 5164]

CHECK CASHERS AND SELLERS—DELINQUENT SMALL LOAN COLLECTION

AN ACT Relating to placing restrictions on check cashers' and sellers' communications when collecting delinquent small loans; and amending RCW 31.45.082.

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

Sec. 1. RCW 31.45.082 and 2003 c 86 s 11 are each amended to read as follows:

(1) A licensee shall comply with all applicable state and federal laws when collecting a delinquent small loan. A licensee may charge a one-time fee as determined in rule by the director to any borrower in default on any loan or loans where the borrower's check has been returned unpaid by the financial institution upon which it was drawn. A licensee may take civil action under Title 62A RCW to collect upon a check that has been dishonored. If the licensee takes civil action, a licensee may charge the borrower the cost of collection as allowed under RCW 62A.3-515, but may not collect attorneys' fees or any other interest or damages as allowed under RCW 62A.3-515. A licensee may not threaten criminal prosecution as a method of collecting a delinquent small loan or threaten to take any legal action against the borrower which the licensee may not legally take.

(2) Unless invited by the borrower, a licensee may not visit a borrower's residence or place of employment for the purpose of collecting a delinquent small loan. A licensee may not impersonate a law enforcement official, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collecting a small loan.

(3) A licensee may not communicate with a borrower in such a manner as to harass, intimidate, abuse, or embarrass a borrower, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, or by use of offensive language. A communication shall be presumed to have been made for the purposes of harassment if it is initiated by the licensee for the purposes of collection and:

(a) It is made with a borrower or spouse in any form, manner, or place, more than three times in a single week;

(b) It is made with a borrower at his or her place of employment more than one time in a single week or made to a borrower after the licensee has been informed that the borrower's employer prohibits such communications;

(c) It is made with the borrower or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.; or

(d) It is made to a party other than the borrower, the borrower's attorney, the licensee's attorney, or a consumer reporting agency if otherwise permitted by law except for purposes of acquiring location or contact information about the borrower.

(4) A licensee is required to maintain a communication log of all telephone and written communications with a borrower initiated by the licensee regarding any collection efforts including date, time, and the nature of each communication.

(5) If a dishonored check is assigned to any third party for collection, this section applies to the third party for the collection of the dishonored check.

(6) For the purposes of this section, "communication" includes any contact with a borrower, initiated by the licensee, in person, by telephone, or in writing (including e-mails, text messages, and other electronic writing) regarding the collection of a delinquent small loan, but does not include any of the following:

(a) Communication while a borrower is physically present in the licensee's place of business;

(b) An unanswered telephone call in which no message (other than a caller ID) is left, unless the telephone call violates subsection (3)(c) of this section; and

(c) An initial letter to the borrower that includes disclosures intended to comply with the federal fair debt collection practices act.

(7) For the purposes of this section, (a) a communication occurs at the time it is initiated by a licensee regardless of the time it is received or accessed by the borrower, and (b) a call to a number that the licensee reasonably believes is the borrower's cell phone will not constitute a communication with a borrower at the borrower's place of employment.

(8) For the purposes of this section, "week" means a series of seven consecutive days beginning on a Sunday.

Passed by the Senate February 26, 2009.
Passed by the House March 13, 2009.
Approved by the Governor March 25, 2009.
Filed in Office of Secretary of State March 26, 2009.

CHAPTER 14

[Substitute Senate Bill 5417]

FLOOD INSURANCE COVERAGE—DUTY OF INSURER—DISCLOSURE

AN ACT Relating to flood insurance coverage; and adding a new section to chapter 48.27 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 48.27 RCW to read as follows:

(1) Every insurer issuing a homeowner, condominium unit owner, residential tenant, and residential fire insurance policy that does not cover damage caused by flood must notify the policyholder that the policy does not cover damage caused by flood. The notice must also inform the policyholder how to contact the national flood insurance program ("NFIP") or one of the NFIP's agents. This notice must be provided:

(a) At the time the policy is issued; and

(b) At the time the policy is renewed.

(2) The following language, when combined with current information about how to contact the NFIP or its agent, satisfies the notice requirements of this section:

"This policy does not cover damage to your property caused by flooding. The federal government offers flood insurance through the National Flood Insurance Program to residents of communities that participate in its program. You can learn more about the National Flood Insurance Program at www.floodsmart.gov or by calling (888) 379-9531."

(3) Nothing in this section invalidates a flood exclusion, or any other exclusion, in an insurance policy subject to this section.

Passed by the Senate March 6, 2009.
Passed by the House March 13, 2009.
Approved by the Governor March 25, 2009.
Filed in Office of Secretary of State March 26, 2009.

CHAPTER 15

[Senate Bill 5221]

DISTRESSED PROPERTY CONVEYANCES

AN ACT Relating to distressed property conveyances; amending RCW 61.34.020; and declaring an emergency.

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

Sec. 1. RCW 61.34.020 and 2008 c 278 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) An "act of equity skimming" occurs when:

(a)(i) A person purchases a dwelling with the representation that the purchaser will pay for the dwelling by assuming the obligation to make payments on existing mortgages, deeds of trust, or real estate contracts secured by and pertaining to the dwelling, or by representing that such obligation will be assumed; and

(ii) The person fails to make payments on such mortgages, deeds of trust, or real estate contracts as the payments become due, within two years subsequent to the purchase; and

(iii) The person diverts value from the dwelling by either (A) applying or authorizing the application of rents from the dwelling for the person's own benefit or use, or (B) obtaining anything of value from the sale or lease with option to purchase of the dwelling for the person's own benefit or use, or (C) removing or obtaining appliances, fixtures, furnishings, or parts of such dwellings or appurtenances for the person's own benefit or use without replacing the removed items with items of equal or greater value; or

(b)(i) The person purchases a dwelling in a transaction in which all or part of the purchase price is financed by the seller and is (A) secured by a lien which is inferior in priority or subordinated to a lien placed on the dwelling by the purchaser, or (B) secured by a lien on other real or personal property, or (C) without any security; and

(ii) The person obtains a superior priority loan which either (A) is secured by a lien on the dwelling which is superior in priority to the lien of the seller, but not including a bona fide assumption by the purchaser of a loan existing prior to

the time of purchase, or (B) creating any lien or encumbrance on the dwelling when the seller does not hold a lien on the dwelling; and

(iii) The person fails to make payments or defaults on the superior priority loan within two years subsequent to the purchase; and

(iv) The person diverts value from the dwelling by applying or authorizing any part of the proceeds from such superior priority loan for the person's own benefit or use.

(2) "Distressed home" means either:

(a) A dwelling that is in danger of foreclosure or at risk of loss due to nonpayment of taxes; or

(b) A dwelling that is in danger of foreclosure or that is in the process of being foreclosed due to a default under the terms of a mortgage.

(3) "Distressed home consultant" means a person who:

(a) Solicits or contacts a distressed homeowner in writing, in person, or through any electronic or telecommunications medium and makes a representation or offer to perform any service that the person represents will:

(i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;

(ii) Obtain forbearance from any servicer, beneficiary, or mortgagee;

(iii) Assist the distressed homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure or is in danger of foreclosure;

(iv) Obtain an extension of the period within which the distressed homeowner may reinstate the distressed homeowner's obligation or extend the deadline to object to a ratification;

(v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed home or contained in the mortgage;

(vi) Assist the distressed homeowner to obtain a loan or advance of funds;

(vii) Save the distressed homeowner's residence from foreclosure;

(viii) Avoid or ameliorate the impairment of the distressed homeowner's credit resulting from the recording of a notice of trustee sale, the filing of a petition to foreclose, or the conduct of a foreclosure sale;

(ix) ((~~Purchase or obtain an option~~)) Cause a contract to purchase an interest in the distressed ((~~homeowner's residence~~)) home to be executed or closed within twenty days of an advertised or docketed foreclosure sale, unless the distressed homeowner is represented in the transaction by an attorney or a person licensed under chapter 18.85 RCW;

(x) Arrange for the distressed homeowner to become a lessee or tenant entitled to continue to reside in the distressed homeowner's residence, unless (A) the continued residence is for a period of no more than twenty days after closing, (B) the purpose of the continued residence is to arrange for and relocate to a new residence, and (C) the distressed homeowner is represented in the transaction by an attorney or a person licensed and subject to chapter 18.85 RCW;

(xi) Arrange for the distressed homeowner to have an option to repurchase the distressed homeowner's residence; or

(xii) Engage in any documentation, grant, conveyance, sale, lease, trust, or gift by which the distressed homeowner clogs the distressed homeowner's equity of redemption in the distressed homeowner's residence; or

(b) Systematically contacts owners of property that court records, newspaper advertisements, or any other source demonstrate are in foreclosure or are in danger of foreclosure.

"Distressed home consultant" does not ((~~mean~~)) include: A financial institution((~~,~~)); a nonprofit credit counseling service((~~,~~)); a licensed attorney, or a person subject to chapter 19.148 RCW((~~. "Distressed home consultant" does not include~~)); a licensed mortgage broker who, pursuant to lawful activities under chapter 19.146 RCW, procures a nonpurchase mortgage loan for the distressed homeowner from a financial institution; or a person licensed as a real estate broker or salesperson under chapter 18.85 RCW, when rendering real estate brokerage services under chapter 18.86 RCW, regardless of whether the person renders additional services that would otherwise constitute the services of a distressed home consultant, and if the person is not engaged in activities designed to, or represented to, result in a distressed home conveyance.

(4) "Distressed home consulting transaction" means an agreement between a distressed homeowner and a distressed home consultant in which the distressed home consultant represents or offers to perform any of the services enumerated in subsection (3)(a) of this section.

(5) "Distressed home conveyance" means a transaction in which:

(a) A distressed homeowner transfers an interest in the distressed home to a distressed home purchaser;

(b) The distressed home purchaser allows the distressed homeowner to occupy the distressed home; and

(c) The distressed home purchaser or a person acting in participation with the distressed home purchaser conveys or promises to convey the distressed home to the distressed homeowner, provides the distressed homeowner with an option to purchase the distressed home at a later date, or promises the distressed homeowner an interest in, or portion of, the proceeds of any resale of the distressed home.

(6) "Distressed home purchaser" means any person who acquires an interest in a distressed home under a distressed home conveyance. "Distressed home purchaser" includes a person who acts in joint venture or joint enterprise with one or more distressed home purchasers in a distressed home conveyance. A financial institution is not a distressed home purchaser.

(7) "Distressed homeowner" means an owner of a distressed home.

(8) "Dwelling" means a ((~~single, duplex, triplex, or four unit family residential building~~)) one-to-four family residence, condominium unit, residential cooperative unit, residential unit in any other type of planned unit development, or manufactured home whether or not title has been eliminated pursuant to RCW 65.20.040.

(9) "Financial institution" means (a) any bank or trust company, mutual savings bank, savings and loan association, credit union, or a lender making federally related mortgage loans, (b) a holder in the business of acquiring federally related mortgage loans as defined in the real estate settlement procedures act (RESPA) (12 U.S.C. Sec. 2602), insurance company, insurance producer, title insurance company, escrow company, or lender subject to auditing by the federal national mortgage association or the federal home loan mortgage corporation, which is organized or doing business pursuant to the laws of any state, federal law, or the laws of a foreign country, if also authorized to conduct

business in Washington state pursuant to the laws of this state or federal law, (c) any affiliate or subsidiary of any of the entities listed in (a) or (b) of this subsection, or (d) an employee or agent acting on behalf of any of the entities listed in (a) or (b) of this subsection. "Financial institution" also means a licensee under chapter 31.04 RCW, provided that the licensee does not include a licensed mortgage broker, unless the mortgage broker is engaged in lawful activities under chapter 19.146 RCW and procures a nonpurchase mortgage loan for the distressed homeowner from a financial institution.

(10) "Homeowner" means a person who owns and ((~~occupies~~)) has occupied a dwelling as his or her primary residence within one hundred eighty days of the latter of conveyance or mutual acceptance of an agreement to convey an interest in the dwelling, whether or not his or her ownership interest is encumbered by a mortgage, deed of trust, or other lien.

(11) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold, the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter 19.134 RCW;

(iii) A person licensed or required to be licensed under chapter 19.146 RCW;

(iv) A person licensed or required to be licensed under chapter 18.85 RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed home consulting transaction.

(12) "Mortgage" means a mortgage, mortgage deed, deed of trust, security agreement, or other instrument securing a mortgage loan and constituting a lien on or security interest in housing.

(13) "Nonprofit credit counseling service" means a nonprofit organization described under section 501(c)(3) of the internal revenue code, or similar successor provisions, that is licensed or certified by any federal, state, or local agency.

(14) "Pattern of equity skimming" means engaging in at least three acts of equity skimming within any three-year period, with at least one of the acts occurring after June 9, 1988.

(15) "Person" includes any natural person, corporation, joint stock association, or unincorporated association.

(16) "Resale" means a bona fide market sale of the distressed home subject to the distressed home conveyance by the distressed home purchaser to an unaffiliated third party.

(17) "Resale price" means the gross sale price of the distressed home on resale.

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

Passed by the Senate February 25, 2009.
Passed by the House March 16, 2009.
Approved by the Governor March 25, 2009.
Filed in Office of Secretary of State March 26, 2009.

CHAPTER 16

[Senate Bill 5348]

MITIGATION BANKING PROJECTS—FUNDING—ELIGIBILITY

AN ACT Relating to removing references to mitigation banking project eligibility for moneys in the habitat conservation account and the riparian protection account; and amending RCW 79A.15.060 and 79A.15.120.

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

Sec. 1. RCW 79A.15.060 and 2007 c 241 s 31 are each amended to read as follows:

(1) The board may adopt rules establishing acquisition policies and priorities for distributions from the habitat conservation account.

(2) Except as provided in RCW 79A.15.030(7), moneys appropriated for this chapter may not be used by the board to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(3) Moneys appropriated for this chapter may be used by grant recipients for costs incidental to acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(4) ((~~Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of critical habitat and urban wildlife habitat, provided that the parties seeking to use the mitigation bank meet the matching requirements of subsection (5) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where critical habitat or urban wildlife habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.~~

~~(5)~~)) The board may not approve a local project where the local agency share is less than the amount to be awarded from the habitat conservation account.

(((~~(6)~~))) (5) In determining acquisition priorities with respect to the habitat conservation account, the board shall consider, at a minimum, the following criteria:

(a) For critical habitat and natural areas proposals:

(i) Community support for the project;

(ii) The project proposal's ongoing stewardship program that includes control of noxious weeds, detrimental invasive species, and that identifies the source of the funds from which the stewardship program will be funded;

(iii) Recommendations as part of a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort, and for projects primarily intended to benefit salmon, limiting factors, or critical pathways analysis;

(iv) Immediacy of threat to the site;

(v) Uniqueness of the site;

(vi) Diversity of species using the site;

(vii) Quality of the habitat;

(viii) Long-term viability of the site;

(ix) Presence of endangered, threatened, or sensitive species;

(x) Enhancement of existing public property;

(xi) Consistency with a local land use plan, or a regional or statewide recreational or resource plan, including projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130;

(xii) Educational and scientific value of the site;

(xiii) Integration with recovery efforts for endangered, threatened, or sensitive species;

(xiv) For critical habitat proposals by local agencies, the statewide significance of the site.

(b) For urban wildlife habitat proposals, in addition to the criteria of (a) of this subsection:

(i) Population of, and distance from, the nearest urban area;

(ii) Proximity to other wildlife habitat;

(iii) Potential for public use; and

(iv) Potential for use by special needs populations.

((~~(7)~~)) (6) Before November 1st of each even-numbered year, the board shall recommend to the governor a prioritized list of all state agency and local projects to be funded under RCW 79A.15.040(1) (a), (b), and (c). The governor may remove projects from the list recommended by the board and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project.

Sec. 2. RCW 79A.15.120 and 2007 c 241 s 37 are each amended to read as follows:

(1) The riparian protection account is established in the state treasury. The board must administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the board.

(2) Moneys appropriated for this chapter to the riparian protection account must be distributed for the acquisition or enhancement or restoration of riparian habitat. All enhancement or restoration projects, except those qualifying under subsection ((~~(10)~~)) (9)(a) of this section, must include the acquisition of a real property interest in order to be eligible.

(3) State and local agencies and lead entities under chapter 77.85 RCW may apply for acquisition and enhancement or restoration funds for riparian habitat projects under subsection (1) of this section. Other state agencies not defined in RCW 79A.15.010, such as the department of transportation and the department

of corrections, may enter into interagency agreements with state agencies to apply in partnership for funds under this section.

(4) The board may adopt rules establishing acquisition policies and priorities for distributions from the riparian protection account.

(5) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the board to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(6) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(7) ((~~Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of riparian habitat, provided that the parties seeking to use the mitigation bank meet the matching requirements of subsection (8) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where riparian habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.~~

~~(8)~~)) The board may not approve a local project where the local agency share is less than the amount to be awarded from the riparian protection account. In-kind contributions, including contributions of a real property interest in land may be used to satisfy the local agency's share.

(((~~(9)~~))) (8) State agencies receiving grants for acquisition of land under this section must pay an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due.

(((~~(10)~~))) (9) In determining acquisition priorities with respect to the riparian protection account, the board must consider, at a minimum, the following criteria:

(a) Whether the project continues the conservation reserve enhancement program. Applications that extend the duration of leases of riparian areas that are currently enrolled in the conservation reserve enhancement program shall be eligible. Such applications are eligible for a conservation lease extension of at least twenty-five years of duration;

(b) Whether the projects are identified or recommended in a watershed planning process under chapter 247, Laws of 1998, salmon recovery planning under chapter 77.85 RCW, or other local plans, such as habitat conservation plans, and these must be highly considered in the process;

(c) Whether there is community support for the project;

(d) Whether the proposal includes an ongoing stewardship program that includes control of noxious weeds, detrimental invasive species, and that

identifies the source of the funds from which the stewardship program will be funded;

(e) Whether there is an immediate threat to the site;

(f) Whether the quality of the habitat is improved or, for projects including restoration or enhancement, the potential for restoring quality habitat including linkage of the site to other high quality habitat;

(g) Whether the project is consistent with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;

(h) Whether the site has educational or scientific value; and

(i) Whether the site has passive recreational values for walking trails, wildlife viewing, or the observation of natural settings.

(((~~(11)~~))) (10) Before November 1st of each even-numbered year, the board will recommend to the governor a prioritized list of projects to be funded under this section. The governor may remove projects from the list recommended by the board and will submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement.

Passed by the Senate March 2, 2009.
Passed by the House March 13, 2009.
Approved by the Governor March 25, 2009.
Filed in Office of Secretary of State March 26, 2009.

CHAPTER 17

[House Bill 1562]

ACADEMIC ACHIEVEMENT—GRADUATION REQUIREMENTS—CERTIFICATE

AN ACT Relating to graduation without a certificate of academic achievement or a certificate of individual achievement; amending RCW 28A.655.0611; and declaring an emergency.

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

Sec. 1. RCW 28A.655.0611 and 2007 c 354 s 4 are each amended to read as follows:

(1) Beginning with the graduating class of 2008 and through no later than the graduating class of 2012, students may graduate from high school without earning a certificate of academic achievement or a certificate of individual achievement if they:

(a) Have not successfully met the mathematics standard on the high school Washington assessment of student learning, an approved objective alternative assessment, or an alternate assessment developed for eligible special education students;

(b) Have successfully met the state standard in the other content areas required for a certificate under RCW 28A.655.061 or 28A.155.045;

(c) Have met all other state and school district graduation requirements; and

(d)(i) For the graduating class of 2008, successfully earn one ((~~additional~~)) high school mathematics credit or career and technical course equivalent, including courses offered at skill centers, after the student's eleventh grade year

intended to increase the student's mathematics proficiency toward meeting or exceeding the mathematics standards assessed on the high school Washington assessment of student learning ((~~and continue to take the appropriate mathematics assessment at least once annually until graduation~~)); and

(ii) For the remaining graduating classes under this section, successfully earn two ((~~additional~~)) mathematics credits or career and technical course equivalent, including courses offered at skill centers, after the student's tenth grade year intended to increase the student's mathematics proficiency toward meeting or exceeding the mathematics standards assessed on the high school Washington assessment of student learning ((~~and continue to take the appropriate mathematics assessment at least once annually until graduation~~)).

(2) The state board of education may adopt a rule that ends the application of this section with a graduating class before the graduating class of 2012, if the state board of education adopts the rule by September 1st of the freshman school year of the graduating class to which the provisions of this section no longer apply. The state board of education's authority under this section does not alter the requirement that any change in performance standards for the tenth grade assessment must comply with RCW 28A.305.130.

(3) This section expires August 31, 2013.

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

Passed by the House March 3, 2009.
Passed by the Senate March 20, 2009.
Approved by the Governor March 30, 2009.
Filed in Office of Secretary of State March 31, 2009.

CHAPTER 18

[Engrossed Substitute Senate Bill 5671]

ANNUITIES—INSURERS AND PRODUCERS—STANDARDS

AN ACT Relating to the suitability of annuities sold in Washington; adding a new section to chapter 48.23 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** The purpose of this act is to permit and set standards for producers and insurers selling annuity products issued after the effective date of this section that ensure consumers purchase annuities suitable to their financial and insurance needs and life circumstances.

NEW SECTION. **Sec. 2.** A new section is added to chapter 48.23 RCW to read as follows:

(1) For the purposes of this section:

(a) "Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.

(b) "Recommendation" means advice provided by an insurance producer, or an insurer when no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

(2) Insurers and insurance producers must comply with the following requirements in recommending and executing a purchase or exchange of an annuity:

(a) In recommending the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions to a consumer, the insurance producer, or the insurer when no producer is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer about their investments and other insurance products and as to their financial situation and needs.

(b) Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer when no producer is involved, shall make reasonable efforts to obtain information concerning:

(i) The consumer's financial status;

(ii) The consumer's tax status;

(iii) The consumer's investment objectives; and

(iv) Other information used or considered to be reasonable by the insurance producer, or the insurer when no producer is involved, in making recommendations to the consumer.

(3) An insurer or insurance producer's recommendation must be reasonable under all circumstances actually known to the insurer or insurance producer at the time of the recommendation. Neither an insurance producer nor an insurer when no producer is involved, has any obligation to a consumer under subsection (2) of this section related to any recommendation if a consumer:

(a) Refuses to provide relevant information requested by the insurer or insurance producer;

(b) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(c) Fails to provide complete or accurate information.

(4) An insurer must assure that a system to supervise recommendations, reasonably designed to achieve compliance with this section, is established and maintained. The system must include, but is not limited to, written procedures and conducting periodic review of its records that are reasonably designed to assist in detecting and preventing violations of this section.

(a) An insurer may contract with a third party, including insurance producers, a general agent, or independent agency, to establish and maintain a system of supervision as required in this subsection with respect to insurance producers under contract with or employed by the third party. An insurer must make reasonable inquiry to assure that the third party is performing the functions required in this subsection and must take action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

(i) Annually obtaining a certification from a third party senior manager with responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(ii) Based on reasonable selection criteria, periodically selecting third parties contracting under this subsection for a review to determine whether the

third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

(b) An insurer, or the contracted third party if a general agent or independent agency, is not required to:

(i) Review, or provide for review of, all insurance producer solicited transactions; or

(ii) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent, or independent agency.

(c) A general agent or independent agency contracting with an insurer to supervise compliance with this section shall promptly, when requested by the insurer, give a certification of compliance or give a clear statement that it is unable to meet the certification criteria. A person may not provide a certification unless the person:

(i) Is a senior manager with responsibility for the delegated functions; and

(ii) Has a reasonable basis for making the certification.

(5) Compliance with the financial industry regulatory authority conduct rules pertaining to suitability satisfies the requirements under this section for the recommendation of annuities registered under the securities act of 1933 (15 U.S.C. Sec. 77(a) et seq. or as hereafter amended). The insurance commissioner must notify the appropriate committees of the house of representatives and senate if there are changes regarding the registration of annuities under the securities act of 1933 that affect the application of this subsection. This subsection does not limit the insurance commissioner's ability to enforce this section.

(6) The commissioner may order an insurer, an insurance producer, or both, to take reasonably appropriate corrective action for any consumer harmed by the insurer's or insurance producer's violation of this section.

(a) Any applicable penalty under this or other sections of Title 48 RCW may be reduced or eliminated by the commissioner if corrective action for the consumer was taken promptly after a violation was discovered.

(b) This subsection does not limit the commissioner's ability to enforce this section or other applicable sections of Title 48 RCW.

(7) Insurers and insurance producers must maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for the insurance transaction for five years after the insurance transaction is completed by the insurer, or for five years after the annuity begins paying benefits, whichever is longer. An insurer is permitted, but is not required, to maintain documentation on behalf of an insurance producer. This section does not relieve an insurance producer of the obligation to maintain records of insurance transactions as required by RCW 48.17.470.

(8) The commissioner may adopt rules to implement and administer this section.

(9) Unless otherwise specifically included, this section does not apply to recommendations involving:

(a) Direct response solicitations when there is no recommendation based on information collected from the consumer under this section; or

(b) Contracts used to fund:

(i) An employee pension or welfare benefit plan that is covered by the employment and income security act;

(ii) A plan described by sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the internal revenue code, as amended, if established or maintained by an employer;

(iii) A government or church plan defined in section 414 of the internal revenue code, a government or church welfare benefit plan or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the internal revenue code;

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(v) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or

(vi) Formal prepaid funeral contracts.

(10) This section does not affect the application of chapter 21.20 RCW.

Passed by the Senate March 20, 2009.
Passed by the House March 13, 2009.
Approved by the Governor March 30, 2009.
Filed in Office of Secretary of State March 31, 2009.

CHAPTER 19

[Substitute Senate Bill 5131]

CRISIS REFERRAL SERVICES—PUBLIC SAFETY EMPLOYEES

AN ACT Relating to crisis referral services for criminal justice and correctional personnel; and adding new sections to chapter 43.101 RCW.

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

NEW SECTION. **Sec. 1.** (1) The commission shall offer a training session on personal crisis recognition and crisis intervention services to criminal justice, correctional personnel, and other public safety employees. The training shall be implemented by the commission in consultation with appropriate public and private organizations that have expertise in crisis referral services and in the underlying conditions leading to the need for crisis referral.

(2) The training shall consist of a minimum of one hour of classroom or internet instruction, and shall include instruction on the following subjects:

(a) The description and underlying causes of problems that may have an impact on the personal and professional lives of public safety employees, including mental health issues, chemical dependency, domestic violence, financial problems, and other personal crises;

(b) Techniques by which public safety employees may recognize the conditions listed in (a) of this subsection and understand the need to seek assistance and obtain a referral for consultation and possible treatment; and

(c) A listing of examples of public and private crisis referral agencies available to public safety employees.

(3) The training developed by the commission shall be made available by the commission to all employees of state and local agencies that perform public

safety duties. The commission may charge a reasonable fee to defer the cost of making the training available.

NEW SECTION. **Sec. 2.** (1) All communications to crisis referral services by employees and volunteers of law enforcement, correctional, firefighting, and emergency services agencies, and all records related to the communications, shall be confidential. Crisis referral services include all public or private organizations that advise employees and volunteers of such agencies about sources of consultation and treatment for personal problems including mental health issues, chemical dependency, domestic violence, gambling, financial problems, and other personal crises.

(2) A crisis referral service may reveal information related to crisis referral services to prevent reasonably certain death, substantial bodily harm, or commission of a crime.

NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act are each added to chapter 43.101 RCW.

Passed by the Senate March 5, 2009.
Passed by the House March 30, 2009.
Approved by the Governor April 8, 2009.
Filed in Office of Secretary of State April 9, 2009.

CHAPTER 20

[Substitute Senate Bill 5012]

ABDUCTED OR MISSING PERSONS—SYSTEMS FOR RECOVERY

AN ACT Relating to abducted or missing persons; amending RCW 13.60.010; and adding a new section to chapter 13.60 RCW.

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

Sec. 1. RCW 13.60.010 and 1985 c 443 s 22 are each amended to read as follows:

The Washington state patrol shall establish a missing children 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. The information shall include pictures, bulletins, training sessions, reports, and biographical materials that will assist in local law enforcement efforts to locate missing children. 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," for voluntary cooperation between local, state, tribal, and other law enforcement agencies, state government agencies, radio and television stations, and cable and satellite systems to enhance the public's ability to assist in recovering abducted children.

"Child" or "children," as used in this chapter, means an individual under eighteen years of age.

NEW SECTION. **Sec. 2.** A new section is added to chapter 13.60 RCW to read as follows:

Within existing resources, the Washington state patrol shall develop and implement a plan, commonly known as 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 to enhance the public's ability to assist in recovering endangered missing persons who do not qualify for inclusion in an amber alert.

Passed by the Senate March 3, 2009.
Passed by the House March 30, 2009.
Approved by the Governor April 8, 2009.
Filed in Office of Secretary of State April 9, 2009.

CHAPTER 21

[Substitute Senate Bill 5030]

ADJUTANT GENERAL—DUTIES AND POWERS

AN ACT Relating to militia records, property, command, and administration; and amending RCW 38.12.020.

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

Sec. 1. RCW 38.12.020 and 1989 c 19 s 12 are each amended to read as follows:

The adjutant general shall:

(((~~(1) Keep rosters of all active, reserve, and retired officers of the militia, and all other records, and papers required to be kept and filed therein, and shall submit to the governor such reports of the operations and conditions of the organized militia as the governor may require.~~

~~(2)~~)) (1) Subject to the orders of the commander-in-chief, command the Washington national guard and recruit, train, maintain, and administer the organized militia of the state of Washington.

(2) Supervise the preparation and submission of any records required by the federal government, the governor, or as otherwise required by law.

(3) Maintain records of the organized militia and state military department as required by law. The adjutant general shall deposit records with the state archivist for historical purposes.

(4) Cause ((~~the military law, and such other military publications as may be necessary for the military service, to be prepared and distributed at the expense of the state, to the departments and units of the organized militia~~)) to be published and distributed to the organized militia at state expense necessary documents or publications, to include the Washington code of military justice.

(((~~(3)~~))) (5) Keep just and true accounts of all moneys received and disbursed by ((~~him or her~~)) the military department.

(((~~(4)~~))) (6) Attest all commissions issued to military officers of this state.

(((~~(5) Make out and transmit all militia reports, returns, and communications prescribed by acts of congress or by direction of the department of defense and the national guard bureau.~~

~~(6) Have a seal, and all copies, orders, records, and papers in his or her office, duly certified and authenticated under the seal, shall be evidence in all cases in like manner as if the originals were produced. The seal now used in the~~

~~office of the adjutant general shall be the seal of his or her office and shall be delivered by him or her to the successor.~~))

(7) Be the custodian of the seal of the office of adjutant general and deliver the same to his or her successor. All orders issued from ((~~his or her~~)) the office of the adjutant general shall be authenticated with the seal. Orders or records under the seal shall be prima facie proof of certification or authenticity.

(((~~7) Make~~)) (8) Promulgate in orders such regulations pertaining to the ((~~preparation of reports and returns and to the use, maintenance, care, and preservation of property in possession of the state for military purposes, whether belonging to the state or to the United States~~)) operation and function of the state military department and organized militia, as in his or her opinion the conditions demand.

(((~~8~~))) (9) Attend to the care, preservation, safekeeping, and repairing of ((~~the arms, ordinance, accoutrements, equipment, and~~)) all ((~~other~~)) military property belonging to the state, or issued to the state by the United States for military purposes((~~, and keep accurate accounts thereof~~)). Any property of the state military department which, after proper inspection, is found unsuitable or no longer needed for use of the ((~~state military forces,~~)) organized militia shall be disposed of in such manner as the governor shall direct and the proceeds thereof used for replacements in kind or by other needed authorized military supplies, and the adjutant general may execute the necessary instruments of conveyance to effect such sale or disposal.

(((~~9~~))) (10) Issue the military property as the necessity of service requires and make purchases for that purpose. ((~~No military property shall be issued or loaned to persons or organizations other than those belonging to the militia, except as permitted by applicable state or federal law.~~

~~(10) Keep on file in his office the reports and returns of military units, and all other writings and papers required to be transmitted to and preserved at the general headquarters of the state militia.~~

~~(11) Keep all records of volunteers commissioned or enlisted for all wars or insurrections, and of individual claims of citizens for service rendered in these wars or insurrections, and he or she shall also~~))

(11) Be the custodian of all ((~~records,~~)) military relics, trophies, colors, and histories ((~~relating to such wars~~)) now in possession of, or which may be acquired by, the state.

(((~~12) Establish and maintain as part of his or her office a bureau of records of the services of the organized militia of the state, and upon request furnish a copy thereof or extract therefrom, attested under seal of his or her office, and such attested copy shall be prima facie proof of service, birthplace, and citizenship.~~

~~(13)~~))) (12) Keep a record of all real property owned or used by the state for military purposes, and in connection therewith he or she shall have sole power to execute all leases to acquire the use of real property by the state for military purposes, or lease it to other agencies for use for authorized activities. The adjutant general shall also have full power to execute and grant easements for rights-of-way for construction, operation, and maintenance of utility service, water, sewage, and drainage for such realty.

Passed by the Senate March 5, 2009.
Passed by the House March 30, 2009.

Approved by the Governor April 8, 2009.
Filed in Office of Secretary of State April 9, 2009.

CHAPTER 22

[Substitute Senate Bill 5035]

VETERANS—ACCESS TO SERVICES—STUDY

AN ACT Relating to improving veterans' access to services; and creating a new section.

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

NEW SECTION. **Sec. 1.** The department of veterans affairs shall study efficient ways to increase the department's access to veterans, and to increase veterans' access to the state and federal assistance programs for which they may be eligible. By January 1, 2010, the department shall submit a report to the legislature with recommendations. The report shall address:

(1) How the department can achieve a goal of identifying all veterans in the state within five years;

(2) How the department can efficiently identify veterans as their population in the state continues to grow;

(3) How the department can identify veterans through referrals from other state agencies that currently provide services to veterans;

(4) How the department can effectively inform veterans of the state and federal programs for which they may be eligible;

(5) The potential costs and savings to the state that would result if the department's recommendations were undertaken; and

(6) What legislation would be needed, if any, to undertake the department's recommendations.

Passed by the Senate March 12, 2009.
Passed by the House March 30, 2009.
Approved by the Governor April 8, 2009.
Filed in Office of Secretary of State April 9, 2009.

CHAPTER 23

[Substitute Senate Bill 5043]

POSTSECONDARY EDUCATION INFORMATION—PORTAL—WORKGROUP

AN ACT Relating to creating a higher education coordination board work group to develop a single, coordinated student access portal; and creating a new section.

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

NEW SECTION. **Sec. 1.** (1) Within existing funds, the higher education coordinating board shall convene a work group to develop a plan to create a single, coordinated, collaboratively supported, one-stop college information web-based portal for students and families planning, preparing, and applying for, as well as those attending, postsecondary education. The purpose of the portal is to provide comprehensive information and applications regarding financial, academic, and career planning, admissions, scholarships, financial aid, as well as any other information and services identified by the work group that would encourage or aid students contemplating their postsecondary education goals.

(2) The work group shall consist of representatives from the higher education coordinating board, the state board for community and technical colleges, the council of presidents, the workforce training and education coordinating board, the independent colleges of Washington, the office of the superintendent of public instruction, representatives of the public, private, and private vocational colleges in Washington, and others as may be needed.

(3) The work group shall:

(a) Investigate similar ongoing efforts in other states including what information and services are typically offered, what agency takes the lead in creating and maintaining the portal, what planning stages and budgets are associated with portals, how portals are marketed to maximize usefulness, and whether the states' efforts are increasing postsecondary participation;

(b) Focus on a portal that is student-centered and does not presuppose a sophisticated understanding of postsecondary education;

(c) Identify the resources necessary to build and maintain the portal;

(d) Develop a plan that builds upon existing infrastructure whenever possible; and

(e) Identify the metrics that can be used to gauge success.

(4) The final report of the work group shall:

(a) Recommend a process and timeline for the creation of the portal;

(b) Identify costs and savings to students, families, and the state;

(c) Identify potential issues and roadblocks anticipated in the creation and maintenance of the portal; and

(d) Propose enabling legislative and administrative solutions.

(5) The board shall report to the legislature by December 1, 2009.

Passed by the Senate February 18, 2009.
Passed by the House March 30, 2009.
Approved by the Governor April 8, 2009.
Filed in Office of Secretary of State April 9, 2009.

CHAPTER 24

[Substitute Senate Bill 5055]

SALE, MERGER, OR TRANSFER OF UTILITY—APPROVAL—NET BENEFIT TEST

AN ACT Relating to protecting the interests of customers of public service companies in proceedings before the Washington utilities and transportation commission; amending RCW 80.12.010, 80.12.020, and 80.12.030; and creating a new section.

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

NEW SECTION. **Sec. 1.** The legislature finds and declares that the Washington utilities and transportation commission should require that a net benefit to customers be shown in order to approve the acquisition of the franchises, properties, or facilities owned by a gas or electrical company in the state and which are necessary or useful in the performance of the duties of a gas or electrical company, and that its decision to approve or deny such an acquisition should be made within a prescribed period of time.

Sec. 2. RCW 80.12.010 and 1961 c 14 s 80.12.010 are each amended to read as follows:

((~~The term~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Person" means an individual, partnership, joint venture, corporation, association, firm, public service company, or any other entity, however organized.

(2) "Public service company((~~,~~))" ((~~as used in this chapter, shall~~)) means every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title.

Sec. 3. RCW 80.12.020 and 1981 c 117 s 1 are each amended to read as follows:

(1) No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it ((~~so~~)) to do((~~: PROVIDED, That~~)) so. The commission shall not approve any transaction under this section that would result in a person, directly or indirectly, acquiring a controlling interest in a gas or electrical company without a finding that the transaction would provide a net benefit to the customers of the company.

(2) This section shall not apply to any sale, lease, assignment or other disposal of such franchises, properties or facilities to a special purpose district as defined in RCW 36.96.010, city, county, or town.

Sec. 4. RCW 80.12.030 and 1961 c 14 s 80.12.030 are each amended to read as follows:

(1) Any such sale, lease, assignment, or other disposition, merger or consolidation made without authority of the commission shall be void.

(2) The commission shall enter an order approving or denying a transaction under RCW 80.12.020 or 80.12.040 within eleven months of the date of filing, which the commission may extend up to four months for cause.

Passed by the Senate February 25, 2009.
Passed by the House March 30, 2009.
Approved by the Governor April 8, 2009.
Filed in Office of Secretary of State April 9, 2009.

CHAPTER 25

[Senate Bill 5156]

CERTIFICATION ACTIONS—PEACE OFFICERS

AN ACT Relating to certification actions of Washington peace officers; and amending RCW 43.101.380.

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

Sec. 1. RCW 43.101.380 and 2006 c 22 s 3 are each amended to read as follows:

(1) The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern hearings

before the commission and govern all other actions before the commission unless otherwise provided in this chapter. The standard of proof in actions before the commission is clear, cogent, and convincing evidence.

(2) In all hearings requested under RCW 43.101.155, a five-member hearings panel shall both hear the case and make the commission's final administrative decision. Members of the commission or the board on law enforcement training standards and education may, but need not be, appointed to the hearings panels. The commission shall appoint as follows two or more panels to hear appeals from ((~~decertification~~)) certification actions:

(a) When a hearing is requested in relation to ((~~decertification~~)) a certification action of a Washington peace officer who is not a peace officer of the Washington state patrol, the commission shall appoint to the panel: (i) One police chief; (ii) one sheriff; (iii) two certified Washington peace officers who are at or below the level of first line supervisor, ((~~who are~~)) one of whom is from a city or county law enforcement ((~~agencies~~)) agency, and who have at least ten years' experience as peace officers; and (iv) one person who is not currently a peace officer and who represents a community college or four-year college or university.

(b) When a hearing is requested in relation to ((~~decertification~~)) a certification action of a peace officer of the Washington state patrol, the commission shall appoint to the panel: (i) Either one police chief or one sheriff; (ii) one administrator of the state patrol; (iii) one certified Washington peace officer who is at or below the level of first line supervisor, who is ((~~from a city or county law enforcement agency~~)) not a state patrol officer, and who has at least ten years' experience as a peace officer; (iv) one state patrol officer who is at or below the level of first line supervisor, and who has at least ten years' experience as a peace officer; and (v) one person who is not currently a peace officer and who represents a community college or four-year college or university.

(c) When a hearing is requested in relation to ((~~decertification~~)) a certification action of a tribal police officer, the commission shall appoint to the panel (i) either one police chief or one sheriff; (ii) one tribal police chief; (iii) one certified Washington peace officer who is at or below the level of first line supervisor, ((~~who is from a city or county law enforcement agency,~~)) and who has at least ten years' experience as a peace officer; (iv) one tribal police officer who is at or below the level of first line supervisor, and who has at least ten years' experience as a peace officer; and (v) one person who is not currently a peace officer and who represents a community college or four-year college or university.

(d) Persons appointed to hearings panels by the commission shall, in relation to any ((~~decertification matter~~)) certification action on which they sit, have the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular commission members.

(3) Where the charge upon which revocation or denial is based is that a peace officer was "discharged for disqualifying misconduct," and the discharge is "final," within the meaning of RCW 43.101.105(1)(d), and the officer received a civil service hearing or arbitration hearing culminating in an affirming decision following separation from service by the employer, the hearings panel may revoke or deny certification if the hearings panel determines that the discharge

occurred and was based on disqualifying misconduct; the hearings panel need not redetermine the underlying facts but may make this determination based solely on review of the records and decision relating to the employment separation proceeding. However, the hearings panel may, in its discretion, consider additional evidence to determine whether such a discharge occurred and was based on such disqualifying misconduct. The hearings panel shall, upon written request by the subject peace officer, allow the peace officer to present additional evidence of extenuating circumstances.

Where the charge upon which revocation or denial of certification is based is that a peace officer "has been convicted at any time of a felony offense" within the meaning of RCW 43.101.105(1)(c), the hearings panel shall revoke or deny certification if it determines that the peace officer was convicted of a felony. The hearings panel need not redetermine the underlying facts but may make this determination based solely on review of the records and decision relating to the criminal proceeding. However, the hearings panel shall, upon the panel's determination of relevancy, consider additional evidence to determine whether the peace officer was convicted of a felony.

Where the charge upon which revocation or denial is based is under RCW 43.101.105(1) (a), (b), (e), or (f), the hearings panel shall determine the underlying facts relating to the charge upon which revocation or denial of certification is based.

(4) The commission's final administrative decision is subject to judicial review under RCW 34.05.510 through 34.05.598.

Passed by the Senate February 26, 2009.
Passed by the House March 30, 2009.
Approved by the Governor April 8, 2009.
Filed in Office of Secretary of State April 9, 2009.

CHAPTER 26

[Engrossed Senate Bill 5135]

DISTRICT COURT JUDGES—KING AND SPOKANE COUNTIES

AN ACT Relating to the number of district court judges in King county and Spokane county; and amending RCW 3.34.010.

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

Sec. 1. RCW 3.34.010 and 2008 c 63 s 1 are each amended to read as follows:

The number of district judges to be elected in each county shall be: Adams, two; Asotin, one; Benton, three; Chelan, two; Clallam, two; Clark, six; Columbia, one; Cowlitz, three; Douglas, one; Ferry, one; Franklin, one; Garfield, one; Grant, two; Grays Harbor, two; Island, one; Jefferson, one; King, ((~~twenty-one~~)) twenty-three in 2009, twenty-five in 2010, and twenty-six in 2011; Kitsap, four; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, one; Pierce, eleven; San Juan, one; Skagit, two; Skamania, one; Snohomish, eight; Spokane, ((~~ten~~)) eight; Stevens, one; Thurston, three; Wahkiakum, one; Walla Walla, two; Whatcom, two; Whitman, one; Yakima, four. This number may be increased only as provided in RCW 3.34.020.

Passed by the Senate February 26, 2009.
Passed by the House March 30, 2009.
Approved by the Governor April 8, 2009.
Filed in Office of Secretary of State April 9, 2009.

CHAPTER 27

[Senate Bill 5184]

DIGITAL FORENSIC CRIME LAB—STUDY

AN ACT Relating to evaluating the need for a digital forensic crime lab; and creating a new section.

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

NEW SECTION. **Sec. 1.** (1) The legislature finds that there is a growing incidence of crimes committed against Washington residents, especially against children that involve the use of electronic technologies, including computers and the internet. Currently, law enforcement's ability to investigate and prosecute technology-involved crimes and online child sex predators is significantly limited by the lack of computer forensic capabilities.

(2) Therefore, in the interest of promoting the safety of our children and communities, providing better investigative tools for law enforcement and prosecutors, and to hold online child sex predators accountable, the legislature directs the Washington state patrol and the office of the attorney general to convene a work group to study the need for a virtual digital forensic lab in the state of Washington. The work group shall review state-of-the-art technologies as utilized by existing digital forensic labs in other states, and evaluate their cost and effectiveness. The work group shall also consider the relative advantages and disadvantages of regional and centralized digital forensic labs, and the merits of staffing such labs exclusively with uniformed officers or a mix of law enforcement and civilian personnel.

(3) In order to accomplish these objectives, the work group shall seek input from the computer software industry and representatives of existing digital forensic labs as how to best centralize forensic analysis of electronic devices and computers, expedite the review of digital forensic evidence, increase the expertise and specialization of forensic examiners, allow investigating officers to conduct basic searches for information and images remotely, and consolidate the custody of all digital forensic evidence in a central repository so that it may be remotely accessed by all law enforcement agencies across the state.

(4) The work group shall report back to the legislature by October 30, 2009, and make recommendations regarding the advisability of establishing a Washington lab that would employ newly designed technologies focused specifically on the needs of the state of Washington.

Passed by the Senate March 2, 2009.
Passed by the House March 30, 2009.
Approved by the Governor April 8, 2009.
Filed in Office of Secretary of State April 9, 2009.

CHAPTER 28

[Substitute Senate Bill 5190]

OFFENDER SENTENCING—TECHNICAL CORRECTIONS

AN ACT Relating to technical corrections to ensure accurate sentences for offenders; amending RCW 2.24.040, 9.41.045, 9.92.151, 9.94A.190, 9.94A.505, 9.94A.633, 9.94A.6332, 9.94A.670, 9.94A.701, 9.94A.703, 9.94A.704, 9.94A.731, 9.94A.771, 9.94A.835, 9.94A.850, 9.94B.030, 9.94B.060, 9.94B.070, 9.95.011, 9.95.017, 9.95.055, 9.95.070, 9.95.090, 9.95.110, 9.95.121, 9.95.122, 9.95.140, 9.95.425, 9.95.900, 9A.76.115, 13.40.135, 72.09.335, 72.09.340, 72.09.370, 72.09.714, 72.09.716, 72.09.718, and 72.09.720; reenacting and amending RCW 9.94A.030; adding new sections to chapter 9.94A RCW; adding a new section to chapter 9.94B RCW; recodifying RCW 9.94A.602, 9.94A.605, and 9.94A.771; repealing RCW 9.94A.545 and 9.94A.715; and providing an effective date.

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

Sec. 1. RCW 2.24.040 and 2000 c 73 s 1 are each amended to read as follows:

Such court commissioner shall have power, authority, and jurisdiction, concurrent with the superior court and the judge thereof, in the following particulars:

(1) To hear and determine all matters in probate, to make and issue all proper orders therein, and to issue citations in all cases where same are authorized by the probate statutes of this state.

(2) To grant and enter defaults and enter judgment thereon.

(3) To issue temporary restraining orders and temporary injunctions, and to fix and approve bonds thereon.

(4) To act as referee in all matters and actions referred to him or her by the superior court as such, with all the powers now conferred upon referees by law.

(5) To hear and determine all proceedings supplemental to execution, with all the powers conferred upon the judge of the superior court in such matters.

(6) To hear and determine all petitions for the adoption of children and for the dissolution of incorporations.

(7) To hear and determine all applications for the commitment of any person to the hospital for the insane, with all the powers of the superior court in such matters: PROVIDED, That in cases where a jury is demanded, same shall be referred to the superior court for trial.

(8) To hear and determine all complaints for the commitments of minors with all powers conferred upon the superior court in such matters.

(9) To hear and determine ex parte and uncontested civil matters of any nature.

(10) To grant adjournments, administer oaths, preserve order, compel attendance of witnesses, and to punish for contempts in the refusal to obey or the neglect of the court commissioner's lawful orders made in any matter before the court commissioner as fully as the judge of the superior court.

(11) To take acknowledgments and proofs of deeds, mortgages and all other instruments requiring acknowledgment under the laws of this state, and to take affidavits and depositions in all cases.

(12) To provide an official seal, upon which shall be engraved the words "Court Commissioner," and the name of the county for which he or she may be appointed, and to authenticate his official acts therewith in all cases where same is necessary.

(13) To charge and collect, for his or her own use, the same fees for the official performance of official acts mentioned in subsections (4) and (11) of this section as are provided by law for referees and notaries public.

(14) To hear and determine small claims appeals as provided in chapter 12.36 RCW.

(15) In adult criminal cases, to preside over arraignments, preliminary appearances, initial extradition hearings, and noncompliance proceedings pursuant to RCW ((~~9.94A.634~~)) 9.94A.6333 or 9.94B.040; accept pleas if authorized by local court rules; appoint counsel; make determinations of probable cause; set, amend, and review conditions of pretrial release; set bail; set trial and hearing dates; authorize continuances; and accept waivers of the right to speedy trial.

Sec. 2. RCW 9.41.045 and 1991 c 221 s 1 are each amended to read as follows:

As a sentence condition and requirement, offenders under the supervision of the department of corrections pursuant to chapter 9.94A RCW shall not own, use, or possess firearms or ammunition. In addition to any penalty imposed pursuant to RCW 9.41.040 when applicable, offenders found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions as provided for in RCW ((~~9.94A.634~~)) 9.94A.633, 9.94A.716, or 9.94A.737. Firearms or ammunition owned, used, or possessed by offenders may be confiscated by community corrections officers and turned over to the Washington state patrol for disposal as provided in RCW 9.41.098.

Sec. 3. RCW 9.92.151 and 2004 c 176 s 5 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the sentence of a prisoner confined in a county jail facility for a felony, gross misdemeanor, or misdemeanor conviction may be reduced by earned release credits in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction. The earned early release time shall be for good behavior and good performance as determined by the correctional agency having jurisdiction. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. The correctional agency shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence.

(2) An offender serving a term of confinement imposed under RCW 9.94A.670((~~(4)~~)) (5)(a) is not eligible for earned release credits under this section.

Sec. 4. RCW 9.94A.030 and 2008 c 276 s 309, 2008 c 231 s 23, 2008 c 230 s 2, and 2008 c 7 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) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence and served in the community subject to controls placed on the offender's movement and activities by the department.

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW ((~~9.94A.715~~)) 9.94A.701, as established by the commission or the legislature under RCW 9.94A.850.

(7) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(8) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(9) "Confinement" means total or partial confinement.

(10) "Conviction" means an adjudication of guilt pursuant to Title((~~s~~)) 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(12) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(13) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(14) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(15) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

(16) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(17) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(18) "Department" means the department of corrections.

(19) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(20) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means

compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(21) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(22) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(24) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(25) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(26) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(27) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(28) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(29) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(30) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) 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;

(r) 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;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602 (as recodified by this act);

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, 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 most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under Title 9 or 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

(31) "Nonviolent offense" means an offense which is not a violent offense.

(32) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(33) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

(34) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in RCW 9.94A.030, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by RCW 9.94A.030, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(35) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (35)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any

federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(36) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; or (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority.

(37) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(38) "Public school" has the same meaning as in RCW 28A.150.010.

(39) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(40) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

(41) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(42) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) 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 violent offense under (a) of this subsection.

(43) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(12);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(44) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(45) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(46) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(47) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

(48) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(49) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(50) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(51) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) 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; and

(xiv) 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;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(52) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(53) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(54) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

Sec. 5. RCW 9.94A.190 and 2001 2nd sp.s. c 12 s 313 are each amended to read as follows:

(1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state. Except as provided in subsection (3) or (5) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the offender or a member of the offender's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.589.

(4) Notwithstanding any other provision of this section, a sentence imposed pursuant to RCW 9.94A.660 which has a standard sentence range of over one year, regardless of length, shall be served in a facility or institution operated, or utilized under contract, by the state.

(5) Sentences imposed pursuant to RCW ((~~9.94A.712~~)) 9.94A.507 shall be served in a facility or institution operated, or utilized under contract, by the state.

Sec. 6. RCW 9.94A.505 and 2008 c 231 s 25 are each amended to read as follows:

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

(iii) RCW 9.94A.570, relating to persistent offenders;

(iv) RCW 9.94A.540, relating to mandatory minimum terms;

(v) RCW 9.94A.650, relating to the first-time offender waiver;

(vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(viii) RCW ((~~9.94A.712~~)) 9.94A.507, relating to certain sex offenses;

(ix) RCW 9.94A.535, relating to exceptional sentences;

(x) RCW 9.94A.589, relating to consecutive and concurrent sentences;

(xi) RCW 9.94A.603, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one

year of confinement if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(8) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

(9) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

Sec. 7. RCW 9.94A.633 and 2008 c 231 s 15 are each amended to read as follows:

(1)(a) An offender who violates any condition or requirement of a sentence may be sanctioned with up to sixty days' confinement for each violation.

(b) In lieu of confinement, an offender may be sanctioned with work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(2) If an offender was under community custody pursuant to one of the following statutes, the offender may be sanctioned as follows:

(a) If the offender was transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.728(2), the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(b) If the offender was sentenced under the drug offender sentencing alternative set out in RCW 9.94A.660, the offender may be sanctioned in accordance with that section.

(c) If the offender was sentenced under the special sexual offender sentencing alternative set out in RCW 9.94A.670, the suspended sentence may be revoked and the offender committed to serve the original sentence of confinement.

(d) If the offender was sentenced to a work ethic camp pursuant to RCW 9.94A.690, the offender may be reclassified to serve the unexpired term of his or her sentence in total confinement.

(e) If a sex offender was sentenced pursuant to RCW ((~~9.94A.712~~)) 9.94A.507, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

Sec. 8. RCW 9.94A.6332 and 2008 c 231 s 18 are each amended to read as follows:

The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:

(1) If the offender was sentenced under the drug offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.660.

(2) If the offender was sentenced under the special sexual offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.670.

(3) If a sex offender was sentenced pursuant to RCW ((~~9.94A.712~~)) 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(4) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737.

(5) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333.

Sec. 9. RCW 9.94A.670 and 2008 c 231 s 31 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider or a certified affiliate sex offender treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

(c) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under *North*

Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion

whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW ((~~9.94A.712~~)) 9.94A.507, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence as provided in this section.

(5) As conditions of the suspended sentence, the court must impose the following:

(a) A term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) A term of community custody equal to the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW ((~~9.94A.712~~)) 9.94A.507, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703.

(c) Treatment for any period up to five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) Specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (8)(b) of this section.

(6) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Crime-related prohibitions;

(b) Require the offender to devote time to a specific employment or occupation;

(c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(d) Require the offender to report as directed to the court and a community corrections officer;

(e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(f) Require the offender to perform community restitution work; or

(g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(7) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

(8)(a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

(9) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (5) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (5) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

(10)(a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.633(1) or refer the violation to the court and recommend

revocation of the suspended sentence as provided for in subsections (7) and (9) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (11) of this section.

(11) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(12) If the offender violates a requirement of the sentence that is not a condition of the suspended sentence pursuant to subsection (5) or (6) of this section, the department may impose sanctions pursuant to RCW 9.94A.633(1).

(13) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(14) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.

Sec. 10. RCW 9.94A.701 and 2008 c 231 s 7 are each amended to read as follows:

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall impose a term of community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer:

(a) A sex offense not sentenced under RCW ((~~9.94A.712~~)) 9.94A.507;

(b) A violent offense;

(c) A crime against persons under RCW 9.94A.411(2);

(d) An offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate;

(e) A felony offender under chapter 69.50 or 69.52 RCW.

(2) If an offender is sentenced to a term of confinement of one year or less for a violation of RCW 9A.44.130(11)(a), the court shall impose a term of community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.

(3) If an offender is sentenced under the drug offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.660.

(4) If an offender is sentenced under the special sexual offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.670.

(5) If an offender is sentenced to a work ethic camp, the court shall impose community custody as provided in RCW 9.94A.690.

(6) If a sex offender is sentenced as a nonpersistent offender pursuant to RCW ((~~9.94A.712~~)) 9.94A.507, the court shall impose community custody as provided in that section.

(7) If the offender is a criminal street gang associate or member and is found guilty of unlawful possession of a firearm under RCW 9.41.040, the court shall impose a term of community custody under subsection (1)(d) of this section.

Sec. 11. RCW 9.94A.703 and 2008 c 231 s 9 are each amended to read as follows:

When a court sentences a person to a term of community custody, the court shall impose conditions of community custody as provided in this section.

(1) **Mandatory conditions.** As part of any term of community custody, the court shall:

(a) Require the offender to inform the department of court-ordered treatment upon request by the department;

(b) Require the offender to comply with any conditions imposed by the department under RCW 9.94A.704;

(c) If the offender was sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 for an offense listed in RCW ((~~9.94A.712~~)) 9.94A.507(1)(a), and the victim of the offense was under eighteen years of age at the time of the offense, prohibit the offender from residing in a community protection zone.

(2) **Waivable conditions.** Unless waived by the court, as part of any term of community custody, the court shall order an offender to:

(a) Report to and be available for contact with the assigned community corrections officer as directed;

(b) Work at department-approved education, employment, or community restitution, or any combination thereof;

(c) Refrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions;

(d) Pay supervision fees as determined by the department; and

(e) Obtain prior approval of the department for the offender's residence location and living arrangements.

(3) **Discretionary conditions.** As part of any term of community custody, the court may order an offender to:

(a) Remain within, or outside of, a specified geographical boundary;

(b) Refrain from direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) Participate in crime-related treatment or counseling services;

(d) Participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community;

(e) Refrain from consuming alcohol; or

(f) Comply with any crime-related prohibitions.

(4) **Special conditions.**

(a) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(b)(i) In sentencing an offender convicted of an alcohol or drug-related traffic offense, the court shall require the offender to complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, defined under RCW 46.61.516, that has been approved by the department of social and health services. If the offense was pursuant to chapter 46.61 RCW, the report shall be forwarded to the department of licensing. If the offender is found to have an alcohol or drug problem that requires treatment, the offender shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the offender is found not to have an alcohol or drug problem that requires treatment, the offender shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The offender shall pay all costs for any evaluation, education, or treatment required by this section, unless the offender is eligible for an existing program offered or approved by the department of social and health services.

(ii) For purposes of this section, "alcohol or drug-related traffic offense" means the following: Driving while under the influence as defined by RCW 46.61.502, actual physical control while under the influence as defined by RCW 46.61.504, vehicular homicide as defined by RCW 46.61.520(1)(a), vehicular assault as defined by RCW 46.61.522(1)(b), homicide by watercraft as defined by RCW 79A.60.050, or assault by watercraft as defined by RCW 79A.60.060.

(iii) This subsection (4)(b) does not require the department of social and health services to add new treatment or assessment facilities nor affect its use of existing programs and facilities authorized by law.

Sec. 12. RCW 9.94A.704 and 2008 c 231 s 10 are each amended to read as follows:

(1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on

the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

(a) Report as directed to a community corrections officer;

(b) Remain within prescribed geographical boundaries;

(c) Notify the community corrections officer of any change in the offender's address or employment;

(d) Pay the supervision fee assessment; and

(e) Disclose the fact of supervision to any mental health or chemical dependency treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense, the department may impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.

(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

(b) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the offender's risk of reoffending, or the safety of the community.

(8) The department may require offenders to pay for special services rendered including electronic monitoring, day reporting, and telephone reporting, dependent on the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(9)(a) When a sex offender has been sentenced pursuant to RCW ((~~9.94A.712~~)) 9.94A.507, the ((~~board shall exercise the authority prescribed in RCW 9.95.420 through 9.95.435.~~

~~(b) The~~)) department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's risk to community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose conditions in addition to court-ordered conditions. The board must consider and may impose department-recommended conditions.

(c) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall

remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

(i) The crime of conviction;

(ii) The offender's risk of reoffending;

(iii) The safety of the community.

(d) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(10) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

Sec. 13. RCW 9.94A.731 and 2003 c 254 s 2 are each amended to read as follows:

(1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW 9.94A.030((~~(31)~~)) and 9.94A.725. The offender shall be required as a condition of partial confinement to report to the facility at designated times. During the period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the department pursuant to this chapter.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the department.

(3) Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

Sec. 14. RCW 9.94A.771 and 1989 c 252 s 18 are each amended to read as follows:

For those individuals who, as a condition and term of their sentence imposed on or before July 1, 1989, have had financial obligations imposed, and who are not in compliance with the court order requiring payment of that legal financial obligation, no action shall be brought before the court from July 1, 1989, through and including December 31, 1989, to impose a penalty for their failure to pay. All individuals who, after December 31, 1989, have not taken the

opportunity to bring their legal financial obligation current, shall be proceeded against pursuant to RCW ((~~9.94A.634~~)) 9.94B.040.

Sec. 15. RCW 9.94A.835 and 2006 c 123 s 2 are each amended to read as follows:

(1) The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case, felony, gross misdemeanor, or misdemeanor, other than sex offenses as defined in RCW 9.94A.030(((~~(38) (a) or (c)~~))) when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

(2) In a criminal case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030(((~~(38)(a) or (c)~~))).

(3) The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

NEW SECTION. **Sec. 16.** A new section is added to chapter 9.94A RCW under the subchapter heading "Special Allegations" to read as follows:

In a criminal case in which the defendant has been convicted of unlawful possession of a firearm under RCW 9.41.040, and there has been a special allegation pleaded and proven by a preponderance of the evidence that the accused is a criminal street gang member or associate as defined in RCW 9.94A.030, the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the accused was a criminal street gang member or associate during the commission of the crime.

Sec. 17. RCW 9.94A.850 and 2005 c 282 s 19 are each amended to read as follows:

(1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June 30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first-time offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition standards. The administrative office of the courts shall provide the commission with available data on diversion, including the use of youth court programs, and dispositions of juvenile offenders under chapter 13.40 RCW; and

(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

(i) Racial disproportionality in juvenile and adult sentencing, and, if available, the impact that diversions, such as youth courts, have on racial disproportionality in juvenile prosecution, adjudication, and sentencing;

(ii) The capacity of state and local juvenile and adult facilities and resources; and

(iii) Recidivism information on adult and juvenile offenders.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community restitution, and a fine.

(4) The standard sentence ranges of total and partial confinement under this chapter, except as provided in RCW 9.94A.517, are subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.

(5)(a) ((~~Not later than December 31, 1999, the commission shall propose to the legislature the initial community custody ranges to be included in sentences under RCW 9.94A.715 for crimes committed on or after July 1, 2000.~~)) Not later than December 31 of each year, the commission may propose modifications to the community custody ranges to be included in sentences under RCW 9.94A.701. The ranges shall be based on the principles in RCW 9.94A.010, and shall take into account the funds available to the department for community custody. The minimum term in each range shall not be less than one-half of the maximum term.

(b) The legislature may, by enactment of a legislative bill, adopt or modify the community custody ranges proposed by the commission. If the legislature fails to adopt or modify the initial ranges in its next regular session after they are proposed, the proposed ranges shall take effect without legislative approval for crimes committed on or after July 1, 2000.

(c) When the commission proposes modifications to ranges pursuant to this subsection, the legislature may, by enactment of a bill, adopt or modify the ranges proposed by the commission for crimes committed on or after July 1 of the year after they were proposed. Unless the legislature adopts or modifies the commission's proposal in its next regular session, the proposed ranges shall not take effect.

(6) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW.

Sec. 18. RCW 9.94B.030 and 1988 c 153 s 8 are each amended to read as follows:

If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW ((~~9.94A.634~~)) 9.94B.040. Jurisdiction shall be with the court of the county in which the offender was sentenced. However, the court may order a change of venue to the offender's county of residence or where the violation occurred, for the purpose of holding a violation hearing.

After the hearing, the court may order the offender to be confined for up to sixty days per violation in the county jail. Reimbursement to a city or county for

the care of offenders who are detained solely for violating a condition of postrelease supervision shall be under RCW 70.48.440. A county shall be reimbursed for indigent defense costs for offenders who are detained solely for violating a condition of postrelease supervision in accordance with regulations to be promulgated by the office of financial management. An offender may be held in jail at state expense pending the hearing, and any time served while awaiting the hearing shall be credited against confinement imposed for a violation. The court shall retain jurisdiction for the purpose of holding the violation hearing and imposing a sanction.

Sec. 19. RCW 9.94B.060 and 2003 c 379 s 5 are each amended to read as follows:

Except for persons sentenced under RCW ((~~9.94A.700~~)) 9.94B.050(2) or ((~~9.94A.710~~)) 9.94B.070, when a court sentences a person to a term of total confinement to the custody of the department for a violent offense, any crime against persons under RCW 9.94A.411(2), or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660, committed on or after July 25, 1999, but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.728 (1) and (2). When the court sentences the offender under this section to the statutory maximum period of confinement, then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.728 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement or community custody imposed under this section.

Sec. 20. RCW 9.94B.070 and 2000 c 28 s 24 are each amended to read as follows:

(1) When a court sentences a person to the custody of the department for an offense categorized as a sex offense, including those sex offenses also included in other offense categories, committed on or after June 6, 1996, and before July 1, 2000, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release.

(2) Unless a condition is waived by the court, the terms of community custody imposed under this section shall be the same as those provided for in RCW ((~~9.94A.700~~)) 9.94B.050(4) and may include those provided for in RCW ((~~9.94A.700~~)) 9.94B.050(5). As part of any sentence that includes a term of community custody imposed under this section, the court shall also require the offender to comply with any conditions imposed by the department under RCW ((~~9.94A.720~~)) 9.94A.704.

(3) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040.

Sec. 21. RCW 9.95.011 and 2007 c 363 s 1 are each amended to read as follows:

(1) When the court commits a convicted person to the department of corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall, at the time of sentencing or revocation of probation, fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense of which the person is convicted.

The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges adopted under RCW 9.94A.850, but the court is subject to the same limitations as those placed on the board under RCW 9.92.090, 9.95.040 (1) through (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The court's minimum term decision is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

Thereafter, the expiration of the minimum term set by the court minus any time credits earned under RCW 9.95.070 and 9.95.110 constitutes the parole eligibility review date, at which time the board may consider the convicted person for parole under RCW 9.95.100 and 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the board's authority to reduce or increase the minimum term, once set by the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080, 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

(2)(a) Except as provided in (b) of this subsection, not less than ninety days prior to the expiration of the minimum term of a person sentenced under RCW ((~~9.94A.712~~)) 9.94A.507, for a sex offense committed on or after September 1, 2001, less any time credits permitted by statute, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum term not to exceed an additional five years. The board shall review the person again not less than ninety days prior to the expiration of the new minimum term.

(b) If at the time a person sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 for a sex offense committed on or after September 1, 2001, arrives at a department of corrections facility, the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival, then no later than one hundred twenty days after the offender's arrival at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum

term not to exceed an additional five years. The board shall review the person again not less than ninety days prior to the expiration of the new minimum term.

(c) In setting a new minimum term, the board may consider the length of time necessary for the offender to complete treatment and programming as well as other factors that relate to the offender's release under RCW 9.95.420. The board's rules shall permit an offender to petition for an earlier review if circumstances change or the board receives new information that would warrant an earlier review.

Sec. 22. RCW 9.95.017 and 2008 c 231 s 40 are each amended to read as follows:

(1) The board shall cause to be prepared criteria for duration of confinement, release on parole, and length of parole for persons committed to prison for crimes committed before July 1, 1984.

The proposed criteria should take into consideration RCW 9.95.009(2). Before submission to the governor, the board shall solicit comments and review on their proposed criteria for parole release.

(2) Persons committed to the department of corrections and who are under the authority of the board for crimes committed on or after September 1, 2001, are subject to the provisions for duration of confinement, release to community custody, and length of community custody established in RCW ((~~9.94A.712~~)) 9.94A.507, 9.94A.704, 72.09.335, and 9.95.420 through 9.95.440.

Sec. 23. RCW 9.95.055 and 2003 c 218 s 3 are each amended to read as follows:

The indeterminate sentence review board is hereby granted authority, in the event of a declaration by the governor that a war emergency exists, including a general mobilization, and for the duration thereof only, to reduce downward the minimum term, as set by the board, of any inmate under the jurisdiction of the board confined in a state correctional facility, who will be accepted by and inducted into the armed services: PROVIDED, That a reduction downward shall not be made under this section for those inmates who: (1) Are confined for (a) treason; (b) murder in the first degree; or (c) rape of a child in the first degree where the victim is under ten years of age or an equivalent offense under prior law; (2) are being considered for civil commitment as a sexually violent predator under chapter 71.09 RCW; or (3) were sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 for a crime committed on or after September 1, 2001.

Sec. 24. RCW 9.95.070 and 2003 c 218 s 4 are each amended to read as follows:

(1) Every prisoner, convicted of a crime committed before July 1, 1984, who has a favorable record of conduct at a state correctional institution, and who performs in a faithful, diligent, industrious, orderly and peaceable manner the work, duties, and tasks assigned to him or her to the satisfaction of the superintendent of the institution, and in whose behalf the superintendent of the institution files a report certifying that his or her conduct and work have been meritorious and recommending allowance of time credits to him or her, shall upon, but not until, the adoption of such recommendation by the indeterminate sentence review board, be allowed time credit reductions from the term of imprisonment fixed by the board.

(2) Offenders sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 for a crime committed on or after September 1, 2001, are subject to the earned release provisions for sex offenders established in RCW 9.94A.728.

Sec. 25. RCW 9.95.090 and 2001 2nd sp.s. c 12 s 329 are each amended to read as follows:

(1) The board shall require of every able bodied offender confined in a state correctional institution for a crime committed before July 1, 1984, as many hours of faithful labor in each and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the institution in which he or she is confined.

(2) Offenders sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 for crimes committed on or after July 1, 2001, shall perform work or other programming as required by the department of corrections during their term of confinement.

Sec. 26. RCW 9.95.110 and 2008 c 231 s 42 are each amended to read as follows:

(1) The board may permit an offender convicted of a crime committed before July 1, 1984, to leave the buildings and enclosures of a state correctional institution on parole, after such convicted person has served the period of confinement fixed for him or her by the board, less time credits for good behavior and diligence in work: PROVIDED, That in no case shall an inmate be credited with more than one-third of his or her sentence as fixed by the board.

The board may establish rules and regulations under which an offender may be allowed to leave the confines of a state correctional institution on parole, and may return such person to the confines of the institution from which he or she was paroled, at its discretion.

(2) The board may permit an offender convicted of a crime committed on or after September 1, 2001, and sentenced under RCW ((~~9.94A.712~~)) 9.94A.507, to leave a state correctional institution on community custody according to the provisions of RCW ((~~9.94A.712~~)) 9.94A.507, 9.94A.704, 72.09.335, and 9.95.420 through 9.95.440. The person may be returned to the institution following a violation of his or her conditions of release to community custody pursuant to the hearing provisions of RCW 9.95.435.

Sec. 27. RCW 9.95.121 and 2001 2nd sp.s. c 12 s 334 are each amended to read as follows:

(1) For offenders convicted of crimes committed before July 1, 1984, within fifteen days from the date of notice to the department of corrections of the arrest and detention of the alleged parole violator, he or she shall be personally served by a state community corrections officer with a copy of the factual allegations of the violation of the conditions of parole, and, at the same time shall be advised of his or her right to an on-site parole revocation hearing and of his or her rights and privileges as provided in RCW 9.95.120 through 9.95.126. The alleged parole violator, after service of the allegations of violations of the conditions of parole and the advice of rights may waive the on-site parole revocation hearing as provided in RCW 9.95.120, and admit one or more of the alleged violations of the conditions of parole. If the board accepts the waiver it shall either, (a) reinstate the parolee on parole under the same or modified conditions, or (b) revoke the parole of the parolee and enter an order of parole revocation and return to state custody. A determination of a new minimum sentence shall be

made within thirty days of return to state custody which shall not exceed the maximum sentence as provided by law for the crime of which the parolee was originally convicted or the maximum fixed by the court.

If the waiver made by the parolee is rejected by the board it shall hold an on-site parole revocation hearing under the provisions of RCW 9.95.120 through 9.95.126.

(2) Offenders sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 are subject to the violation hearing process established in RCW 9.95.435.

Sec. 28. RCW 9.95.122 and 2001 2nd sp.s. c 12 s 335 are each amended to read as follows:

(1) At any on-site parole revocation hearing for a person convicted of a crime committed before July 1, 1984, the alleged parole violator shall be entitled to be represented by an attorney of his or her own choosing and at his or her own expense, except, upon the presentation of satisfactory evidence of indigency and the request for the appointment of an attorney by the alleged parole violator, the board may cause the appointment of an attorney to represent the alleged parole violator to be paid for at state expense, and, in addition, the board may assume all or such other expenses in the presentation of evidence on behalf of the alleged parole violator as it may have authorized: PROVIDED, That funds are available for the payment of attorneys' fees and expenses. Attorneys for the representation of alleged parole violators in on-site hearings shall be appointed by the superior courts for the counties wherein the on-site parole revocation hearing is to be held and such attorneys shall be compensated in such manner and in such amount as shall be fixed in a schedule of fees adopted by rule of the board.

(2) The rights of offenders sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 are defined in RCW 9.95.435.

Sec. 29. RCW 9.95.140 and 2001 2nd sp.s. c 12 s 341 are each amended to read as follows:

(1) The board shall cause a complete record to be kept of every prisoner under the jurisdiction of the board released on parole or community custody. Such records shall be organized in accordance with the most modern methods of filing and indexing so that there will be always immediately available complete information about each such prisoner. Subject to information sharing provisions related to mentally ill offenders, the end of sentence review committee, and the department of corrections, the board may make rules as to the privacy of such records and their use by others than the board and its staff. Sex offenders convicted of crimes committed before July 1, 1984, who are under the board's jurisdiction shall be subject to the determinations of the end of sentence review committee regarding risk level and subject to sex offender registration and community notification. The board shall be immune from liability for the release of information concerning sex offenders as provided in RCW 4.24.550.

The superintendents of state correctional facilities and all officers and employees thereof and all other public officials shall at all times cooperate with the board and furnish to the board, its officers, and employees such information as may be necessary to enable it to perform its functions, and such superintendents and other employees shall at all times give the members of the

board, its officers, and employees free access to all prisoners confined in the state correctional facilities.

(2) Offenders sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 shall be subject to the determinations of the end of sentence review committee regarding risk level and subject to sex offender registration and community notification.

(3) The end of sentence review committee shall make law enforcement notifications for offenders under board jurisdiction on the same basis that it notifies law enforcement regarding offenders sentenced under chapter 9.94A RCW for crimes committed after July 1, 1984.

Sec. 30. RCW 9.95.425 and 2001 2nd sp.s. c 12 s 307 are each amended to read as follows:

(1) Whenever the board or a community corrections officer of this state has reason to believe an offender released under RCW 9.95.420 has violated a condition of community custody or the laws of this state, any community corrections officer may arrest or cause the arrest and detention of the offender pending a determination by the board whether sanctions should be imposed or the offender's community custody should be revoked. The community corrections officer shall report all facts and circumstances surrounding the alleged violation to the board, with recommendations.

(2) If the board or the department causes the arrest or detention of an offender for a violation that does not amount to a new crime and the offender is arrested or detained by local law enforcement or in a local jail, the board or department, whichever caused the arrest or detention, shall be financially responsible for local costs. Jail bed costs shall be allocated at the rate established under RCW 9.94A.740((~~(3)~~)).

Sec. 31. RCW 9.95.900 and 2001 2nd sp.s. c 12 s 353 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 9.95.010, 9.95.011, 9.95.013, 9.95.015, 9.95.017, 9.95.040, 9.95.045, 9.95.047, 9.95.052, 9.95.080, 9.95.100, 9.95.115, 9.95.116, 9.95.120, 9.95.124, 9.95.125, 9.95.130, 9.95.190, 9.95.200, 9.95.204, 9.95.206, 9.95.210, 9.95.212, 9.95.214, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265, 9.95.280, 9.95.290, 9.95.310, 9.95.320, 9.95.330, 9.95.340, 9.95.350, 9.95.360, 9.95.370, 72.04A.070, and 72.04A.080.

(2) The following sections apply to any felony offense committed before July 1, 1984, and to any offense sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 and committed on or after July 1, 2001: RCW 9.95.003, 9.95.005, 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.055, 9.95.060, 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090, 9.95.110, 9.95.121, 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150, 9.95.160, 9.95.170, 9.95.300, and 9.96.050.

Sec. 32. RCW 9A.76.115 and 2001 2nd sp.s. c 12 s 360 are each amended to read as follows:

(1) A person is guilty of sexually violent predator escape if:

(a) Having been found to be a sexually violent predator and confined to the special commitment center or another secure facility under court order, the person escapes from the secure facility;

(b) Having been found to be a sexually violent predator and being under an order of conditional release, the person leaves or remains absent from the state of Washington without prior court authorization; or

(c) Having been found to be a sexually violent predator and being under an order of conditional release, the person: (i) Without authorization, leaves or remains absent from his or her residence, place of employment, educational institution, or authorized outing; (ii) tampers with his or her electronic monitoring device or removes it without authorization; or (iii) escapes from his or her escort.

(2) Sexually violent predator escape is a class A felony with a minimum sentence of sixty months, and shall be sentenced under RCW ((~~9.94A.712~~)) 9.94A.507.

Sec. 33. RCW 13.40.135 and 1997 c 338 s 23 are each amended to read as follows:

(1) The prosecuting attorney shall file a special allegation of sexual motivation in every juvenile offense other than sex offenses as defined in RCW 9.94A.030(((~~(33) (a) or (c)~~))) when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably consistent defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

(2) In a juvenile case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the juvenile committed the offense with a sexual motivation. The court shall make a finding of fact of whether or not the sexual motivation was present at the time of the commission of the offense. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030(((~~(33)(a) or (c)~~))).

(3) The prosecuting attorney shall not withdraw the special allegation of "sexual motivation" without approval of the court through an order of dismissal. The court shall not dismiss the special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

Sec. 34. RCW 72.09.335 and 2001 2nd sp.s. c 12 s 305 are each amended to read as follows:

The department shall provide offenders sentenced under RCW ((~~9.94A.712~~)) 9.94A.507 with the opportunity for sex offender treatment during incarceration.

Sec. 35. RCW 72.09.340 and 2005 c 436 s 3 are each amended to read as follows:

(1) In making all discretionary decisions regarding release plans for and supervision of sex offenders, the department shall set priorities and make decisions based on an assessment of public safety risks.

(2) The department shall, no later than September 1, 1996, implement a policy governing the department's evaluation and approval of release plans for sex offenders. The policy shall include, at a minimum, a formal process by which victims, witnesses, and other interested people may provide information and comments to the department on potential safety risks to specific individuals or classes of individuals posed by a specific sex offender. The department shall

make all reasonable efforts to publicize the availability of this process through currently existing mechanisms and shall seek the assistance of courts, prosecutors, law enforcement, and victims' advocacy groups in doing so. Notice of an offender's proposed residence shall be provided to all people registered to receive notice of an offender's release under RCW ((~~9.94A.612~~)) 72.09.712(2), except that in no case may this notification requirement be construed to require an extension of an offender's release date.

(3)(a) For any offender convicted of a felony sex offense against a minor victim after June 6, 1996, the department shall not approve a residence location if the proposed residence: (i) Includes a minor victim or child of similar age or circumstance as a previous victim who the department determines may be put at substantial risk of harm by the offender's residence in the household; or (ii) is within close proximity of the current residence of a minor victim, unless the whereabouts of the minor victim cannot be determined or unless such a restriction would impede family reunification efforts ordered by the court or directed by the department of social and health services. The department is further authorized to reject a residence location if the proposed residence is within close proximity to schools, child care centers, playgrounds, or other grounds or facilities where children of similar age or circumstance as a previous victim are present who the department determines may be put at substantial risk of harm by the sex offender's residence at that location.

(b) In addition, for any offender prohibited from living in a community protection zone under RCW ((~~9.94A.712(6)(a)(ii)~~)) 9.94A.703(1)(c), the department may not approve a residence location if the proposed residence is in a community protection zone.

(4) When the department requires supervised visitation as a term or condition of a sex offender's community placement under RCW ((~~9.94A.700~~)) 9.94B.050(6), the department shall, prior to approving a supervisor, consider the following:

(a) The relationships between the proposed supervisor, the offender, and the minor; (b) the proposed supervisor's acknowledgment and understanding of the offender's prior criminal conduct, general knowledge of the dynamics of child sexual abuse, and willingness and ability to protect the minor from the potential risks posed by contact with the offender; and (c) recommendations made by the department of social and health services about the best interests of the child.

Sec. 36. RCW 72.09.370 and 2001 2nd sp.s. c 12 s 362 are each amended to read as follows:

(1) The secretary shall identify offenders in confinement or partial confinement who: (a) Are reasonably believed to be dangerous to themselves or others; and (b) have a mental disorder. In determining an offender's dangerousness, the secretary shall consider behavior known to the department and factors, based on research, that are linked to an increased risk for dangerousness of mentally ill offenders and shall include consideration of an offender's chemical dependency or abuse.

(2) Prior to release of an offender identified under this section, a team consisting of representatives of the department of corrections, the division of mental health, and, as necessary, the indeterminate sentence review board, other divisions or administrations within the department of social and health services, specifically including the division of alcohol and substance abuse and the

division of developmental disabilities, the appropriate regional support network, and the providers, as appropriate, shall develop a plan, as determined necessary by the team, for delivery of treatment and support services to the offender upon release. The team may include a school district representative for offenders under the age of twenty-one. The team shall consult with the offender's counsel, if any, and, as appropriate, the offender's family and community. The team shall notify the crime victim/witness program, which shall provide notice to all people registered to receive notice under RCW ((~~9.94A.612~~)) 72.09.712 of the proposed release plan developed by the team. Victims, witnesses, and other interested people notified by the department may provide information and comments to the department on potential safety risk to specific individuals or classes of individuals posed by the specific offender. The team may recommend: (a) That the offender be evaluated by the ((~~county~~)) designated mental health professional, as defined in chapter 71.05 RCW; (b) department-supervised community treatment; or (c) voluntary community mental health or chemical dependency or abuse treatment.

(3) Prior to release of an offender identified under this section, the team shall determine whether or not an evaluation by a county designated mental health professional is needed. If an evaluation is recommended, the supporting documentation shall be immediately forwarded to the appropriate county designated mental health professional. The supporting documentation shall include the offender's criminal history, history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement, and any known history of involuntary civil commitment.

(4) If an evaluation by a county designated mental health professional is recommended by the team, such evaluation shall occur not more than ten days, nor less than five days, prior to release.

(5) A second evaluation by a county designated mental health professional shall occur on the day of release if requested by the team, based upon new information or a change in the offender's mental condition, and the initial evaluation did not result in an emergency detention or a summons under chapter 71.05 RCW.

(6) If the county designated mental health professional determines an emergency detention under chapter 71.05 RCW is necessary, the department shall release the offender only to a state hospital or to a consenting evaluation and treatment facility. The department shall arrange transportation of the offender to the hospital or facility.

(7) If the county designated mental health professional believes that a less restrictive alternative treatment is appropriate, he or she shall seek a summons, pursuant to the provisions of chapter 71.05 RCW, to require the offender to appear at an evaluation and treatment facility. If a summons is issued, the offender shall remain within the corrections facility until completion of his or her term of confinement and be transported, by corrections personnel on the day of completion, directly to the identified evaluation and treatment facility.

(8) The secretary shall adopt rules to implement this section.

Sec. 37. RCW 72.09.714 and 1989 c 30 s 2 are each amended to read as follows:

The department of corrections shall provide the victims and next of kin in the case of a homicide and witnesses involved in violent offense cases or sex

offenses as defined by RCW 9.94A.030 where a judgment and sentence was entered after October 1, 1983, a statement of the rights of victims and witnesses to request and receive notification under RCW ((~~9.94A.612~~)) 72.09.712 and ((~~9.94A.616~~)) 72.09.716.

Sec. 38. RCW 72.09.716 and 1985 c 346 s 3 are each amended to read as follows:

Requests for notification under RCW ((~~9.94A.612~~)) 72.09.712 shall be made by sending a written request by certified mail directly to the department of corrections and giving the defendant's name, the name of the county in which the trial took place, and the month of the trial. Notification information and necessary forms shall be available through the department of corrections, county prosecutors' offices, and other agencies as deemed appropriate by the department of corrections.

Sec. 39. RCW 72.09.718 and 1985 c 346 s 4 are each amended to read as follows:

The notification requirements of RCW ((~~9.94A.612~~)) 72.09.712 are in addition to any requirements in RCW 43.43.745 or other law.

Sec. 40. RCW 72.09.720 and 1985 c 346 s 7 are each amended to read as follows:

Civil liability shall not result from failure to provide notice required under RCW ((~~9.94A.612~~)) 72.09.712 through ((~~9.94A.618~~)) 72.09.718, 9.94A.030, and 43.43.745 unless the failure is the result of gross negligence.

NEW SECTION. **Sec. 41.** (1) RCW 9.94A.602 and 9.94A.605 are each recodified as sections in chapter 9.94A RCW under the subchapter heading "special allegations."

(2) RCW 9.94A.771 is recodified as a section in chapter 9.94B RCW.

NEW SECTION. **Sec. 42.** The following acts or parts of acts are each repealed:

(1) RCW 9.94A.545 (Community custody) and 2008 c 276 s 304, 2006 c 128 s 4, 2003 c 379 s 8, 2000 c 28 s 13, 1999 c 196 s 10, 1988 c 143 s 23, & 1984 c 209 s 22; and

(2) RCW 9.94A.715 (Community custody for specified offenders—Conditions) and 2008 c 276 s 305; 2006 c 130 s 2, 2006 c 128 s 5, 2003 c 379 s 6, 2001 2nd sp.s. c 12 s 302, 2001 c 10 s 5, & 2000 c 28 s 25.

NEW SECTION. **Sec. 43.** This act takes effect August 1, 2009.

Passed by the Senate February 26, 2009.
Passed by the House March 30, 2009.
Approved by the Governor April 8, 2009.
Filed in Office of Secretary of State April 9, 2009.

CHAPTER 29

[Engrossed Substitute Senate Bill 5228]

COUNTY ROAD CONSTRUCTION PROJECTS—COUNTY FORCES

AN ACT Relating to calculating construction projects by county forces; and amending RCW 36.77.065 and 36.77.070.

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

Sec. 1. RCW 36.77.065 and 2005 c 162 s 1 are each amended to read as follows:

The board may cause any county road to be constructed or improved by ((~~day labor~~)) use of county forces as provided in this section.

(1) As used in this section((~~,~~)):

(a) "County forces" means regular employees of a county; and

(b) "((~~county~~)) Road construction ((~~budget~~)) project costs" means the aggregate total of those costs as defined by the budgeting, accounting, and reporting system for counties and cities and other local governments authorized under RCW 43.09.200 and 43.09.230 as prescribed in the state auditor's budget, accounting, and reporting manual's (BARS) road and street construction accounts: PROVIDED, That such costs shall not include those costs assigned to the right-of-way account, ancillary operations account, ((~~and that portion of the engineering account that is~~)) preliminary engineering account, and construction engineering account in the budget, accounting, and reporting manual.

(2) For counties with a population that equals or exceeds ((~~fifty~~)) four hundred thousand people, the total amount of ((~~day labor~~)) road construction ((~~programs~~)) project costs one county may perform annually with county forces shall ((~~total~~)) be no more than the total of the following amounts ((~~determined in the following manner~~)):

(a) ((~~Any county with a total annual county road construction budget of four million dollars or more may accumulate a day labor road construction budget equal to no more than eight hundred thousand dollars or fifteen percent of the county's total annual county road construction budget, whichever is greater.~~

~~(b) Any county with a total annual county road construction budget of one million five hundred thousand dollars or more and less than four million dollars may accumulate a day labor road construction budget equal to not more than five hundred twenty five thousand dollars or twenty percent of the county's total annual county road construction budget, whichever is greater.~~

~~(c) Any county with a total annual county road construction budget of five hundred thousand dollars or more and less than one million five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred fifty thousand dollars or thirty-five percent of the county's total annual county road construction budget, whichever is greater.~~

~~(d) Any county with a total annual county road construction budget less than five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred fifty thousand dollars: PROVIDED, That any county with a total annual road construction budget of less than five hundred thousand dollars may, by resolution of the board at the time the county road construction budget is adopted, elect to construct or improve county roads by day labor in an amount not to exceed thirty five thousand dollars on any one project, including labor, equipment, and materials; such election to be in lieu of the two hundred fifty thousand dollar limit provided for in this section, except that any project means a complete project and the division of any project into units of work or classes of work so as to permit construction by day labor is not authorized~~)) Three million two hundred fifty thousand dollars; and

(b) The previous year's county motor vehicle fuel tax distribution factor, as provided for in RCW 46.68.124(5), multiplied by the amount listed in (a) of this subsection.

(3) For counties with a population ((~~of~~)) that equals or exceeds one hundred fifty thousand, but is less than ((~~fifty~~)) four hundred thousand people, the total amount of ((~~day labor~~)) road construction ((~~programs~~)) project costs one county may perform annually ((~~may total~~)) with county forces shall be no more than the total of the following amounts ((~~determined in the following manner~~)):

(a) ((~~A county with a total annual county road construction budget of four million dollars or more may accumulate a day labor road construction budget equal to not more than eight hundred eighty thousand dollars or twenty five percent of the county's total annual county road construction budget, whichever is greater;~~

~~(b) A county with a total annual county road construction budget of one million five hundred thousand dollars or more and less than four million dollars may accumulate a day labor road construction budget equal to not more than five hundred seventy-seven thousand dollars or thirty percent of the county's total annual county road construction budget, whichever is greater;~~

~~(c) A county with a total annual county road construction budget of five hundred thousand dollars or more and less than one million five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred seventy-five thousand dollars or forty-five percent of the county's total annual county road construction budget, whichever is greater;~~

~~(d) A county with a total annual county road construction budget less than five hundred thousand dollars may accumulate a day labor road construction budget equal to two hundred seventy five thousand dollars. However, such a county may, by resolution of the board at the time the county road construction budget is adopted, elect instead to construct or improve county roads by day labor in an amount not to exceed thirty-eight thousand five hundred dollars on any one project, including labor, equipment, and materials. That election is in lieu of the two hundred seventy-five thousand dollar limit provided for in this section. As used in this section, "any project" means a complete project, and a county may not divide a project into units of work or classes of work so as to permit construction by day labor.~~

~~(4) Any county that adopts a county road construction budget unreasonably exceeding that county's actual road construction expenditures for the same budget year which has the effect of permitting the county to exceed the day labor amounts established in this section is in violation of the county road administration board's standards of good practice under RCW 36.78.020 and is in violation of this section.~~)) One million seven hundred fifty thousand dollars; and

(b) The previous year's county motor vehicle fuel tax distribution factor, as provided for in RCW 46.68.124(5), multiplied by the amount listed in (a) of this subsection.

(4) For counties with a population that equals or exceeds thirty thousand, but is less than one hundred fifty thousand people, the total amount of road construction project costs one county may perform annually with county forces shall be no more than the total of the following amounts:

(a) One million one hundred fifty thousand dollars; this amount shall increase to one million two hundred fifty thousand dollars effective January 1, 2012; and

(b) The previous year's county motor vehicle fuel tax distribution factor, as provided for in RCW 46.68.124(5), multiplied by the amount listed in (a) of this subsection.

(5) For counties with a population that is less than thirty thousand people, the total amount of road construction project costs one county may perform annually with county forces shall be no more than the total of the following amounts:

(a) Seven hundred thousand dollars; this amount shall increase to eight hundred thousand dollars effective January 1, 2012; and

(b) The previous year's county motor vehicle fuel tax distribution factor, as provided for in RCW 46.68.124(5), multiplied by the amount listed in (a) of this subsection.

(6) Any county((,)) whose expenditure for ((~~day labor~~)) county forces for road construction projects ((~~unreasonably~~)) exceeds the limits specified in this section, is in violation of the county road administration board's standards of good practice under RCW 36.78.020 and is in violation of this section.

(((~~(5)~~))) (7) Notwithstanding any other provision in this section, whenever the construction work or improvement is the installation of electrical traffic control devices, highway illumination equipment, electrical equipment, wires, or equipment to convey electrical current, in an amount exceeding ten thousand dollars for any one project including labor, equipment, and materials, such work shall be performed by contract as in this chapter provided. This section means a complete project and does not permit the construction of any project by ((~~day labor~~)) county forces by division of the project into units of work or classes of work.

Sec. 2. RCW 36.77.070 and 1983 c 3 s 81 are each amended to read as follows:

If the board determines that any construction should be performed by ((~~day labor~~)) county forces, and the estimated cost of the work exceeds ((~~twenty-five hundred~~)) ten thousand dollars, it shall cause to be published in one issue of a newspaper of general circulation in the county, a brief description of the work to be done and the county road engineer's estimate of the cost thereof. At the completion of such construction, the board shall cause to be published in one issue of such a newspaper a similar brief description of the work together with an accurate statement of the true and complete cost of performing such construction by ((~~day labor~~)) county forces.

Failure to make the required publication shall subject each county commissioner to a fine of one hundred dollars for which he shall be liable individually and upon his official bond and the prosecuting attorney shall prosecute for violation of the provisions of this section and RCW 36.77.065.

Passed by the Senate March 6, 2009.

Passed by the House March 30, 2009.

Approved by the Governor April 8, 2009.

Filed in Office of Secretary of State April 9, 2009.

CHAPTER 30

[Engrossed Substitute Senate Bill 5238]

STATE RETIREMENT SYSTEMS—RETIREES—MAILINGS

AN ACT Relating to mailing information to certain members of the state retirement systems; and adding a new section to chapter 41.50 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 41.50 RCW to read as follows:

(1) Any organization that exclusively provides representation or services to retired members of the Washington state retirement systems and has membership dues deducted through the department of retirement systems has the right to request the department to assist in doing blind mailings to retirees twice each year. The mailings must provide information to members of the retirement systems eligible for membership in the retiree organization regarding services offered by the retiree organization. The mailings shall not be for the purpose of supporting or opposing any political party, ballot measure, or candidate. The retiree organization must provide all printed materials to be mailed and envelopes to a mail processing center and pay all costs for generating mailing labels, inserting materials into envelopes, sealing, labeling, and delivering materials to be mailed to a bulk mail center or post office. The organization must use its own bulk mail permit and pay all postage costs.

(2) The department must provide requested retiree data for addressing the envelopes to the mail center under a secure data share agreement with the mail center under which neither the organizations nor any other entity has direct access to any names or addresses. The department has no obligation to approve or disapprove, or in any other way take any responsibility for, the content of the mailings. Only organizations that meet the requirements under subsection (1) of this section and have legal authority to provide services to retirement system retirees have the right to request assistance with blind mailings.

Passed by the Senate March 4, 2009.
Passed by the House March 30, 2009.
Approved by the Governor April 8, 2009.
Filed in Office of Secretary of State April 9, 2009.

CHAPTER 31

[Substitute Senate Bill 5261]

ELECTRONIC STATEWIDE UNIFIED SEX OFFENDER NOTIFICATION AND REGISTRATION PROGRAM

AN ACT Relating to creating an electronic statewide unified sex offender notification and registration program; and amending RCW 36.28A.040.

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

Sec. 1. RCW 36.28A.040 and 2007 c 204 s 1 are each amended to read as follows:

(1) No later than July 1, 2002, the Washington association of sheriffs and police chiefs shall implement and operate an electronic statewide city and county jail booking and reporting system. The system shall serve as a central repository and instant information source for offender information and jail statistical data.

The system may be placed on the Washington state justice information network and be capable of communicating electronically with every Washington state city and county jail and with all other Washington state criminal justice agencies as defined in RCW 10.97.030.

(2) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, if a city or county jail or law enforcement agency receives state or federal funding to cover the entire cost of implementing or reconfiguring an electronic jail booking system, the city or county jail or law enforcement agency shall implement or reconfigure an electronic jail booking system that is in compliance with the jail booking system standards developed pursuant to subsection (4) of this section.

(3) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, city or county jails, or law enforcement agencies that operate electronic jail booking systems, but choose not to accept state or federal money to implement or reconfigure electronic jail booking systems, shall electronically forward jail booking information to the Washington association of sheriffs and police chiefs. At a minimum the information forwarded shall include the name of the offender, vital statistics, the date the offender was arrested, the offenses arrested for, the date and time an offender is released or transferred from a city or county jail, and if available, the mug shot. The electronic format in which the information is sent shall be at the discretion of the city or county jail, or law enforcement agency forwarding the information. City and county jails or law enforcement agencies that forward jail booking information under this subsection are not required to comply with the standards developed under subsection (4)(b) of this section.

(4) The Washington association of sheriffs and police chiefs shall appoint, convene, and manage a statewide jail booking and reporting system standards committee. The committee shall include representatives from the Washington association of sheriffs and police chiefs correction committee, the information service board's justice information committee, the judicial information system, at least two individuals who serve as jailers in a city or county jail, and other individuals that the Washington association of sheriffs and police chiefs places on the committee. The committee shall have the authority to:

(a) Develop and amend as needed standards for the statewide jail booking and reporting system and for the information that must be contained within the system. At a minimum, the system shall contain:

(i) The offenses the individual has been charged with;

(ii) Descriptive and personal information about each offender booked into a city or county jail. At a minimum, this information shall contain the offender's name, vital statistics, address, and mugshot;

(iii) Information about the offender while in jail, which could be used to protect criminal justice officials that have future contact with the offender, such as medical conditions, acts of violence, and other behavior problems;

(iv) Statistical data indicating the current capacity of each jail and the quantity and category of offenses charged;

(v) The ability to communicate directly and immediately with the city and county jails and other criminal justice entities; and

(vi) The date and time that an offender was released or transferred from a local jail;

(b) Develop and amend as needed operational standards for city and county jail booking systems, which at a minimum shall include the type of information collected and transmitted, and the technical requirements needed for the city and county jail booking system to communicate with the statewide jail booking and reporting system;

(c) Develop and amend as needed standards for allocating grants to city and county jails or law enforcement agencies that will be implementing or reconfiguring electronic jail booking systems.

(5)(a) A statewide automated victim information and notification system shall be added to the city and county jail booking and reporting system. The system shall:

(i) Automatically notify a registered victim via the victim's choice of telephone, letter, or e-mail when any of the following events affect an offender housed in any Washington state city or county jail or department of corrections facility:

(A) Is transferred or assigned to another facility;

(B) Is transferred to the custody of another agency outside the state;

(C) Is given a different security classification;

(D) Is released on temporary leave or otherwise;

(E) Is discharged;

(F) Has escaped; or

(G) Has been served with a protective order that was requested by the victim;

(ii) Automatically notify a registered victim via the victim's choice of telephone, letter, or e-mail when an offender has:

(A) An upcoming court event where the victim is entitled to be present, if the court information is made available to the statewide automated victim information and notification system administrator at the Washington association of sheriffs and police chiefs;

(B) An upcoming parole, pardon, or community supervision hearing; or

(C) A change in the offender's parole, probation, or community supervision status including:

(I) A change in the offender's supervision status; or

(II) A change in the offender's address;

(iii) Automatically notify a registered victim via the victim's choice of telephone, letter, or e-mail when a sex offender has:

(A) Updated his or her profile information with the state sex offender registry; or

(B) Become noncompliant with the state sex offender registry;

(iv) Permit a registered victim to receive the most recent status report for an offender in any Washington state city and county jail, department of corrections, or sex offender registry by calling the statewide automated victim information and notification system on a toll-free telephone number or by accessing the statewide automated victim information and notification system via a public web site. All registered victims calling the statewide automated victim information and notification system will be given the option to have live operator assistance

to help use the program on a twenty-four hour, three hundred sixty-five day per year basis;

(v) Permit a crime victim to register, or registered victim to update, the victim's registration information for the statewide automated victim information and notification system by calling a toll-free telephone number or by accessing a public web site; and

(vi) Ensure that the offender information contained within the statewide automated victim information and notification system is updated frequently to timely notify a crime victim that an offender has been released or discharged or has escaped. However, the failure of the statewide automated victim information and notification system to provide notice to the victim does not establish a separate cause of action by the victim against state officials, local officials, law enforcement officers, or any related correctional authorities.

(b) ((~~An appointed or elected official, public employee, or public agency as defined in RCW 4.24.470, or units of government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any release of information or the failure to release information related to the statewide automated victim information and notification system and the jail booking and reporting system as described in this section, so long as the release was without gross negligence. The immunity provided under this subsection applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.~~

~~(c)~~)) Participation in the statewide automated victim information and notification program satisfies any obligation to notify the crime victim of an offender's custody status and the status of the offender's upcoming court events so long as:

(i) Information making offender and case data available is provided on a timely basis to the statewide automated victim information and notification program; and

(ii) Information a victim submits to register and participate in the victim notification system is only used for the sole purpose of victim notification.

((~~(d)~~)) (c) Automated victim information and notification systems in existence and operational as of July 22, 2007, shall not be required to participate in the statewide system.

(6) When funded, the Washington association of sheriffs and police chiefs shall implement and operate an electronic statewide unified sex offender notification and registration program.

(7) An appointed or elected official, public employee, or public agency as defined in RCW 4.24.470, or combination of units of government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any release of information or the failure to release information related to the statewide automated victim information and notification system, the electronic statewide unified sex offender notification and registration program, and the jail booking and reporting system as described in this section, so long as the release was without gross negligence. The immunity provided under this subsection applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public.

Passed by the Senate March 3, 2009.
Passed by the House March 30, 2009.
Approved by the Governor April 8, 2009.
Filed in Office of Secretary of State April 9, 2009.

CHAPTER 32

[Substitute Senate Bill 5290]

UTILITIES—RATE CASE HEARING—LOW-INCOME PROGRAMS

AN ACT Relating to requests made by a party concerning gas or electrical company discounts for low-income senior customers and low-income customers; and amending RCW 80.28.068.

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

Sec. 1. RCW 80.28.068 and 1999 c 62 s 1 are each amended to read as follows:

Upon request by an electrical or gas company, or other party to a general rate case hearing, the commission may approve rates, charges, services, and/or physical facilities at a discount for low-income senior customers and low-income customers. Expenses and lost revenues as a result of these discounts shall be included in the company's cost of service and recovered in rates to other customers.

Passed by the Senate February 26, 2009.
Passed by the House March 30, 2009.
Approved by the Governor April 8, 2009.
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CHAPTER 33

[Substitute House Bill 1254]

WASHINGTON GRAIN COMMISSION

AN ACT Relating to creating the Washington grain commission; amending RCW 15.04.200, 15.65.620, 15.66.270, 41.06.070, 42.56.380, and 43.23.033; adding a new section to chapter 66.12 RCW; adding a new chapter to Title 15 RCW; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** The history, economy, culture, and the future of Washington state to a large degree all involve agriculture. In order to develop and promote Washington's agricultural products as part of the existing comprehensive scheme to regulate agricultural commodities, the legislature declares:

(1) That the marketing of wheat and barley produced in Washington is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that wheat and barley produced in Washington are properly promoted by:

(a) Enabling wheat producers and barley producers to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the grains they produce; and

(b) Working towards stabilizing the agricultural industries by increasing consumption of wheat and barley within the state, the nation, and internationally;

(2) That the wheat and barley industries operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and that includes restrictions on marketing autonomy. Those restrictions may impair the agricultural producer's ability to compete in local, domestic, and foreign markets;

(3) That it is in the overriding public interest that support for the wheat and barley industries be clearly expressed, that adequate protection be given to the industries and their activities and operations, and that wheat and barley be promoted individually and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's wheat and barley;

(b) Increase the sale and use of Washington state's wheat and barley in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's wheat and barley;

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's wheat and barley and wheat and barley products;

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of wheat and barley produced in Washington state;

(4) That the commission is established primarily for the benefit of the people of the state of Washington and its economy. By enacting this chapter, the legislature hereby charges the commission, with oversight by the director, to speak on behalf of the Washington state government with regard to wheat and barley production in Washington and issues related to the wheat and barley industry in Washington; and

(5) That this chapter is enacted in the exercise of the police powers of this state for the purposes of protecting the health, peace, safety, and general welfare of the people of this state.

NEW SECTION. **Sec. 2.** The wheat and barley industries are highly regulated industries, and this chapter and the rules adopted under it are only one aspect of the regulation of those industries. Other regulations and restraints applicable to the wheat and barley industries include:

(1) Chapter 15.04 RCW, Washington agriculture general provisions;

(2) Chapter 15.08 RCW, horticultural pests and diseases;

(3) Chapter 15.14 RCW, planting stock;

(4) Chapter 15.49 RCW, seeds;

(5) Chapter 15.54 RCW, fertilizers, minerals, and limes;

(6) Chapter 15.58 RCW, Washington pesticide control act;

(7) Chapter 15.64 RCW, farm marketing;

(8) Chapter 15.83 RCW, agricultural marketing and fair practices;

(9) Chapter 15.86 RCW, organic food products;

(10) Chapter 15.92 RCW, center for sustaining agriculture and natural resources;

(11) Chapter 17.24 RCW, insect pests and plant diseases;

(12) Chapter 19.94 RCW, weights and measures;

(13) Chapter 20.01 RCW, agricultural products—commission merchants, dealers, brokers, buyers, agents;

(14) Chapter 22.09 RCW, agricultural commodities;

(15) Chapter 43.23 RCW, department of agriculture;

(16) Chapter 69.04 RCW, food, drugs, cosmetics, and poisons including provisions of Title 21 U.S.C. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;

(17) Chapter 70.94 RCW, Washington clean air act, agricultural burning;

(18) 7 U.S.C., Sec. 136, federal insecticide, fungicide, and rodenticide act; and

(19) 7 U.S.C., Sec. 1621, agricultural marketing act.

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

(1) "Affected area" means the following counties located in the state of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

(2) "Affected producer" means any producer who is subject to this chapter.

(3) "Assessment" means the monetary amount established by the commission in accordance with this chapter.

(4) "Commercial channels" means the sale of wheat or barley for use as food, feed, seed, or any industrial or chemurgic use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat or barley or product produced from wheat or barley.

(5) "Commercial quantities" means five hundred or more bushels of wheat or twenty tons of barley produced for market in any calendar year by any producer.

(6) "Commission" means the Washington grain commission.

(7) "Department" means the department of agriculture of the state of Washington.

(8) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act concerning some matter under this chapter.

(9) "Grain" or "grains" means wheat and barley and includes all kinds and varieties of wheat and barley grown in the state of Washington.

(10) "Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of wheat or barley that is not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(11) "Hosting" may include providing meals, refreshments, lodging, transportation, gifts of a nominal value, reasonable and customary entertainment, and normal incidental expenses at meetings or gatherings.

(12) "Mail" or "send," for purposes of any notice relating to rule making, referenda, or elections, means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(13) "Marketing year" means the twelve-month period beginning June 1st of any year and ending on May 31st of the subsequent year. "Fiscal year" means

the twelve-month period beginning July 1st of any year and ending on June 30th of the subsequent year.

(14) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(15) "Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals, or any unit or agency of local or state government.

(16) "Producer" means any person who is engaged in the business of producing or causing to be produced for market, in commercial quantities, wheat or barley grown in the designated affected area of the state of Washington, and who has been so engaged in at least one of the past three years. "Producer" includes a person who contracts to produce or grow wheat or barley on behalf of a person who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase. "To produce" means to act as a producer.

(17) "Promotional hosting" means the hosting of individuals and groups of individuals at meetings, meals, and gatherings for the purpose of cultivating trade relations and promoting sales of wheat or barley or processed wheat or barley products.

(18) "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(19) "Rule-making proceedings" means rule making under chapter 34.05 RCW.

(20) "Vacancy" means that a commission member leaves or is removed from a position on the commission prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position.

NEW SECTION. **Sec. 4.** (1) There is hereby created the Washington grain commission. The commission is composed of five wheat producer members, two barley producer members, two members representing the wheat industry, one member representing the barley industry, and the director or his or her appointee. All members, including the director or his or her appointee, are full voting members of the commission.

(2)(a) Each wheat producer member of the commission must be a resident of Washington state, over the age of eighteen years at the time of appointment, and a producer of wheat in the district in and for which he or she is nominated and appointed. A wheat producer member must continue to satisfy these qualifications during his or her term of office.

(b) For the nomination and appointment of wheat producer members, the affected area is divided into districts as follows:

(i) District I: Ferry, Lincoln, Pend Oreille, Spokane, and Stevens counties;

(ii) District II: Whitman county;

(iii) District III: Asotin, Columbia, Garfield, and Walla Walla counties;

(iv) District IV: Adams, Chelan, Douglas, Grant, and Okanogan counties; and

(v) District V: Benton, Franklin, Kittitas, Klickitat, and Yakima counties.

(c) The wheat producers in each district are entitled to elect one wheat producer member of the commission.

(3)(a) Each barley producer member of the commission must be a resident of Washington state, over the age of eighteen years at the time of appointment,

and a producer of barley in the district in and for which he or she is nominated and appointed. A barley producer member must continue to satisfy these qualifications during his or her term of office.

(b) For the nomination and appointment of barley producer members, the affected area is divided into districts as follows:

(i) District VI: Asotin, Benton, Columbia, Franklin, Garfield, Klickitat, Walla Walla, Whitman, and Yakima counties; and

(ii) District VII: Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties.

(c) The barley producers in each district are entitled to elect one barley producer member of the commission.

(4) An industry member of the commission need not be a resident of Washington state, but must be involved with the handling, marketing, transportation, processing of, or research regarding wheat or barley produced in Washington state. An industry representative member must continue to satisfy these qualifications during his or her term of office.

(5)(a) The regular term of office of each producer member of the commission is three years from January 1st following his or her first appointment by the director and continues until a successor is appointed. The term of office for producer positions representing districts I, IV, and VII is from January 1, 2011, to December 31, 2014, and for three-year terms thereafter. The term of office for producer positions representing districts II, III, V, and VI is from January 1, 2012, to December 31, 2015, and for three-year terms thereafter.

(b) The regular term of office of each industry representative member of the commission is three years from January 1st following his or her appointment by the director and until a successor is appointed. The term of office for the barley industry representative position is from January 1, 2011, to December 31, 2014, and for three-year terms thereafter. The term of office for the wheat industry representative (position 1) is from January 1, 2011, to December 31, 2014, and for three-year terms thereafter. The term of office for the wheat industry representative (position 2) is from January 1, 2012, to December 31, 2015, and for three-year terms thereafter.

(c) The director, or his or her appointee, is a permanent member of the commission.

NEW SECTION. **Sec. 5.** (1) The Washington grain commission replaces the Washington wheat commission and the Washington barley commission. To accomplish this transition, the initial appointments to the Washington grain commission are as follows:

(a) Within thirty days of the effective date of this section, the Washington wheat commission shall forward to the director the names of the currently appointed wheat producer members who shall be appointed to the interim terms specified in subsection (2) of this section. Thereafter, wheat producer members are nominated and appointed under sections 6 and 8 of this act.

(b) Within thirty days of the effective date of this section, the Washington barley commission shall forward to the director the names of two currently appointed producer members, one who resides in and is a barley producer in district VI and one who resides in and is a barley producer in district VII who shall be appointed to the interim terms specified in subsection (2) of this section.

Thereafter, barley producer members are nominated and appointed under sections 6 and 8 of this act.

(c) Within thirty days of the effective date of this section, the Washington wheat commission shall forward to the director the names of the currently appointed wheat industry representative members who shall be appointed to the interim terms specified in subsection (3) of this section. Thereafter the director shall appoint wheat industry representative members under sections 7 and 8 of this act.

(d) Within thirty days of the effective date of this section, the Washington barley commission shall forward to the director the name of one of the currently appointed barley industry representative members who shall be appointed to the interim term specified in subsection (3) of this section. Thereafter the director shall appoint the barley industry representative member under sections 7 and 8 of this act.

(2) Interim terms for producer members expire as follows:

(a) Districts I, IV, and VII: December 31, 2010; and

(b) Districts II, III, V, and VI: December 31, 2011.

(3) Interim terms for industry representative members expire as follows:

(a) Barley industry representative: December 31, 2010;

(b) Wheat industry representative (position 1): December 31, 2010; and

(c) Wheat industry representative (position 2): December 31, 2011.

(4) The initial appointments under this section must be made within sixty days of the effective date of this section.

NEW SECTION. **Sec. 6.** (1) The director shall appoint the producer members of the commission.

(2) Candidates for producer positions on the commission must be nominated to the director in accordance with this section.

(3)(a) The director shall mail nominating petitions for producer members not earlier than September 17th and not later than October 2nd in each district in which an open producer position will occur at the end of the year. Each nominating petition must be signed by the candidate and by at least five affected producers of the district from which the nominated candidate would be appointed.

(b) Signed nominating petitions must be filed with the director. A nominating petition is filed when it is postmarked by the deadline.

(c) The director shall determine the final date for filing nominating petitions and shall display that final date on the face of each nominating petition mailed under this subsection. The final date may not be earlier than October 8th and not later than October 13th in each district in which an open producer position will occur at the end of the year.

(4)(a) The director shall prepare an advisory ballot for each district in which an open producer position will occur. All candidates from a district who have been nominated as a producer member in accordance with subsection (3) of this section shall have their names placed on the advisory ballot for that district.

(b) The director shall mail advisory ballots to all affected producers in each district in which an open producer position will occur. Advisory ballots must be mailed not earlier than October 18th and not later than November 2nd in each district in which an open producer position will occur at the end of the year.

(c) Only those completed advisory ballots may be counted that are sent to the director and postmarked not later than November 25th in each district in which an open producer position will occur at the end of the year. Each advisory ballot must display the following language on its face: "Each completed advisory ballot must be postmarked not later than November 25, [insert year] to be counted."

(d) Each affected producer is entitled to one vote.

(e) The advisory vote must be conducted in a manner so that it is a secret ballot.

(5)(a) If two or more candidates for a position are named in valid petitions, an advisory vote must be held. If only one candidate for a position is named in valid petitions, an advisory vote need not be held, and the director may appoint that candidate or request an additional candidate from the commission for appointment consideration. If a candidate for a position is not named in any valid petition, the commission shall submit a candidate for the director's appointment consideration. Not more than one commission member may be part of the same person under this chapter.

(b) The director may request of any candidate whose name is forwarded to the director for potential appointment that the candidate submit a letter stating why he or she wishes to be appointed to the commission.

(c) If two or more candidates receive votes in an advisory vote, the director may select either of the two candidates receiving the most votes for the position or may reject both candidates and request a new advisory vote with nominees selected by the commission and, if desired, by the director. If no candidate has been nominated in a petition under subsection (3) of this section, the director shall make an appointment to the position as provided in section 8 of this act.

(6) Except for good cause shown, appointments under this section must be made no later than fifteen days before the commencement of the term of office of the position for which the appointment is made.

NEW SECTION. **Sec. 7.** (1) The director shall appoint the industry representative members of the commission.

(2) Not later than November 1st preceding the expiration of an industry representative member's term of office, the commission shall, by majority vote of a quorum of the commission, select a qualified candidate for the industry representative position and forward the name of the candidate to the director.

(3) The director may select the candidate for the position or may reject the candidate and request that the commission forward the name of an additional candidate for appointment consideration by the director.

(4) Except for good cause shown, appointments under this section must be made no later than fifteen days before the commencement of the term of office of the position for which the appointment is made.

NEW SECTION. **Sec. 8.** In the event of a vacancy on the commission, the remaining members shall recommend to the director the name of a person qualified for appointment to the vacant position. The director may appoint that person for the position or may reject the candidate and request that the commission forward the name of an additional candidate for appointment consideration by the director.

NEW SECTION. **Sec. 9.** If a commission member fails or refuses to perform his or her duties due to excessive absence or abandonment of his or her position or engages in any acts of dishonesty or willful misconduct, a majority of a quorum of the commission may recommend in writing to the director that the commission member be removed from his or her position on the commission. Upon receiving this recommendation, the director shall review the matter, including any statement from the commission member who is the subject of the recommendation, and determine whether adequate cause for removal is present. If the director finds that adequate cause for removal exists, the director shall remove the member from his or her commission position. The position is then vacant and must be filled as set forth in this chapter.

NEW SECTION. **Sec. 10.** (1) Any member of the commission also may be a member or officer of an association which has similar objectives for which the agricultural commission was formed.

(2) An agricultural commission also may contract with such an association for services necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into, and provided that any members with potential conflicts of interest comply with applicable provisions in chapter 42.52 RCW.

NEW SECTION. **Sec. 11.** (1) The commission shall hold regular meetings, at least quarterly, with the time, date, and place to be determined prior to the new calendar year and published in the state register as required in RCW 42.30.075.

(2) The commission may call special meetings as provided for in RCW 42.30.080.

(3) The commission shall hold an annual meeting. The proposed budget must be presented for discussion at the meeting. Notice of the annual meeting must be given by the commission at least ten days prior to the meeting through the regular news media.

(4) Any action taken by the commission requires the majority vote of the members present, provided a quorum is present.

(5) All commission meetings are open and public and must be conducted in accordance with chapter 42.30 RCW.

NEW SECTION. **Sec. 12.** (1) A majority of the voting members constitute a quorum for the transaction of all business and for carrying out the duties of the commission.

(2) A member of the commission shall not receive any salary or other compensation from the commission, except that each member of the commission is compensated in accordance with RCW 43.03.230 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence, lodging, and travel expenses allowed by RCW 43.03.050 and 43.03.060. Employees of the commission also may be reimbursed subsistence, lodging, and travel expenses allowed by RCW 43.03.050 and 43.03.060 when on official commission business.

NEW SECTION. **Sec. 13.** (1) The Washington grain commission is the successor in interest to the Washington wheat commission and the Washington barley commission and is vested with all powers and duties transferred to it

under this chapter and other such powers and duties as may be authorized by law.

(2) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the Washington wheat commission or Washington barley commission must be delivered to the custody of the Washington grain commission. All cabinets, furniture, office equipment, motor vehicles, and other tangible property owned or employed by the Washington wheat commission or Washington barley commission must be delivered to the Washington grain commission. The Washington grain commission shall ensure the timely transfers of all legal titles, registrations, and licenses made necessary by this subsection. All funds, accounts, investments, credits, or other assets held by the Washington wheat commission or Washington barley commission must be transferred or assigned to the Washington grain commission. All debts, liabilities, and obligations owed by the Washington wheat commission or Washington barley commission must be transferred or assigned to the Washington grain commission.

(3) All employees of the Washington wheat commission or Washington barley commission are transferred to the Washington grain commission.

(4) Beginning with the final initial appointment made under section 5 of this act, the interim commissioners shall submit timely reports to the director summarizing the progress made in completing the actions required under this section and any other actions necessary to complete the transition provided for in this chapter.

(5) When the interim commissioners have completed the actions required under this section and any other actions necessary to complete the transition provided for in this chapter, they shall so certify in writing to the director. The Washington wheat commission and Washington barley commission cease to exist as of the date that certification is received by the director. Once the director has received the certification, the director is authorized and shall take action to repeal the marketing orders addressing wheat or barley.

(6) All actions required under this section must be completed by the interim commissioners no later than one hundred twenty days after the final initial appointment is made under section 5 of this act.

(7) RCW 15.66.157 and 15.66.160 do not apply to the Washington wheat commission and the Washington barley commission.

NEW SECTION. **Sec. 14.** (1) The commission is an agency of the Washington state government subject to oversight by the director. In exercising its powers and duties, the commission shall carry out the following purposes:

(a) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets, or to create new or larger markets for wheat and barley grown in Washington;

(b) To engage in cooperative efforts in the domestic or foreign marketing of wheat and barley grown in Washington;

(c) To provide for carrying on research studies to find more efficient methods of production, irrigation, processing, transportation, handling, and marketing of wheat and barley grown in Washington;

(d) To adopt rules to provide for improving standards and grades by defining, establishing, and providing labeling requirements with respect to wheat and barely grown in Washington;

(e) To investigate and take necessary action to prevent unfair trade practices relating to wheat and barley grown in Washington;

(f) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of wheat and barley grown in Washington to any elected official or officer or employee of any agency;

(g) To provide marketing information and services for producers of wheat and barley in Washington;

(h) To provide information and services for meeting resource conservation objectives of producers of wheat and barley in Washington;

(i) To provide for education and training related to wheat and barley grown in Washington; and

(j) To assist and cooperate with the department or any local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect the production or trade of wheat and barley grown in Washington.

(2) The commission has the following powers and duties:

(a) To collect the assessments of producers as provided in this chapter and to expend the same in accordance with this chapter;

(b) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments authorized under this chapter and data on the value of each producer's production for a minimum three-year period;

(c) To maintain a list of the names and addresses of persons who handle wheat or barley within the affected area and data on the amount and value of the wheat and barley handled for a minimum three-year period by each person;

(d) To request records and audit the records of producers or handlers of wheat or barley during normal business hours to determine whether the appropriate assessment has been paid;

(e) To fund, conduct, or otherwise participate in scientific research relating to wheat or barley, including but not limited to research to find more efficient methods of irrigation, production, processing, handling, transportation, and marketing of wheat or barley, or regarding pests, pesticides, food safety, irrigation, transportation, and environmental stewardship related to wheat or barley;

(f) To work cooperatively with local, state, and federal agencies, universities, and national organizations for the purposes provided in this chapter;

(g) To establish a foundation using commission funds as grant money when the foundation benefits the wheat or barley industry in Washington and implements the purposes provided in this chapter;

(h) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to wheat or barley;

(i) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes and powers provided in this chapter, including specifically contracts or agreements for research described in (e) of this subsection. Personal service contracts must comply with chapter 39.29 RCW;

(j) To institute and maintain in its own name any and all legal actions necessary to carry out the provisions of this chapter, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities;

(k) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review and approval by the office of the attorney general;

(l) To elect a chair and other officers as determined advisable;

(m) To employ and discharge at its discretion administrators and additional personnel, advertising and research agencies, and other persons and firms as appropriate and pay compensation;

(n) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey that real property;

(o) To keep accurate records of all its receipts and disbursements by commodity, which records must be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(p) To borrow money and incur indebtedness;

(q) To make necessary disbursements for routine operating expenses;

(r) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient;

(s) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in this chapter;

(t) To apply for and administer federal market access programs or similar programs or projects and provide matching funds as may be necessary;

(u) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized in this chapter;

(v) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of wheat or barley; or the regulation of the manufacture, distribution, sale, or use of any pesticide, as defined in chapter 15.58 RCW, or any agricultural chemical which is of use or potential use in producing wheat or barley. This participation may include activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(w) To speak on behalf of the Washington state government on a nonexclusive basis regarding issues related to wheat and barley, including but not limited to trade negotiations and market access negotiations and to fund industry organizations engaging in those activities;

(x) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this chapter;

(y) To administer, enforce, direct, and control the provisions of this chapter and any rules adopted under this chapter; and

(z) Other powers and duties that are necessary to carry out the purposes of this chapter.

NEW SECTION. **Sec. 15.** (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of wheat and barley; and

(b) The establishment and effectuation of market research projects, market development projects, or both, to the end that the marketing and utilization of wheat and barley may be encouraged, expanded, improved, or made more efficient.

(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning any agricultural commodity.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall review and make a determination of all submissions described in this section in a timely manner.

NEW SECTION. **Sec. 16.** (1) Except as provided in subsection (2) of this section, all rule-making proceedings conducted under this chapter must be in accordance with chapter 34.05 RCW.

(2) Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310 and 43.135.055 and chapter 19.85 RCW, the regulatory fairness act, when the proposed rule is subject to a referendum.

(3) Rules, regulations, and orders made by the commission must be filed with the director and become effective as provided in RCW 34.05.380.

NEW SECTION. **Sec. 17.** (1) The commission may receive donations of liquor produced from wheat or barley grown in Washington and may use the liquor for the promotional purposes specified in subsection (2) of this section.

(2) The commission may engage directly or indirectly in the promotion of liquor produced from wheat or barley grown in Washington including, without limitation, the acquisition in any lawful manner and the dissemination without charge of the liquor. This dissemination is not deemed a sale for any purpose and the commission is not deemed a producer, supplier, or manufacturer, or the clerk, servant, or agent of a producer, supplier, distributor, or manufacturer under Title 66 RCW. This dissemination without charge may be solely for agricultural development or trade promotion, and not for fund-raising purposes under section 14(2)(u) of this act. Dissemination for promotional purposes may include promotional hosting and must in the good faith judgment of the commission be in the aid of the marketing, advertising, or promotion of wheat or barley grown in Washington, or research related to that marketing, advertising, or promotion.

(3) The commission shall adopt rules governing promotional hosting expenditures by its employees, agents, or commission members under RCW 15.04.200.

NEW SECTION. **Sec. 18.** A new section is added to chapter 66.12 RCW to read as follows:

The Washington grain commission created under section 4 of this act may purchase or receive donations of liquor produced from wheat or barley grown in Washington and may use the liquor for the promotional purposes specified in section 17(2) of this act. Liquor furnished to the commission under this section which is used within the state is subject to the taxes imposed under RCW

66.24.210. A license, permit, or bond is not required of the Washington grain commission under this title for the promotional purposes specified in section 17(2) of this act.

NEW SECTION. **Sec. 19.** (1) The restrictive provisions of chapter 43.78 RCW do not apply to promotional printing and literature for the commission.

(2) All promotional printing contracts entered into by the commission must be executed and performed under conditions of employment that substantially conform to the laws of this state respecting hours of labor, the minimum wage scale, and the rules and regulations of the department of labor and industries regarding conditions of employment, hours of labor, and minimum wages, and the violation of such a provision of any contract is grounds for cancellation of the contract.

NEW SECTION. **Sec. 20.** (1) All money received by the commission from the assessment levied under this chapter and all moneys transferred to the commission under section 13(2) of this act must be deposited in the banks designated by the commission and disbursed by order of the commission. RCW 43.01.050 does not apply to money collected under this chapter.

(2) The commission shall adopt rules or establish policies as it determines necessary to ensure proper accounting and disbursement of moneys received and held by the commission.

NEW SECTION. **Sec. 21.** Unless covered by a blanket bond covering officials or employees of the state of Washington, every administrator, employee, or other person occupying a position of trust for the commission and every commission member actually handling or drawing upon funds shall give a bond in the penal amount as may be required by the commission, the premium for which bond or bonds must be paid by the commission.

NEW SECTION. **Sec. 22.** (1) Obligations incurred by the commission and any other liabilities or claims against the commission are enforceable only against the assets of the commission and, except to the extent of those assets, liability for the debts or actions of the commission does not exist against either the state of Washington or any subdivision or instrumentality thereof or against any member, employee, or agent of the commission or the state of Washington in his or her individual capacity.

(2) Except as otherwise provided in this chapter, neither the commission members, nor its employees, may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. A person or employee may not be held individually responsible for any act or omission of any other commission members. The liability of the commission members is several and not joint, and a member is not liable for the default of any other member. This subsection confirms that commission members have been and continue to be state officers or volunteers for purposes of RCW 4.92.075 and are entitled to the defenses, indemnifications, limitations of liability, and other protections and benefits of chapter 4.92 RCW.

(3) In any civil or criminal action or proceeding for violation of any statute, including a rule adopted under that statute, or common law against monopolies or combinations in restraint of trade, including any action under chapter 19.86 RCW, proof that the act complained of was done in compliance with the

provisions of this chapter, and in furtherance of the purposes and provisions of this chapter, is a complete defense to such an action or proceeding.

NEW SECTION. **Sec. 23.** Copies of the proceedings, records, and acts of the commission, when certified by the chair, are admissible in any court as prima facie evidence of the truth of the statements contained therein.

NEW SECTION. **Sec. 24.** (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving this chapter.

(3) This section does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person.

NEW SECTION. **Sec. 25.** (1) The commission shall reimburse the department for all costs incurred by the department for actions necessary to carry out this chapter, including the adoption of rules, facilitating or conducting nominations or advisory votes, and the review and approval required under section 15 of this act.

(2) The director may provide by rule for a method to fund staff support for all commodity boards or commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs are related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director.

NEW SECTION. **Sec. 26.** (1) The commission shall prepare a list of all producers of wheat and a list of all producers of barley, which must include for each producer his or her name and address and the amount, by unit, of wheat or barley produced during the past three years.

(2) The commission shall prepare a list of all persons who handle wheat and all persons who handle barley, which must include for each handler his or her name and address and the amount, by unit, of wheat or barley handled during the past three years.

(3) It is the responsibility of each producer or handler to ensure that his or her correct address is filed with the commodity commission and to submit production data and handling data to the commission as prescribed in this chapter.

(4) Any qualified person may, at any time, have his or her name placed upon any list for which he or she qualifies by delivering or mailing the information to the commission. The lists must be corrected and brought up-to-date in accordance with evidence and information provided to the commission.

(5) For all purposes of giving notice, conducting advisory votes, and holding referenda, the applicable list corrected up to the day preceding the date the list is certified by the commission is the list of all affected producers entitled to notice or to vote. Inadvertent failure to notify an affected producer does not invalidate a proceeding conducted under this chapter.

(6) At the director's request when conducting a referendum for the commission, the commission shall provide the director a certified list of affected producers from the commission records. The list must include all information required by the director to conduct a referendum under this chapter, must be used to determine assent as provided in this chapter, and must be kept in the rule-making file by the director.

NEW SECTION. **Sec. 27.** (1)(a) The initial annual assessments are the amounts most recently approved by referendum by wheat producers and barley producers and effective at the time the grain commission is established:

(i) The initial annual assessment on wheat is three-fourths of one percent of the net receipts at the first point of sale;

(ii) The initial annual assessment on barley is one percent of the net receipts at the first point of sale.

(b) The initial annual assessments established in this subsection are effective unless and until changed pursuant to the procedure in subsection (2) of this section.

(2)(a) If the commission determines, based on information available to it, that the revenue from the assessment levied on wheat or barley under this chapter is too high or is inadequate to accomplish the purposes of this chapter, then with the oversight of the director the commission shall adopt a resolution setting forth the needs of the industry, the extent and probable cost of the commission activities identified as necessary to address the needs of the industry together with a brief statement justifying each activity, the proposed new assessment rate, and the expected revenue from the proposed assessment levied. The resolution must be submitted to the director for review and approval.

(b) If the director objects to the proposed new assessment rate, the director shall explain the reasons for the objection to the commission in writing. The commission may adopt a revised resolution and submit it to the director for review and approval.

(c) Upon receiving the director's approval and with the director's oversight, the commission may conduct a referendum to determine whether affected producers assent to the proposed new assessment rate, or may refer the matter to the director to conduct the referendum on behalf of the commission. Only wheat producers may vote on a proposed new assessment rate on wheat, and only barley producers may vote on a proposed new assessment rate on barley.

(i) The producers have assented to the new rate if more than fifty percent by number and more than fifty percent by volume of those replying assent. The determination by volume is made on the basis of volume as determined in the list of affected producers created under section 26 of this act.

(ii) Results of the referendum must be communicated via the news media.

(iii) If the requisite assent is given, the commission shall adopt the new rate at its next meeting. The new rate must be adopted by rule in accordance with chapter 34.05 RCW, except as provided in section 16 of this act.

(3)(a) Notwithstanding the provisions in subsection (2) of this section, the commission may, by majority vote of a quorum of its members, adopt a finding that its current revenue substantially exceeds that needed to support the current needs of the industry and the current cost of commission activities and order a temporary reduction in the annual assessments below the rate currently authorized under subsection (1) of this section.

(b) With the director's approval, such a reduction commences on July 1st following the commission's action and expires automatically on June 30th of the subsequent year unless extended by a new action of the commission under this subsection.

(c) Any action taken under this subsection must be communicated to affected producers via the news media and any other means it deems effective.

(4) The annual assessment authorized in this chapter may not exceed three percent of the total market value of all affected units sold, processed, stored, or delivered for sale, processing, or storage by all affected producers of wheat or barley during the year to which the assessment applies.

NEW SECTION. **Sec. 28.** (1) The collection of the assessment made and levied by the commission must be paid by the producer upon all commercial quantities of wheat and all commercial quantities of barley sold, processed, stored, or delivered for sale, processing, or storage by the producer. However, an assessment may not be levied or collected on wheat or barley grown and used by the producer for feed, seed, or personal consumption.

(2) Handlers including warehousemen, processors, and feedlots receiving wheat or barley in commercial quantities from producers shall collect the assessment made and levied by the commission from each producer whose production they handle and remit the assessment to the commission on a monthly basis. Affected units of wheat or barley must not be transported, carried, shipped, sold, stored, or otherwise handled or disposed of until every due and payable assessment under this chapter has been paid and the receipt issued, but liability under this chapter does not attach to common carriers in the regular course of their business.

(3) Any due and payable assessment levied under this chapter constitutes a personal debt of every person so assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission on a monthly basis. In the event any person fails to pay the full amount of such an assessment, the commission may add to the unpaid assessment an amount not exceeding ten percent of the unpaid assessment to defray the cost of enforcing the collecting of the unpaid assessment. In the event of failure of the person or persons to pay any due and payable assessment, the commission may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the additional ten percent, and the action must be tried and judgment rendered as in any other cause of action for debt due and payable. Venue for an action against a person owing a due and payable assessment to the commission is in Spokane county or a county in which the person produces or handles wheat or barley.

NEW SECTION. **Sec. 29.** (1) All moneys collected or otherwise received by the commission under this chapter must be used solely by and for the commission and may not be used for any other commission or the department,

except as otherwise provided in this chapter. These moneys must be deposited in accounts in the name of the commission in any bank which is a state depository. All expenses and disbursements incurred and made under this chapter must be paid from moneys collected and received under this chapter without the necessity of a specific legislative appropriation, and all moneys deposited for the account of any order must be paid from the account by check or voucher in the form and in the manner and upon the signature of the person as may be prescribed by the commission. RCW 43.01.050 is not applicable to such an account or any moneys so received, collected, or expended.

(2) The commission shall ensure that the expenditure of assessments collected from wheat producers and moneys transferred from the wheat commission under section 13(2) of this act are used for purposes related to the wheat industry and that the expenditure of assessments collected from barley producers and moneys transferred from the barley commission under section 13(2) of this act are used for purposes related to the barley industry. However, this section does not prevent assessments from wheat, assessments from barley, and moneys transferred from the wheat commission or barley commission under section 13(2) of this act to be combined or used together for activities, projects, and other endeavors that benefit both the wheat and barley industries.

NEW SECTION. **Sec. 30.** (1) Any funds of the commission may be invested in savings or time deposits in banks, trust companies, and mutual savings banks that are doing business in the United States, up to the amount of insurance afforded those accounts by the federal deposit insurance corporation.

(2) This section applies to all funds which may be lawfully so invested, which in the judgment of the commission are not required for immediate expenditure. The authority granted by this section is not exclusive and is cumulative and in addition to other authority provided by law for the investment of the funds including, but not limited to, authority granted under chapters 39.58, 39.59, and 43.84 RCW.

NEW SECTION. **Sec. 31.** (1) To prove eligibility to vote or hold a position on the commission, each producer must show records of sales of commercial quantities of wheat or barley sold within the past three years if requested by the commission.

(2) Each handler shall keep a complete and accurate record of all wheat and barley handled.

(3) Handlers' records must be in the form and contain the information as the commission may by rule prescribe, must be preserved for a period of three years, and are subject to inspection at any time upon demand of the commission or its agents.

(4) The commission through its agents may enter and inspect the premises and records of any handler of wheat or barley for the purpose of enforcing this chapter. The commission has the authority to issue subpoenas for the production of books, records, documents, and other writings of any kind from any handler and from any person having, either directly or indirectly, actual or legal control of or over the premises, books, records, documents, or other writings, for the purpose of enforcing this chapter or rules adopted under this chapter.

(5) All information furnished to or acquired by the commission or by an agent of the commission under this section must be kept confidential by all

officers, employees, and agents of the commission, except as may be necessary in a suit or other legal proceeding brought by, on behalf of, or against the commission or its employees or agents involving the enforcement of this chapter or rules adopted under this chapter.

(6) This section does not prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to this chapter, which statements do not identify the information furnished by any person; or

(b) The publication by the commission or the director of the name of any person violating this chapter or rules adopted under this chapter, together with a statement of the particular provisions and the manner of the violation.

NEW SECTION. **Sec. 32.** (1) It is a misdemeanor for any person willfully to:

(a) Violate or aid in the violation of this chapter or rules adopted under this chapter;

(b) Submit a false or fraudulent report, statement, or record required by the director or the commission under this chapter or rules adopted under this chapter; or

(c) Fail or refuse to submit a report, statement, or record required by the director or the commission under this chapter or rules adopted under this chapter.

(2) In the event of a violation or threatened violation of this chapter or rules adopted under this chapter, the director or the commission is entitled to an injunction in a court of competent jurisdiction to prevent further violation and to a decree of specific performance, and to a temporary restraining order and injunction pending litigation.

(3) In the event of a violation or threatened violation of this chapter or rules adopted under this chapter, the director, the commission, or any affected producer on joining the commission may refer the violation to the prosecutor in any county in which the defendant or any defendant resides, or in which the violation was committed, or in which the defendant or any defendant has his or her principal place of business.

(4) The superior courts are hereby vested with jurisdiction to enforce this chapter and the rules of the commission issued under this chapter, and to prevent and restrain violations of this chapter.

Sec. 33. RCW 15.04.200 and 2006 c 330 s 24 are each amended to read as follows:

(1) Under the authority of Article VIII of the state Constitution as amended, agricultural commodity commission expenditures for agricultural development or trade promotion and promotional hosting by an agricultural commodities commission under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.88, 15.89, 15.— (the new chapter created in section 40 of this act), and 16.67 RCW shall be pursuant to specific budget items as approved by the agricultural commodity commission at the annual public hearings on the agricultural commodity commission budget.

(2) Agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents or commissioners. The rules shall identify officials and agents authorized to make expenditures and the objectives of the expenditures.

Individual agricultural commodity commission commissioners shall make promotional hosting expenditures, or seek reimbursements for these expenditures, only in those instances where the expenditures have been approved by the agricultural commodity commission. All payments and reimbursements shall be identified and supported on vouchers.

(3) Agricultural commodity commissions shall be exempt from the requirements of RCW 43.01.090 and 43.19.500 and chapter 43.82 RCW.

Sec. 34. RCW 15.65.620 and 1961 c 256 s 62 are each amended to read as follows:

Nothing in this chapter shall apply to nor alter nor change any provision of the statutes of the state of Washington relating to the apple ((~~advertising~~)) commission (RCW 15.24.010-15.24.210 inclusive), to the soft tree fruits commission (RCW 15.28.010-15.28.310 inclusive), ((~~or~~)) to dairy products commission (RCW 15.44.010-15.44.180 inclusive), or to ((~~wheat~~)) the grain commission (((~~RCW 15.63.010-15.63.920 inclusive~~))) (chapter 15.— (the new chapter created in section 40 of this act)). No marketing agreement or order containing any of the provisions specified in RCW 15.65.310 or 15.65.320 shall be issued with respect to the respective commodities affected by said statutes unless and until any commission established by any such statute shall cease to perform the provisions of its respective statute. The provisions of this chapter shall have no application to any marketing agreement or order issued pursuant to the Washington agricultural enabling act of 1955 (chapter 15.66 RCW); except that any such marketing agreement or order issued pursuant to said 1955 act may be brought under this chapter upon compliance with the provisions of this chapter relating to amendments of marketing agreements and orders, whereupon:

(1) The provisions of this chapter shall apply to and the provisions of said 1955 act shall cease to apply to such marketing agreement or order; and

(2) All assets and liabilities of, or pertaining to such agreement or order, and of any commission or agency established by it, shall continue to exist with respect to such agreement, order, commission or agency after being so brought under this chapter.

Sec. 35. RCW 15.66.270 and 2007 c 234 s 100 are each amended to read as follows:

This chapter does not apply to any provision of the statutes of the state of Washington relating to the Washington apple commission (chapter 15.24 RCW), to the soft tree fruits commission (chapter 15.28 RCW), ((~~or~~)) to the dairy products commission (chapter 15.44 RCW),or to the Washington grain commission (chapter 15.— RCW (the new chapter created in section 40 of this act)). Marketing agreements or orders shall not be issued with respect to apples, soft tree fruits, ((~~or~~)) dairy products, or wheat or barley for the purposes specified in RCW 15.66.030 (1) or (2).

Sec. 36. RCW 41.06.070 and 2002 c 354 s 209 are each amended to read as follows:

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

(a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and

employees of the legislative council, joint legislative audit and review committee, statute law committee, and any interim committee of the legislature;

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

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

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

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

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

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

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

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

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

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

(j) Assistant attorneys general;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

((~~(x)~~)) (y) All employees of the marine employees' commission;

((~~(y)~~)) (z) Staff employed by the department of community, trade, and economic development to administer energy policy functions and manage energy site evaluation council activities under RCW 43.21F.045(2)(m);

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

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

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

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

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

(3) In addition to the exemptions specifically provided by this chapter, the director of personnel may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the director of personnel stating the reasons for requesting such exemptions. The director of personnel shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the director determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the director of personnel shall grant the request and such determination shall be final as to any decision made before July 1, 1993. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor.

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

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

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

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

Sec. 37. RCW 42.56.380 and 2007 c 177 s 1 are each amended to read as follows:

The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

(1) Business-related information under RCW 15.86.110;

(2) Information provided under RCW 15.54.362;

(3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.— (the new chapter created in section 40 of this act), 15.100, 15.89, and 16.67 RCW or required by the department of agriculture to administer these chapters or the department's programs;

(4) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States department of agriculture, or on applications for phytosanitary certification required by the department of agriculture;

(5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.— (the new chapter created in section 40 of this act), 15.100, 15.89, or 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information;

(6) Except under RCW 15.19.080, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer;

(7) Information that can be identified to a particular business and that is collected under RCW 15.17.140(2) and 15.17.143 for certificates of compliance;

(8) Financial statements provided under RCW 16.65.030(1)(d);

(9) Information submitted by an individual or business for the purpose of participating in a state or national animal identification system. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete; and

(10) Results of testing for animal diseases not required to be reported under chapter 16.36 RCW that is done at the request of the animal owner or his or her designee that can be identified to a particular business or individual.

Sec. 38. RCW 43.23.033 and 2006 c 330 s 27 are each amended to read as follows:

(1) The director may provide by rule for a method to fund staff support for all commodity boards and commissions if a position is not directly funded by the legislature.

(2) Staff support funded under this section ((~~and~~)), RCW 15.65.047(1)(c), 15.66.055(3), 15.24.215, 15.26.265, 15.28.320, 15.44.190, 15.88.180, 15.89.150, and 16.67.190, and chapter 15.— RCW (the new chapter created in section 40 of this act) shall be limited to one-half full-time equivalent employee for all commodity boards and commissions.

NEW SECTION. **Sec. 39.** 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. 40.** Sections 1 through 17, 19 through 32, and 39 of this act constitute a new chapter in Title 15 RCW.

Passed by the House February 23, 2009.
Passed by the Senate April 1, 2009.
Approved by the Governor April 9, 2009.
Filed in Office of Secretary of State April 10, 2009.

CHAPTER 34

[House Bill 1034]

STATE-OWNED ARMORIES—PUBLIC AND PRIVATE USE

AN ACT Relating to rental or lease of armories; and amending RCW 38.20.010.

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

Sec. 1. RCW 38.20.010 and 2005 c 252 s 3 are each amended to read as follows:

Except as provided in this section, state-owned armories shall be used strictly for military purposes.

(1) One room, together with the necessary furniture, heat, light, and janitor service, may be set aside for the exclusive use of bona fide veterans' organizations subject to the direction of the officer in charge. Members of these veterans' organizations and their auxiliaries shall have access to the room and its use at all times.

(2) A bona fide veterans' organization may use any state armory for athletic and social events without payment of rent whenever the armory is not being used by the organized militia. The adjutant general may require the veterans' organization to pay the cost of heating, lighting, or other miscellaneous expenses incidental to this use.

(3) The adjutant general may, during an emergency, permit transient lodging of service personnel in armories.

(4) The adjutant general may, upon the recommendation of the executive head or governing body of a county, city or town, permit transient lodging of anyone in armories. The adjutant general may require the county, city or town to pay no more than the actual cost of staffing, heating, lighting and other miscellaneous expenses incidental to this use.

(5) Civilian rifle clubs affiliated with the National Rifle Association of America are permitted to use small arms ranges in the armories at least one night each week under regulations prescribed by the adjutant general.

(6) State-owned armories shall be available, at the discretion of the adjutant general, for public and private use ((~~for casual civic purposes, and amateur and professional sports and theatricals~~)) upon payment of ((~~fixed~~)) rental charges and compliance with regulations of the state military department. Children attending primary and high schools have a preferential right to use these armories.

The adjutant general shall prepare a schedule of rental charges, including a cleaning deposit, and utility costs for each state-owned armory which may not be waived except for activities sponsored by the organized militia or activities provided for in subsection (4) of this section. The rental charges derived from armory rentals less the cleaning deposit shall be paid into the military department rental and lease account under RCW 38.40.210.

Passed by the House January 26, 2009.
Passed by the Senate April 1, 2009.
Approved by the Governor April 9, 2009.
Filed in Office of Secretary of State April 10, 2009.

CHAPTER 35

[Engrossed House Bill 1049]

VETERANS' RELIEF PROGRAMS—ELIGIBILITY

AN ACT Relating to veterans' relief; and amending RCW 73.08.005.

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

Sec. 1. RCW 73.08.005 and 2008 c 6 s 502 are each amended to read as follows:

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

(1) "Direct costs" includes those allowable costs that can be readily assigned to the statutory objectives of this chapter, consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(2) "Family" means the spouse or domestic partner, surviving spouse, surviving domestic partner, and dependent children of a living or deceased veteran.

(3) "Indigent" means a person who is defined as such by the county legislative authority using one or more of the following definitions:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income;

(b) Receiving an annual income, after taxes, of up to one hundred fifty percent or less of the current federally established poverty level, or receiving an annual income not exceeding a higher qualifying income established by the county legislative authority; or

(c) Unable to pay reasonable costs for shelter, food, utilities, and transportation because his or her available funds are insufficient.

(4) "Indirect costs" includes those allowable costs that are generally associated with carrying out the statutory objectives of this chapter, but the identification and tracking of those costs cannot be readily assigned to a specific statutory objective without an accounting effort that is disproportionate to the benefit received. A county legislative authority may allocate allowable indirect costs to its veterans' assistance fund if it is accomplished in a manner consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(5) "Veteran" has the same meaning as defined in RCW 41.04.005 and 41.04.007, and includes a current member of the national guard or armed forces reserves who has been deployed to serve in an armed conflict.

(6) "Veterans' advisory board" means a board established by a county legislative authority under the authority of RCW 73.08.035.

(7) "Veterans' assistance fund" means an account in the custody of the county auditor, or the chief financial officer in a county operating under a charter, that is funded by taxes levied under the authority of RCW 73.08.080.

(8) "Veterans' assistance program" means a program approved by the county legislative authority under the authority of RCW 73.08.010 that is fully or partially funded by the veterans' assistance fund authorized by RCW 73.08.080.

Passed by the House January 26, 2009.
Passed by the Senate March 31, 2009.
Approved by the Governor April 9, 2009.
Filed in Office of Secretary of State April 10, 2009.

CHAPTER 36

[Substitute House Bill 1055]

CONSTRUCTION CONTRACTORS—DISPLAY OF LICENSES

AN ACT Relating to requiring workers to have licenses, certificates, or permits in their possession when performing work in certain construction trades; amending RCW 18.106.020, 18.106.070, 18.106.090, 18.106.170, 19.28.271, 19.28.211, 19.28.231, 70.87.230, and 70.87.250; reenacting and amending RCW 19.28.161; 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 dishonest construction contractors sometimes hire workers without proper licenses, certificates, permits, and endorsements to do electrical, plumbing, and conveyance work. This practice gives these contractors an unfair competitive advantage and leaves workers and customers vulnerable.

(2) The legislature intends that electricians, plumbers, and conveyance workers be required to have their licenses, certificates, permits, and endorsements and photo identification in their possession while working. The legislature further intends that the department of labor and industries be authorized to require electricians, plumbers, and conveyance workers to wear and visibly display their licenses, certificates, permits, and endorsements while working, and to include photo identification on these documents. These requirements will help address the problems of the underground economy in the construction industry, level the playing field for honest contractors, and protect workers and consumers.

Sec. 2. RCW 18.106.020 and 2006 c 185 s 11 are each amended to read as follows:

(1) No person may engage in or offer to engage in the trade of plumbing without having a journeyman certificate, specialty certificate, temporary permit, or trainee certificate and photo identification in his or her possession. The department may establish by rule a requirement that the person also wear and visibly display his or her certificate or permit. A trainee must be supervised by a person who has a journeyman certificate, specialty certificate, or temporary permit, as specified in RCW 18.106.070. No contractor may employ a person to engage in or offer to engage in the trade of plumbing unless the person employed has a journeyman certificate, specialty certificate, temporary permit, or trainee certificate. This section does not apply to a contractor who is contracting for work on his or her own residence. Until July 1, 2007, the department shall issue

a written warning to any specialty plumber defined by RCW 18.106.010(10)(c) not having a valid plumber certification. The warning will state that the individual must apply for a plumber training certificate or be qualified for and apply for plumber certification under the requirements in RCW 18.106.040 within thirty calendar days of the warning. Only one warning will be issued to any individual. If the individual fails to comply with this section, the department shall issue a penalty or penalties as authorized by this chapter.

(2) No person may engage in or offer to engage in medical gas piping installation without having a certificate of competency as a journeyman plumber and a medical gas piping installer endorsement and photo identification in his or her possession. The department may establish by rule a requirement that the person also wear and visibly display his or her endorsement. A trainee may engage in medical gas piping installation if he or she has a training certificate and is supervised by a person with a medical gas piping installer endorsement. No contractor may employ a person to engage in or offer to engage in medical gas piping installation unless the person employed has a certificate of competency as a journeyman plumber and a medical gas piping installer endorsement.

(3) No contractor may advertise, offer to do work, submit a bid, or perform any work under this chapter without being registered as a contractor under chapter 18.27 RCW.

(4) Violation of this section is an infraction. Each day in which a person engages in the trade of plumbing in violation of this section or employs a person in violation of this section is a separate infraction. Each worksite at which a person engages in the trade of plumbing in violation of this section or at which a person is employed in violation of this section is a separate infraction.

(5) Notices of infractions for violations of this section may be issued to:

(a) The person engaging in or offering to engage in the trade of plumbing in violation of this section;

(b) The contractor in violation of this section; and

(c) The contractor's employee who authorized the work assignment of the person employed in violation of this section.

Sec. 3. RCW 18.106.070 and 2006 c 185 s 10 are each amended to read as follows:

(1) The department shall issue a certificate of competency to all applicants who have passed the examination and have paid the fee for the certificate. The certificate may include a photograph of the holder. The certificate shall bear the date of issuance, and shall expire on the birthdate of the holder immediately following the date of issuance. The certificate shall be renewable every other year, upon application, on or before the birthdate of the holder, except for specialty plumbers defined by RCW 18.106.010(10)(c) who also have an electrical certification issued jointly as provided by RCW 18.106.050(3) in which case their certificate shall be renewable every three years on or before the birthdate of the holder. The department shall renew a certificate of competency if the applicant: (a) Pays the renewal fee assessed by the department; and (b) during the past two years has completed sixteen hours of continuing education approved by the department with the advice of the advisory board, including four hours related to electrical safety. For holders of the specialty plumber certificate under RCW 18.106.010(10)(c), the continuing education may

comprise both electrical and plumbing education with a minimum of twelve of the required twenty-four hours of continuing education in plumbing. If a person fails to renew the certificate by the renewal date, he or she must pay a doubled fee. If the person does not renew the certificate within ninety days of the renewal date, he or she must retake the examination and pay the examination fee.

The journeyman plumber and specialty plumber certificates of competency, the medical gas piping installer endorsement, and the temporary permit provided for in this chapter grant the holder the right to engage in the work of plumbing as a journeyman plumber, specialty plumber, or medical gas piping installer, in accordance with their provisions throughout the state and within any of its political subdivisions on any job or any employment without additional proof of competency or any other license or permit or fee to engage in the work. This section does not preclude employees from adhering to a union security clause in any employment where such a requirement exists.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the plumbing construction trade or who is learning the plumbing construction trade may work in the plumbing construction trade if supervised by a certified journeyman plumber or a certified specialty plumber in that plumber's specialty. All apprentices and individuals learning the plumbing construction trade shall obtain a plumbing training certificate from the department. The certificate shall authorize the holder to learn the plumbing construction trade while under the direct supervision of a journeyman plumber or a specialty plumber working in his or her specialty. The certificate may include a photograph of the holder. The holder of the plumbing training certificate shall renew the certificate annually. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the plumbing construction industry for the previous year and the number of hours worked for each employer. An annual fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. ((~~Apprentices and individuals learning the plumbing construction trade shall have their plumbing training certificates in their possession at all times that they are performing plumbing work. They shall show their certificates to an authorized representative of the department at the representative's request.~~))

(3) Any person who has been issued a plumbing training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a journeyman plumber or an appropriate specialty plumber who has an applicable certificate of competency issued under this chapter. Either a journeyman plumber or an appropriate specialty plumber shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter. The ratio of noncertified individuals to certified journeymen or specialty plumbers working on a job site shall be: (a) Not more than two noncertified plumbers working on any one job site for every certified specialty plumber or journeyman plumber working as a specialty plumber; and (b) not more than one noncertified plumber working on

any one job site for every certified journeyman plumber working as a journeyman plumber.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in a technical school program in the plumbing construction trade in a school approved by the workforce training and education coordinating board, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(4) An individual who has a current training certificate and who has successfully completed or is currently enrolled in a medical gas piping installer training course approved by the department may work on medical gas piping systems if the individual is under the direct supervision of a certified medical gas piping installer who holds a medical gas piping installer endorsement one hundred percent of a working day on a one-to-one ratio.

(5) The training to become a certified plumber must include not less than sixteen hours of classroom training established by the director with the advice of the advisory board. The classroom training must include, but not be limited to, electrical wiring safety, grounding, bonding, and other related items plumbers need to know to work under RCW 19.28.091.

(6) All persons who are certified plumbers before January 1, 2003, are deemed to have received the classroom training required in subsection (5) of this section.

Sec. 4. RCW 18.106.090 and 1985 c 7 s 78 are each amended to read as follows:

The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever a plumber coming into the state of Washington from another state requests the department for a temporary permit to engage in the trade of plumbing as a journeyman plumber or as a specialty plumber during the period of time between filing of an application for a certificate as provided in RCW 18.106.030 as now or hereafter amended and taking the examination provided for in RCW 18.106.050((~~: PROVIDED, That~~)). The temporary permit may include a photograph of the plumber. No temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency;

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW 18.106.030;

(3) To any apprentice plumber.

Sec. 5. RCW 18.106.170 and 1983 c 124 s 6 are each amended to read as follows:

An authorized representative of the department may investigate alleged or apparent violations of this chapter. An authorized representative of the department upon presentation of credentials may inspect sites at which a person is doing plumbing work for the purpose of determining whether that person has a certificate or permit issued by the department in accordance with this chapter ((~~or is supervised by a person who has such a certificate or permit~~)). Upon request of the authorized representative of the department, a person doing plumbing work shall produce ((~~evidence that the person has a~~)) his or her

certificate or permit ((~~issued by the department in accordance with this chapter or is supervised by a person who has such a certificate or permit~~)) and photo identification.

Sec. 6. RCW 19.28.271 and 2001 c 211 s 20 are each amended to read as follows:

(1) It is unlawful for any person, firm, partnership, corporation, or other entity to employ an individual for purposes of RCW 19.28.161 through 19.28.271 who has not been issued a certificate of competency, a temporary permit, or a training certificate. It is unlawful for any individual to engage in the electrical construction trade or to maintain or install any electrical equipment or conductors without having in his or her possession a certificate of competency, a temporary permit, or a training certificate under RCW 19.28.161 through 19.28.271, and photo identification. The department may establish by rule a requirement that the individual also wear and visibly display his or her certificate or permit.

(2) Any person, firm, partnership, corporation, or other entity found in violation of RCW 19.28.161 through 19.28.271 shall be assessed a penalty of not less than fifty dollars or more than five hundred dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.161 through 19.28.271. An appeal may be made to the board as is provided in RCW 19.28.131. The appeal shall be filed within twenty days after the notice of the penalty is given to the assessed party by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. Any equipment maintained or installed by any person who does not possess a certificate of competency under RCW 19.28.161 through 19.28.271 shall not receive an electrical work permit and electrical service shall not be connected or maintained to operate the equipment. Each day that a person, firm, partnership, corporation, or other entity violates RCW 19.28.161 through 19.28.271 is a separate violation.

((~~(2)~~)) (3) A civil penalty shall be collected in a civil action brought by the attorney general in the county wherein the alleged violation arose at the request of the department if any of RCW 19.28.161 through 19.28.271 or any rules adopted under RCW 19.28.161 through 19.28.271 are violated.

Sec. 7. RCW 19.28.161 and 2006 c 224 s 2 and 2006 c 185 s 6 are each reenacted and amended to read as follows:

(1) No person may engage in the electrical construction trade without having a valid master journeyman electrician certificate of competency, journeyman electrician certificate of competency, master specialty electrician certificate of competency, or specialty electrician certificate of competency issued by the department in accordance with this chapter. Electrician certificate of competency specialties include, but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, and appliance repair. Until July 1, 2007, the department of labor and industries shall issue a written warning to any specialty pump and irrigation or domestic pump electrician not having a valid electrician certification. The warning will state that the individual must apply for an electrical training certificate or be qualified for and apply for electrician certification under the requirements in RCW 19.28.191(1)(g) within thirty

calendar days of the warning. Only one warning will be issued to any individual. If the individual fails to comply with this section, the department shall issue a penalty as defined in RCW 19.28.271 to the individual.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade or who is learning the electrical construction trade may work in the electrical construction trade if supervised by a certified master journeyman electrician, journeyman electrician, master specialty electrician in that electrician's specialty, or specialty electrician in that electrician's specialty. All apprentices and individuals learning the electrical construction trade shall obtain an electrical training certificate from the department. The certificate shall authorize the holder to learn the electrical construction trade while under the direct supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. The certificate may include a photograph of the holder. The holder of the electrical training certificate shall renew the certificate biennially. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the electrical construction industry for the previous biennial period and the number of hours worked for each employer, and proof of sixteen hours of approved classroom electrical continuing education courses covering this chapter, the national electrical code, or electrical theory, or the equivalent electrical training courses taken as part of an approved apprenticeship program under chapter 49.04 RCW or an approved electrical training program under RCW 19.28.191(1)(h). This education requirement is effective July 1, 2007. A biennial fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the electrical construction trade shall have their electrical training certificates in their possession at all times that they are performing electrical work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued an electrical training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter.

(4) The ratio of noncertified individuals to certified master journeymen electricians, journeymen electricians, master specialty electricians, or specialty electricians on any one job site is as follows:

(a) When working as a specialty electrician, not more than two noncertified individuals for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician, except that the ratio

requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board; and

(b) When working as a journeyman electrician, not more than one noncertified individual for every certified master journeyman electrician or journeyman electrician, except that the ratio requirements shall be one certified master journeyman electrician or journeyman electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(5) For the residential (as specified in WAC 296-46B-920(2)(a)), pump and irrigation (as specified in WAC 296-46B-920(2)(b)), sign (as specified in WAC 296-46B-920(2)(d)), limited energy (as specified in WAC 296-46B-920(2)(e)), nonresidential maintenance (as specified in WAC 296-46B-920(2)(g)), restricted nonresidential maintenance as determined by the department in rule, or other new nonresidential specialties, not including appliance repair, as determined by the department in rule, either a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty must be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day. Other specialties must meet the requirements specified in RCW 19.28.191(1)(g)(ii). When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

(a) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and

(b) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

(6) The electrical contractor shall accurately verify and attest to the electrical trainee hours worked by electrical trainees on behalf of the electrical contractor.

Sec. 8. RCW 19.28.211 and 2006 c 185 s 12 are each amended to read as follows:

(1) The department shall issue a certificate of competency to all applicants who have passed the examination provided in RCW 19.28.201, and who have complied with RCW 19.28.161 through 19.28.271 and the rules adopted under this chapter. The certificate may include a photograph of the holder. The certificate shall bear the date of issuance, and shall expire on the holder's birthday. The certificate shall be renewed every three years, upon application, on or before the holder's birthdate. A fee shall be assessed for each certificate and for each annual renewal.

(2) If the certificate holder demonstrates to the department that he or she has satisfactorily completed an annual eight-hour continuing education course, the certificate may be renewed without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date. For pump and irrigation or domestic pump specialty electricians, the continuing education course may combine both electrical and plumbing education provided that there is a minimum of four hours of electrical training in the course.

(a) The contents and requirements for satisfactory completion of the continuing education course shall be determined by the director and approved by the board.

(b) The department shall accept proof of a certificate holder's satisfactory completion of a continuing education course offered in another state as meeting the requirements for maintaining a current Washington state certificate of competency if the department is satisfied the course is comparable in nature to that required in Washington state for maintaining a current certificate of competency.

(3) If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. The department shall set the fees by rule for issuance and renewal of a certificate of competency. The fees shall cover but not exceed the costs of issuing the certificates and of administering and enforcing the electrician certification requirements of this chapter.

(4) The certificates of competency and temporary permits provided for in this chapter grant the holder the right to work in the electrical construction trade as a master electrician, journeyman electrician, or specialty electrician in accordance with their provisions throughout the state and within any of its political subdivisions without additional proof of competency or any other license, permit, or fee to engage in such work.

Sec. 9. RCW 19.28.231 and 2001 c 211 s 16 are each amended to read as follows:

The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever an electrician coming into the state of Washington from another state requests the department for a temporary permit to engage in the electrical construction trade as an electrician during the period of time between filing of an application for a certificate as provided in RCW

19.28.181 and the date the results of taking the examination provided for in RCW 19.28.201 are furnished to the applicant. The temporary permit may include a photograph of the holder. The department is authorized to enter into reciprocal agreements with other states providing for the acceptance of such states' journeyman and speciality electrician certificate of competency or its equivalent when such states requirements are equal to the standards set by this chapter. No temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency, except that any person who has failed the examination for competency under this section shall be entitled to continue to work under a temporary permit for ninety days if the person is enrolled in a journeyman electrician refresher course and shows evidence to the department that he or she has not missed any classes. The person, after completing the journeyman electrician refresher course, shall be eligible to retake the examination for competency at the next scheduled time.

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW 19.28.181.

(3) To any apprentice electrician.

Sec. 10. RCW 70.87.230 and 2003 c 143 s 1 are each amended to read as follows:

(1) Except as provided in RCW 70.87.270, a person may not perform conveyance work within the state unless he or she is an elevator mechanic who is regularly employed by and is working: ((~~(1)~~)) (a) For an owner exempt from licensing requirements under RCW 70.87.270 and performing maintenance; ((~~(2)~~)) (b) for a public agency performing maintenance; or ((~~(3)~~)) (c) under the direct supervision of an elevator contractor. A person, firm, public agency, or company is not required to be an elevator contractor for removing or dismantling conveyances that are destroyed as a result of a complete demolition of a secured building or structure or where the building is demolished back to the basic support structure whereby no access is permitted therein to endanger the safety and welfare of a person.

(2) When performing conveyance work, an elevator mechanic must have his or her license and photo identification in his or her possession. The elevator mechanic must produce his or her license and identification upon request of an authorized representative of the department. The department may establish by rule a requirement that the mechanic also wear and visibly display his or her license.

Sec. 11. RCW 70.87.250 and 2003 c 143 s 21 are each amended to read as follows:

(1) Upon approval of an application, the department may issue a license that is biennially renewable. Each license may include a photograph of the licensee. The fee for the license and for any renewal shall be set by the department in rule.

(2) The department may issue temporary elevator mechanic licenses. These temporary elevator mechanic licenses will be issued to those certified as qualified and competent by licensed elevator contractors. The company shall furnish proof of competency as the department may require. Each license may include a photograph of the licensee. Each license must recite that it is valid for a period of thirty days from the date of issuance and for such particular

conveyance or geographical areas as the department may designate, and otherwise entitles the licensee to the rights and privileges of an elevator mechanic license issued in this chapter. A temporary elevator mechanic license may be renewed by the department and a fee as established in rule must be charged for any temporary elevator mechanic license or renewal.

(3) The renewal of all licenses granted under this section is conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of licensees on new and existing rules of the department. The course must consist of not less than eight hours of instruction that must be attended and completed within one year immediately preceding any license renewal.

(4) The courses must be taught by instructors through continuing education providers that may include, but are not limited to, association seminars and labor training programs. The department must approve the continuing education providers. All instructors must be approved by the department and are exempt from the requirements of subsection (3) of this section with regard to his or her application for license renewal, provided that such applicant was qualified as an instructor at any time during the one year immediately preceding the scheduled date for such renewal.

(5) A licensee who is unable to complete the continuing education course required under this section before the expiration of his or her license due to a temporary disability may apply for a waiver from the department. This will be on a form provided by the department and signed under the pains and penalties of perjury and accompanied by a certified statement from a competent physician attesting to the temporary disability. Upon the termination of the temporary disability, the licensee must submit to the department a certified statement from the same physician, if practicable, attesting to the termination of the temporary disability. At which time a waiver sticker, valid for ninety days, must be issued to the licensee and affixed to his or her license.

(6) Approved training providers must keep uniform records, for a period of ten years, of attendance of licensees and these records must be available for inspection by the department at its request. Approved training providers are responsible for the security of all attendance records and certificates of completion. However, falsifying or knowingly allowing another to falsify attendance records or certificates of completion constitutes grounds for suspension or revocation of the approval required under this section.

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CHAPTER 37

[House Bill 1218]

CONTEMPT OF COURT—LOCATION OF DETENTION

AN ACT Relating to imprisonment for contempt of court cases; and amending RCW 7.21.040 and 7.21.050.

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

Sec. 1. RCW 7.21.040 and 1989 c 373 s 4 are each amended to read as follows:

(1) Except as otherwise provided in RCW 7.21.050, a punitive sanction for contempt of court may be imposed only pursuant to this section.

(2)(a) An action to impose a punitive sanction for contempt of court shall be commenced by a complaint or information filed by the prosecuting attorney or city attorney charging a person with contempt of court and reciting the punitive sanction sought to be imposed.

(b) If there is probable cause to believe that a contempt has been committed, the prosecuting attorney or city attorney may file the information or complaint on his or her own initiative or at the request of a person aggrieved by the contempt.

(c) A request that the prosecuting attorney or the city attorney commence an action under this section may be made by a judge presiding in an action or proceeding to which a contempt relates. If required for the administration of justice, the judge making the request may appoint a special counsel to prosecute an action to impose a punitive sanction for contempt of court.

A judge making a request pursuant to this subsection shall be disqualified from presiding at the trial.

(d) If the alleged contempt involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial of the contempt unless the person charged consents to the judge presiding at the trial.

(3) The court may hold a hearing on a motion for a remedial sanction jointly with a trial on an information or complaint seeking a punitive sanction.

(4) A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.

(5) If the defendant is found guilty of contempt of court under this section, the court may impose for each separate contempt of court a fine of not more than five thousand dollars or imprisonment ((~~in the county jail~~)) for not more than one year, or both.

Sec. 2. RCW 7.21.050 and 1989 c 373 s 5 are each amended to read as follows:

(1) The judge presiding in an action or proceeding may summarily impose either a remedial or punitive sanction authorized by this chapter upon a person who commits a contempt of court within the courtroom if the judge certifies that he or she saw or heard the contempt. The judge shall impose the sanctions immediately after the contempt of court or at the end of the proceeding and only for the purpose of preserving order in the court and protecting the authority and dignity of the court. The person committing the contempt of court shall be given an opportunity to speak in mitigation of the contempt unless compelling circumstances demand otherwise. The order of contempt shall recite the facts, state the sanctions imposed, and be signed by the judge and entered on the record.

(2) A court, after a finding of contempt of court in a proceeding under subsection (1) of this section may impose for each separate contempt of court a punitive sanction of a fine of not more than five hundred dollars or imprisonment ((~~in the county jail~~)) for not more than thirty days, or both, or a remedial sanction set forth in RCW 7.21.030(2). A forfeiture imposed as a

remedial sanction under this subsection may not exceed more than five hundred dollars for each day the contempt continues.

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CHAPTER 38

[Substitute House Bill 1221]

CRIME VICTIMS—CIVIL COMMITMENT PROCEEDINGS—COUNSELING

AN ACT Relating to the availability of crime victims' compensation funds for witnesses in civil commitment proceedings; and amending RCW 7.68.070.

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

Sec. 1. RCW 7.68.070 and 2002 c 54 s 1 are each amended to read as follows:

The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51.32 RCW except as provided in this section:

(1) The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 are not applicable to this chapter.

(2) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. The rights, duties, responsibilities, limitations, and procedures applicable to a worker as contained in RCW 51.32.010 are applicable to this chapter.

(3) The limitations contained in RCW 51.32.020 are applicable to claims under this chapter. In addition thereto, no person or spouse, child, or dependent of such person is entitled to benefits under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation, or incitement by the victim, unless an injury resulting from a criminal act caused the death of the victim;

(b) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(c) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(4) The benefits established upon the death of a worker and contained in RCW 51.32.050 shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter: PROVIDED, That benefits for burial expenses shall not exceed the amount paid by the department in case of the death of a worker as provided in chapter 51.32 RCW in any claim: PROVIDED FURTHER, That if

the criminal act results in the death of a victim who was not gainfully employed at the time of the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act;

(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived the victim or where such spouse has legal custody of all of his or her children, shall be limited to burial expenses and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;

(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid, and such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum of three thousand seven hundred fifty dollars to be divided equally among such child or children;

(c) If any such spouse does not have legal custody of any of the children, the burial expenses shall be paid and the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars and any such child or children not in the legal custody of the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars to be divided equally among the child or children;

(d) If no such spouse survives, then such burial expenses shall be paid, and each surviving child of the victim at the time of the criminal act shall receive a lump sum payment of three thousand seven hundred fifty dollars up to a total of two such children and where there are more than two such children the sum of seven thousand five hundred dollars shall be divided equally among such children.

No other benefits may be paid or payable under these circumstances.

(5) The benefits established in RCW 51.32.060 for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That if a victim becomes permanently and totally disabled as a proximate result of the criminal act and was not gainfully employed at the time of the criminal act, the victim shall receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018:

(a) If married at the time of the criminal act, twenty-nine percent of the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of the average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of the average monthly wage.

(6) The benefits established in RCW 51.32.080 for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section equally apply under this chapter.

(7) The benefits established in RCW 51.32.090 for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That no person is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act, and was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act.

(8) The benefits established in RCW 51.32.095 for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 are applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

(13) Except for medical benefits authorized under RCW 7.68.080, no more than thirty thousand dollars shall be granted as a result of a single injury or

death, except that benefits granted as the result of total permanent disability or death shall not exceed forty thousand dollars.

(14) Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for total temporary disability under subsection (7) of this section, shall be limited to fifteen thousand dollars.

(15) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

(16) Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act, except to the extent that the costs for such services exceed service limits established by the department of social and health services or, during the 1993-95 fiscal biennium, to the extent necessary to provide matching funds for federal medicaid reimbursement.

(17) In addition to other benefits provided under this chapter, immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be provided only with respect to homicides committed on or after July 1, 1992.

(18) A dependent mother, father, stepmother, or stepfather, as defined in RCW 51.08.050, who is a survivor of her or his child's homicide, who has been requested by a law enforcement agency or a prosecutor to assist in the judicial proceedings related to the death of the victim, and who is not domiciled in Washington state at the time of the request, may receive a lump-sum payment upon arrival in this state. Total benefits under this subsection may not exceed seven thousand five hundred dollars. If more than one dependent parent is eligible for this benefit, the lump-sum payment of seven thousand five hundred dollars shall be divided equally among the dependent parents.

(19) A victim whose crime occurred in another state who qualifies for benefits under RCW 7.68.060(4) may receive appropriate mental health counseling to address distress arising from participation in the civil commitment proceedings. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080.

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CHAPTER 39

[Substitute House Bill 1280]

EXPLOSIVE LICENSES—REQUIREMENTS

AN ACT Relating to the expiration of explosives licenses; and amending RCW 70.74.360.

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

Sec. 1. RCW 70.74.360 and 2008 c 285 s 10 are each amended to read as follows:

(1) The director of labor and industries shall require, as a condition precedent to the original issuance ((~~or~~)) and upon renewal every three years thereafter of any explosive license, fingerprinting and criminal history record information checks of every applicant. In the case of a corporation, fingerprinting and criminal history record information checks shall be required for the management officials directly responsible for the operations where explosives are used if such persons have not previously had their fingerprints recorded with the department of labor and industries. In the case of a partnership, fingerprinting and criminal history record information checks shall be required of all general partners. Such fingerprints as are required by the department of labor and industries shall be submitted on forms provided by the department to the identification section of the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior convictions of the individuals fingerprinted. The Washington state patrol shall provide to the director of labor and industries such criminal record information as the director may request. The applicant shall give full cooperation to the department of labor and industries and shall assist the department of labor and industries in all aspects of the fingerprinting and criminal history record information check. The applicant shall be required to pay the current federal and state fee for fingerprint-based criminal history background checks.

(2) The director of labor and industries shall not issue a license to manufacture, purchase, store, use, or deal with explosives to:

(a) Any person under twenty-one years of age;

(b) Any person whose license is suspended or whose license has been revoked, except as provided in RCW 70.74.370;

(c) Any person who has been convicted in this state or elsewhere of a violent offense as defined in RCW 9.94A.030, perjury, false swearing, or bomb threats or a crime involving a schedule I or II controlled substance, or any other drug or alcohol related offense, unless such other drug or alcohol related offense does not reflect a drug or alcohol dependency. However, the director of labor and industries may issue a license if the person suffering a drug or alcohol related dependency is participating in or has completed an alcohol or drug recovery program acceptable to the department of labor and industries and has established control of their alcohol or drug dependency. The director of labor and industries shall require the applicant to provide proof of such participation and control; or

(d) Any person who has previously been adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease and who has not at the time of application been restored to competency.

(3) The director of labor and industries may establish reasonable licensing fees for the manufacture, dealing, purchase, use, and storage of explosives.

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CHAPTER 40

[Substitute House Bill 1291]

LIBRARY DISTRICT ANNEXATIONS

AN ACT Relating to library district annexations; and amending RCW 27.12.360 and 27.12.010.

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

Sec. 1. RCW 27.12.360 and 1982 c 123 s 13 are each amended to read as follows:

Any city or town with a population of ((~~one~~)) three hundred thousand or less at the time of annexation may become a part of any rural county library district, island library district, or intercounty rural library district lying contiguous thereto by annexation in the following manner: The inclusion of such a city or town may be initiated by the adoption of an ordinance by the legislative authority thereof stating its intent to join the library district and finding that the public interest will be served thereby. Before adoption, the ordinance shall be submitted to the library board of the city or town for its review and recommendations. If no library board exists in the city or town, the state librarian shall be notified of the proposed ordinance. If the board of trustees of the library district concurs in the annexation, notification thereof shall be transmitted to the legislative authority or authorities of the counties in which the city or town is situated.

Sec. 2. RCW 27.12.010 and 1994 c 198 s 1 are each amended to read as follows:

As used in this chapter, unless the context requires a different meaning:

(1) "Governmental unit" means any county, city, town, rural county library district, intercounty rural library district, rural partial-county library district, or island library district;

(2) "Legislative body" means the body authorized to determine the amount of taxes to be levied in a governmental unit; in rural county library districts, in intercounty rural library districts, and in island library districts, the legislative body shall be the board of library trustees of the district;

(3) "Library" means a free public library supported in whole or in part with money derived from taxation;

(4) "Regional library" means a free public library maintained by two or more counties or other governmental units as provided in RCW 27.12.080;

(5) "Rural county library district" means a library serving all the area of a county not included within the area of incorporated cities and towns: PROVIDED, That any city or town ((~~with a population of one hundred thousand or less at the time of annexation~~)) meeting the population requirements of RCW 27.12.360 may be included therein as provided in RCW 27.12.360 through 27.12.390;

(6) "Intercounty rural library district" means a municipal corporation organized to provide library service for all areas outside of incorporated cities and towns within two or more counties: PROVIDED, That any city or town ((~~with a population of one hundred thousand or less at the time of annexation~~)) meeting the population requirements of RCW 27.12.360 may be included therein as provided in RCW 27.12.360 through 27.12.390;

(7) "Island library district" means a municipal corporation organized to provide library service for all areas outside of incorporated cities and towns on a single island only, and not all of the area of the county, in counties composed entirely of islands and having a population of less than twenty-five thousand at the time the island library district was created: PROVIDED, That any city or town ((~~with a population of one hundred thousand or less at the time of annexation~~)) meeting the population requirements of RCW 27.12.360 may be included therein as provided in RCW 27.12.360 through 27.12.390; and

(8) "Rural partial-county library district" means a municipal corporation organized to provide library service for a portion of the unincorporated area of a county. Any city or town located in the same county as a rural partial-county library district may annex to the district if the city or town has a population of one hundred thousand or less at the time of annexation.

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CHAPTER 41

[House Bill 1322]

SCOLIOSIS SCREENING—SCHOOLS

AN ACT Relating to scoliosis screening in schools; creating a new section; and repealing RCW 28A.210.180, 28A.210.190, 28A.210.200, 28A.210.210, 28A.210.220, 28A.210.240, and 28A.210.250.

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

NEW SECTION. **Sec. 1.** The legislature recognizes that schools and their health personnel are important elements in ensuring the health of Washington's youth. Allowing school personnel to focus their efforts on providing the best care is essential for continued success.

Schools are currently required to screen students for scoliosis, which affects approximately two to three percent of the general population. Detection and identification of cases that require medical attention is vital. However, the legislature finds that schools are not the ideal setting for these screenings, nor are they the best use of school health personnel resources. The lack of a simple and rapid test that provides reliable diagnoses results in referrals to unnecessary care, which is limited in effectiveness for mild to moderate cases. This may lead to financial and emotional hardship for the student and family. Scoliosis screening is more appropriately provided as part of preventive care by a student's primary care provider.

Removing scoliosis screening as a responsibility of school districts will result in more reliable diagnoses, and allow school health personnel to focus their efforts on improving the health of their unique student populations.

NEW SECTION. **Sec. 2.** The following acts or parts of acts are each repealed:

(1) RCW 28A.210.180 (Screening program for scoliosis—Purpose) and 1991 c 86 s 1, 1990 c 33 s 201, 1985 c 216 s 1, & 1979 c 47 s 1;

(2) RCW 28A.210.190 (Screening program for scoliosis—Definitions) and 1991 c 86 s 2, 1990 c 33 s 202, 1985 c 216 s 2, & 1979 c 47 s 2;

(3) RCW 28A.210.200 (Screening program for scoliosis—Examination of children—Personnel making examinations, training for) and 1991 c 86 s 3, 1990 c 33 s 203, 1985 c 216 s 3, & 1979 c 47 s 3;

(4) RCW 28A.210.210 (Screening program for scoliosis—Records—Parents or guardians notification, contents) and 1990 c 33 s 204, 1985 c 216 s 4, & 1979 c 47 s 4;

(5) RCW 28A.210.220 (Screening program for scoliosis—Distribution of rules, records and forms) and 1990 c 33 s 205 & 1979 c 47 s 5;

(6) RCW 28A.210.240 (Screening program for scoliosis—Pupils exempt, when) and 1985 c 216 s 5 & 1979 c 47 s 6; and

(7) RCW 28A.210.250 (Screening program for scoliosis—Sanctions against school officials failing to comply) and 1990 c 33 s 207 & 1979 c 47 s 7.

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CHAPTER 42

[Engrossed Substitute House Bill 1401]

HEALTH INSURANCE COVERAGE—APPLICATION—STANDARD HEALTH QUESTIONNAIRE

AN ACT Relating to the standard health questionnaire; and reenacting and amending RCW 48.43.018.

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

Sec. 1. RCW 48.43.018 and 2007 c 80 s 13 and 2007 c 259 s 37 are each reenacted and amended to read as follows:

(1) Except as provided in (a) through ((~~(d)~~)) (g) of this subsection, a health carrier may require any person applying for an individual health benefit plan and the health care authority shall require any person applying for nonsubsidized enrollment in the basic health plan to complete the standard health questionnaire designated under chapter 48.41 RCW.

(a) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee due to his or her change of residence from one geographic area in Washington state to another geographic area in Washington state where his or her current health plan is not offered, completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of relocation.

(b) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee:

(i) Because a health care provider with whom he or she has an established care relationship and from whom he or she has received treatment within the past twelve months is no longer part of the carrier's provider network under his or her existing Washington individual health benefit plan; and

(ii) His or her health care provider is part of another carrier's or a basic health plan managed care system's provider network; and

(iii) Application for a health benefit plan under that carrier's provider network individual coverage or for basic health plan nonsubsidized enrollment is made within ninety days of his or her provider leaving the previous carrier's provider network; then completion of the standard health questionnaire shall not be a condition of coverage.

(c) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee due to his or her having exhausted continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if application for coverage is made within ninety days of exhaustion of continuation coverage. A health carrier or the health care authority as administrator of basic health plan nonsubsidized coverage shall accept an application without a standard health questionnaire from a person currently covered by such continuation coverage if application is made within ninety days prior to the date the continuation coverage would be exhausted and the effective date of the individual coverage applied for is the date the continuation coverage would be exhausted, or within ninety days thereafter.

(d) ((~~If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee following disenrollment from a health plan that is exempt from continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if: (i) The person had at least twenty-four months of continuous group coverage including church plans immediately prior to disenrollment; (ii) application is made no more than ninety days prior to the date of disenrollment; and (iii) the effective date of the individual coverage applied for is the date of disenrollment, or within ninety days thereafter.~~

~~(f)~~)) If a person is seeking an individual health benefit plan or enrollment in the basic health plan as a nonsubsidized enrollee due to a change in employment status that would qualify him or her to purchase continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., but the person's employer is exempt under federal law from the requirement to offer such coverage, completion of the standard health questionnaire shall not be a condition of coverage if: (i) Application for coverage is made within ninety days of a qualifying event as defined in 29 U.S.C. Sec. 1163; and (ii) the person had at least twenty-four months of continuous group coverage immediately prior to the qualifying event. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous group coverage if application is made no more than ninety days prior to the date of a qualifying event and the effective date of the individual coverage applied for is the date of the qualifying event, or within ninety days thereafter.

(e) If a person is seeking an individual health benefit plan, completion of the standard health questionnaire shall not be a condition of coverage if: (i) The person had at least twenty-four months of continuous basic health plan coverage under chapter 70.47 RCW immediately prior to disenrollment; and (ii) application for coverage is made within ninety days of disenrollment from the basic health plan. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous basic health plan coverage if application is made no more than ninety days prior to the date of disenrollment and the effective date of the individual

coverage applied for is the date of disenrollment, or within ninety days thereafter.

(f) If a person is seeking an individual health benefit plan due to a change in employment status that would qualify him or her to purchase continuation coverage provided under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire is not a condition of coverage if: (i) Application for coverage is made within ninety days of a qualifying event as defined in 29 U.S.C. Sec. 1163; and (ii) the person had at least twenty-four months of continuous group coverage immediately prior to the qualifying event. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous group coverage if application is made no more than ninety days prior to the date of a qualifying event and the effective date of the individual coverage applied for is the date of the qualifying event, or within ninety days thereafter.

(g) If a person is seeking an individual health benefit plan due to their terminating continuation coverage under 29 U.S.C. Sec. 1161 et seq., completion of the standard health questionnaire shall not be a condition of coverage if: (i) Application for coverage is made within ninety days of terminating the continuation coverage; and (ii) the person had at least twenty-four months of continuous group coverage immediately prior to the termination. A health carrier shall accept an application without a standard health questionnaire from a person with at least twenty-four months of continuous group coverage if application is made no more than ninety days prior to the date of termination of the continuation coverage and the effective date of the individual coverage applied for is the date the continuation coverage is terminated, or within ninety days thereafter.

(2) If, based upon the results of the standard health questionnaire, the person qualifies for coverage under the Washington state health insurance pool, the following shall apply:

(a) The carrier may decide not to accept the person's application for enrollment in its individual health benefit plan and the health care authority, as administrator of basic health plan nonsubsidized coverage, shall not accept the person's application for enrollment as a nonsubsidized enrollee; and

(b) Within fifteen business days of receipt of a completed application, the carrier or the health care authority as administrator of basic health plan nonsubsidized coverage shall provide written notice of the decision not to accept the person's application for enrollment to both the person and the administrator of the Washington state health insurance pool. The notice to the person shall state that the person is eligible for health insurance provided by the Washington state health insurance pool, and shall include information about the Washington state health insurance pool and an application for such coverage. If the carrier or the health care authority as administrator of basic health plan nonsubsidized coverage does not provide or postmark such notice within fifteen business days, the application is deemed approved.

(3) If the person applying for an individual health benefit plan: (a) Does not qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire; (b) does qualify for coverage under the Washington state health insurance pool based upon the results of the standard health questionnaire and the carrier elects to accept the

person for enrollment; or (c) is not required to complete the standard health questionnaire designated under this chapter under subsection (1)(a) or (b) of this section, the carrier or the health care authority as administrator of basic health plan nonsubsidized coverage, whichever entity administered the standard health questionnaire, shall accept the person for enrollment if he or she resides within the carrier's or the basic health plan's service area and provide or assure the provision of all covered services regardless of age, sex, family structure, ethnicity, race, health condition, geographic location, employment status, socioeconomic status, other condition or situation, or the provisions of RCW 49.60.174(2). The commissioner may grant a temporary exemption from this subsection if, upon application by a health carrier, the commissioner finds that the clinical, financial, or administrative capacity to serve existing enrollees will be impaired if a health carrier is required to continue enrollment of additional eligible individuals.

Passed by the House February 23, 2009.
Passed by the Senate April 1, 2009.
Approved by the Governor April 9, 2009.
Filed in Office of Secretary of State April 10, 2009.

CHAPTER 43

[Substitute House Bill 1414]

HEALTH CARE ASSISTANTS—AUTHORITY

AN ACT Relating to the practice of health care assistants; amending RCW 18.135.010, 18.135.020, and 18.135.065; adding a new section to chapter 18.135 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) It is the intent of the legislature to enhance the delivery of health care to the citizens of the state.

(a) For many years health care assistants, certified with the state and supervised by a licensed health care practitioner, have been an integral and often overlooked part of the state's health care delivery system. It is not surprising then that as the demand for health care services has exploded over the past twenty years, so too have the demands on licensed health care practitioners, and in turn those that assist those practitioners.

(b) In an attempt to manage this skyrocketing demand, a highly complex integrated health delivery system characterized by greater specialization has evolved. Health care assistants, including medical assistants, have responded to these changes by developing greater training and education opportunities through nationally accredited programs. This additional training, when appropriately supervised, can be of great assistance to our licensed health care practitioners.

(c) It is important for the legislature to look for new ways to harness the training of our health care practitioners, and those that assist them, in order to alleviate the stress on our current health care delivery system. With this in mind, the legislature encourages some minor expansions to the scope of practice of registered health care assistants, so long as there are clearly defined limitations to their scope expressly linked to education, training, and supervision.

(2) Within the existing resources, the department of health shall conduct a review under chapter 18.120 regarding the regulation and the scope of practice of medical assistants.

Sec. 2. RCW 18.135.010 and 2008 c 58 s 1 are each amended to read as follows:

It is in this state's public interest that limited authority to: (1) Administer skin tests and subcutaneous, intradermal, intramuscular, and intravenous injections; (2) perform minor invasive procedures to withdraw blood; ((~~and~~)) (3) administer vaccines in accordance with RCW 18.135.120; and (4) administer certain drugs, in accordance with section 3 of this act be granted to health care assistants who are not so authorized under existing licensing statutes, subject to such regulations as will ensure the protection of the health and safety of the patient.

NEW SECTION. **Sec. 3.** A new section is added to chapter 18.135 RCW to read as follows:

(1)(a) The administration of drugs by a health care assistant is restricted to oral, topical, rectal, otic, ophthalmic, or inhaled routes administered pursuant to a written order of a supervising health care practitioner. The drugs authorized for administration under this section are limited to the following:

(i) Over-the-counter drugs that may be administered to a patient while in the care of a health care practitioner are: Benadryl, acetaminophen, ibuprofen, aspirin, neosporin, polysporin, normal saline, colace, kenalog, and hydrocortisone cream;

(ii) Nonover-the-counter unit dose legend drugs that may be administered to a patient while in the care of a health care practitioner are: Kenalog, hydrocortisone cream, reglan, compazine, zofran, bactroban, albuterol, xopenex, silvadene, gastrointestinal cocktail, fluoride, lmx cream, emla, lat, optic dyes, oral contrast, and oxygen.

(b) Only health care assistants who are certified as category C or E assistants by the department of health may administer the oral drugs specified in (a) of this subsection.

(c) Health care assistants authorized to administer certain over-the-counter and legend drugs under (a) of this subsection must demonstrate initial and ongoing competency to administer specific drugs as determined by the health care practitioner.

(2) A health care practitioner must administer a medication if:

(a) A patient is unable to physically ingest or safely apply a medication independently or with assistance; or

(b) A patient is unable to indicate an awareness that he or she is taking a medication.

(3) This section expires July 1, 2013.

Sec. 4. RCW 18.135.020 and 2008 c 58 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) "Secretary" means the secretary of health.

(2) "Health care assistant" means an unlicensed person who assists a licensed health care practitioner in providing health care to patients pursuant to

this chapter. However, persons trained by a federally approved end-stage renal disease facility who perform end-stage renal dialysis in the home setting are exempt from certification under this chapter.

(3) "Health care practitioner" means:

(a) A physician licensed under chapter 18.71 RCW;

(b) An osteopathic physician or surgeon licensed under chapter 18.57 RCW; or

(c) Acting within the scope of their respective licensure, a podiatric physician and surgeon licensed under chapter 18.22 RCW, a registered nurse or advanced registered nurse practitioner licensed under chapter 18.79 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A RCW, or an osteopathic physician assistant licensed under chapter 18.57A RCW.

(4) "Supervision" means supervision of procedures permitted pursuant to this chapter by a health care practitioner who is physically present and is immediately available in the facility during the administration of injections or vaccines, as defined in this chapter, or certain drugs as provided in section 3 of this act, but need not be present during procedures to withdraw blood.

(5) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, renal dialysis center or facility federally approved under 42 C.F.R. 405.2100, blood bank federally licensed under 21 C.F.R. 607, or clinical laboratory certified under 20 C.F.R. 405.1301-16.

(6) "Delegation" means direct authorization granted by a licensed health care practitioner to a health care assistant to perform the functions authorized in this chapter which fall within the scope of practice of the delegator and which are not within the scope of practice of the delegatee.

Sec. 5. RCW 18.135.065 and 2008 c 58 s 3 are each amended to read as follows:

(1) Each delegator, as defined under RCW 18.135.020(6), shall maintain a list of((: (a))) specific ((~~medications and~~)) drugs, diagnostic agents, and vaccines, and the route of administration of each((~~, that he or she has authorized for injection; and (b) the vaccines that he or she has authorized for administration~~)) drug, diagnostic agent, and vaccine that the delegatee is authorized to administer under this chapter. Both the delegator and delegatee shall sign the above list, indicating the date of each signature. The signed list shall be forwarded to the secretary of the department of health and shall be available for review.

(2) Delegatees are prohibited from administering any controlled substance as defined in RCW 69.50.101(d), any experimental drug, and any cancer chemotherapy agent unless a delegator is physically present in the immediate area where the drug is administered.

Passed by the House March 5, 2009.
Passed by the Senate March 31, 2009.
Approved by the Governor April 9, 2009.
Filed in Office of Secretary of State April 10, 2009.

CHAPTER 44

[Substitute House Bill 1510]

BIRTH CERTIFICATES—CONFIDENTIAL INFORMATION—DISCLOSURE

AN ACT Relating to the disclosure of confidential information on birth certificates; and amending RCW 70.58.055.

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

Sec. 1. RCW 70.58.055 and 1997 c 58 s 948 are each amended to read as follows:

(1) To promote and maintain nationwide uniformity in the system of vital statistics, the certificates required by this chapter or by the rules adopted under this chapter shall include, as a minimum, the items recommended by the federal agency responsible for national vital statistics including social security numbers.

(2)(a) The state board of health by rule may require additional pertinent information relative to the birth and manner of delivery as it may deem necessary for statistical study. This information shall be placed in a confidential section of the birth certificate form and shall not be used for certification, nor shall it be subject to the view of the public ((~~or for certification purposes except upon order of the court~~)) except as provided in (b) of this subsection. The state board of health may eliminate from the forms items that it determines are not necessary for statistical study.

(b) Information contained in the confidential section of the birth certificate form may only be available for review by:

(i) A member of the public upon order of the court; or

(ii) The individual who is the subject of the birth certificate upon confirmation of the identity of the requestor in a manner approved by the state board of health. Confidential information provided to the individual who is the subject of the birth certificate shall be limited to information on the child and shall not include information on the mother or father.

(3) Each certificate or other document required by this chapter shall be on a form or in a format prescribed by the state registrar.

(4) All vital records shall contain the data required for registration. No certificate may be held to be complete and correct that does not supply all items of information called for or that does not satisfactorily account for the omission of required items.

(5) Information required in certificates or documents authorized by this chapter may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar.

Passed by the House March 3, 2009.
Passed by the Senate April 1, 2009.
Approved by the Governor April 9, 2009.
Filed in Office of Secretary of State April 10, 2009.

CHAPTER 45

[House Bill 1569]

LOCAL PUBLIC WORKS ASSISTANCE FUNDS

AN ACT Relating to establishing local public works assistance funds; and adding a new chapter to Title 36 RCW.

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

NEW SECTION. **Sec. 1.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Capital facilities plan" means a capital facilities plan required under chapter 36.70A RCW.

(2) "Local government" means cities, towns, counties, special purpose districts, and any other municipal corporations or quasi-municipal corporations in the state, excluding school districts and port districts.

(3) "Public works project" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, or storm and sanitary sewage systems and solid waste facilities, including recycling facilities.

NEW SECTION. **Sec. 2.** (1) County legislative authorities may establish local public works assistance funds for the purpose of funding public works projects located wholly or partially within the county. Moneys may be deposited in local public works assistance funds from existing revenue sources of the county.

(2) Moneys deposited in local public works assistance funds, and interest earned on balances from the funds, may only be used:

(a) To make loans to the county and to other local governments for funding public works projects as provided in this chapter; and

(b) For costs incurred in the administration of funds.

(3) No more than fifty percent of the moneys loaned from a fund in a calendar year may be loaned to the county providing local public works assistance funds. At least twenty-five percent of the moneys anticipated to be loaned from a fund in a calendar year must be made available for funding public works projects in cities or towns.

(4) No more than one percent of the average annual balance of a county's fund, including interest earned on balances from the fund, may be used annually for administrative costs.

NEW SECTION. **Sec. 3.** (1) Counties, in consultation with cities and towns within the county, may make loans to local governments from funds established under section 2 of this act for the purpose of assisting local governments in funding public works projects. Counties may require terms and conditions and may charge rates of interest on its loans as they deem necessary or convenient to carry out the purposes of this chapter. Counties may not pledge any amount greater than the sum of money in their local public works assistance fund plus money to be received from the payment of the debt service on loans made from that fund. Money received from local governments in repayment of loans made under this chapter must be paid into the fund of the lending county for uses consistent with this chapter.

(2) Prior to receiving moneys from a fund established under section 2 of this act, a local government applying for financial assistance under this chapter must demonstrate to the lending county:

(a) Utilization of all local revenue sources that are reasonably available for funding public works projects;

(b) Compliance with applicable requirements of chapter 36.70A RCW; and

(c) Consistency between the proposed project and applicable capital facilities plans.

(3) Counties may not make loans under this chapter prior to completing the initial collaboration and prioritization requirements of section 4(1) of this act.

NEW SECTION. **Sec. 4.** (1) County legislative authorities utilizing or providing money under this chapter must develop a prioritization process for funding public works projects that gives priority to projects necessary to address public health needs, substantial environmental degradation, or increases existing capacity necessary to accommodate projected population and employment growth. This prioritization process must be:

(a) Completed collaboratively with public works directors of local governments within the county;

(b) Documented in the form of written findings produced by the county; and

(c) Revised periodically according to a schedule developed by the county and the public works directors.

(2) In addition to the requirements under subsection (1) of this section, legislative authorities providing funding to other local governments under this chapter must consider, through a competitive application process, the following factors in assigning a priority to and funding a project:

(a) Whether the local government applying for assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;

(b) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(c) The cost of the project compared to the size of the local government and amount of loan money available;

(d) The number of communities served by or funding the project;

(e) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards;

(f) The number of additional housing units estimated to be achieved by funding the project;

(g) The additional jobs estimated to be achieved by funding the project; and

(h) Other criteria the county legislative authority deems appropriate.

NEW SECTION. **Sec. 5.** County legislative authorities providing funding for public works projects under this chapter must keep proper records of accounts and are subject to audit by the state auditor.

NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute a new chapter in Title 36 RCW.

Passed by the House March 3, 2009.

Passed by the Senate April 1, 2009.

Approved by the Governor April 9, 2009.

Filed in Office of Secretary of State April 10, 2009.

CHAPTER 46

[Substitute House Bill 1843]

MOTOR CARRIERS—REGULATION AND COMPLIANCE REVIEW

AN ACT Relating to motor carrier regulation and compliance review; amending RCW 46.32.080, 46.32.085, 46.32.090, 46.32.100, and 46.16.615; adding a new section to chapter 46.32 RCW; and repealing 2007 c 419 s 18 (uncodified).

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

Sec. 1. RCW 46.32.080 and 2007 c 419 s 10 are each amended to read as follows:

(1) The Washington state patrol is responsible for enforcement of safety requirements for commercial motor vehicles including, but not limited to, safety audits and compliance reviews. Those motor carriers that have operations in this state are subject to the patrol's safety audits and compliance review programs. Compliance reviews may result in the initiation of an enforcement action, which may include monetary penalties. The utilities and transportation commission is responsible for adoption and enforcement of safety requirements for vehicles operated by entities holding authority under chapters 81.66, 81.68, 81.70, and 81.77 RCW, and by household goods carriers holding authority under chapter 81.80 RCW.

(2) Motor vehicles owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes, from point of production to market or disposal, or supplies or commodities to be used on the farm, orchard, or dairy, must have a department of transportation number, as defined in RCW 46.16.004, but are exempt from safety audits and compliance reviews.

(3) All records and documents required of motor carriers with operations in this state must be available for review and inspection during normal business hours. Duly authorized agents of the state patrol conducting safety audits and compliance reviews may enter the motor carrier's place of business, or any location where records or equipment are located, at reasonable times and without advanced notice. Motor carriers who do not permit duly authorized agents to enter their place of business, or any location where records or equipment are located, for safety audits and compliance reviews are subject to enforcement action, including a monetary penalty.

(4)(a) All motor carriers with a commercial motor vehicle, as defined in RCW 46.16.004, that operate in this state must apply for a department of transportation number, as defined in RCW 46.16.004, by January 1, 2008. All entities with authority under chapters 81.66, 81.68, 81.70, and 81.77 RCW, and all household goods carriers with authority under chapter 81.80 RCW, must apply for a department of transportation number by January 1, 2010.

(b) All motor carriers operating in this state who (i) have not applied under (a) of this subsection for a department of transportation number, as defined in RCW 46.16.004, and (ii) have a commercial motor vehicle that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more, must apply for a department of transportation number by January 1, 2011.

(c) The state patrol may deny an application if the ((~~motor carrier~~)) applicant does not meet the requirements and standards under this chapter. The state patrol shall not issue a department of transportation number to ((~~a motor carrier~~)) an applicant who at the time of application has been placed out of

service by the federal motor carrier safety administration. Commercial motor vehicles must be marked as prescribed by the state patrol. Those ((~~motor carriers~~)) applicants with a current United States department of transportation number are exempt from applying for a department of transportation number.

(d) The state patrol may (i) place a motor carrier out of service or (ii) refuse to issue or recognize as valid a department of transportation number to ((~~a motor carrier~~)) an applicant who: (A) Formerly held a department of transportation number that was placed out of service for cause, and where cause has not been removed; (B) is a subterfuge for the real party in interest whose department of transportation number was placed out of service for cause, and where cause has not been removed; (C) as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, had a department of transportation number and was placed out of service for cause, and where cause has not been removed; or (D) has an unsatisfied debt to the state assessed under this chapter.

(e) Upon a finding by the chief of the state patrol or the chief's designee that a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the state patrol shall notify the department, and the department shall revoke the registrations for all commercial motor vehicles that are owned by the motor carrier subject to RCW 46.32.080. In determining whether a motor carrier is an imminent hazard or danger to the public health, safety, or welfare, the chief or the chief's designee shall consider safety factors.

Sec. 2. RCW 46.32.085 and 2007 c 419 s 14 are each amended to read as follows:

(1) The Washington state patrol, in consultation with the department of licensing, shall adopt rules consistent with this chapter to regulate vehicle safety requirements for motor carriers who own, control, manage, or operate a commercial motor vehicle within this state. Except as otherwise provided in this chapter, the rules adopted by the state patrol under this section must be as rigorous as federal regulations governing certain interstate motor carriers at 49 C.F.R. Parts 40 and 380 through 397, which cover the areas of commercial motor carrier driver training, controlled substance and alcohol use and testing, compliance with the federal driver's license requirements and penalties, vehicle equipment and safety standards, hazardous material practices, financial responsibility, driver qualifications, hours of service, vehicle inspection and corrective actions, and assessed penalties for noncompliance. The state patrol shall amend these rules periodically to maintain, to the extent permissible under this chapter, standards as rigorous as the federal regulations governing certain interstate motor carriers. The state patrol shall submit a report to the legislature by December 31st of each year that outlines new rules or rule changes and explains how the state rules compare to the federal regulations.

(2) Motor vehicles operated by entities with authority under chapters 81.66, 81.68, 81.70, and 81.77 RCW, and by household goods carriers operating under chapter 81.80 RCW, must comply with rules regulating vehicle safety adopted by the utilities and transportation commission.

Sec. 3. RCW 46.32.090 and 2007 c 419 s 11 are each amended to read as follows:

The department shall collect a fee of sixteen dollars, in addition to all other fees and taxes, for each motor vehicle base plated in the state of Washington that is subject to highway inspections and compliance reviews by the state patrol under RCW 46.32.080, at the time of registration and renewal of registration under chapter 46.16 or 46.87 RCW, or the international registration plan if base plated in a foreign jurisdiction. The fee must be apportioned for those vehicles operating interstate and registered under the international registration plan. This fee does not apply to nonmotor-powered vehicles, including trailers. Refunds will not be provided for fees paid under this section when the vehicle is no longer subject to RCW 46.32.080. The department may deduct an amount equal to the cost of administering the program. All remaining fees shall be deposited with the state treasurer and credited to the state patrol highway account of the motor vehicle fund.

Sec. 4. RCW 46.32.100 and 2007 c 419 s 12 are each amended to read as follows:

(1)(a) In addition to all other penalties provided by law, and except as provided otherwise in (a)(i), (ii), or (iii) of this subsection, a commercial motor vehicle that is subject to compliance reviews under this chapter and an officer, agent, or employee of a company operating a commercial motor vehicle who violates or who procures, aids, or abets in the violation of this title or any order or rule of the state patrol is liable for a penalty of one hundred dollars for each violation((~~, except for each violation~~)).

(i) It is a violation of this chapter for a person operating a commercial motor vehicle to fail to comply with the requirements of 49 C.F.R. Pt. 382, controlled substances and alcohol use and testing, 49 C.F.R. Sec. 391.15, disqualification of drivers, and 49 C.F.R. Sec. 396.9(c)(2), moving a vehicle placed out of service before the out of service defects have been satisfactorily repaired((~~, for which~~)). For each violation the person is liable for a penalty of five hundred dollars.

(ii) The driver of a commercial motor vehicle who violates an out-of-service order is liable for a penalty of at least one thousand one hundred dollars but not more than two thousand seven hundred fifty dollars for each violation.

(iii) An employer who allows a driver to operate a commercial motor vehicle when there is an out-of-service order is liable for a penalty of at least two thousand seven hundred fifty dollars but not more than eleven thousand dollars for each violation.

(iv) Each violation under this subsection (1)(a) is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(b) In addition to all other penalties provided by law, any motor carrier, company, or any officer or agent of a motor carrier or company operating a commercial motor vehicle subject to compliance reviews under this chapter who refuses entry or to make the required records, documents, and vehicles available to a duly authorized agent of the state patrol is liable for a penalty of at least five thousand dollars as well as an out-of-service order being placed on the department of transportation number, as defined in RCW 46.16.004, and vehicle registration to operate. Each violation is a separate and distinct offense, and in

case of a continuing violation every day's continuance is a separate and distinct violation.

(c) A motor carrier operating a commercial motor vehicle after receiving a final unsatisfactory rating or being placed out of service is liable for a penalty of not more than eleven thousand dollars for each violation. Each violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation.

(d) A high-risk carrier is liable for double the amount of the penalty of a prior violation if the high-risk carrier repeats the same violation during a follow-up compliance review. Each repeat violation is a separate and distinct offense, and in case of a repeat continuing violation every day's continuance is a separate and distinct violation.

(2) The Washington state patrol may place an out-of-service order on a department of transportation number, as defined in RCW 46.16.004, for violations of this chapter or for nonpayment of any monetary penalties assessed by the state patrol or the utilities and transportation commission, as a result of compliance reviews, or for violations of cease and desist orders issued by the utilities and transportation commission. The state patrol shall notify the department of licensing when an out-of-service order has been placed on a motor carrier's department of transportation number. The state patrol shall notify the motor carrier when there has been an out-of-service order placed on the motor carrier's department of transportation number and the vehicle registrations have been revoked by sending a notice by first-class mail using the last known address for the registered or legal owner or owners, and recording the transmittal on an affidavit of first-class mail. Notices under this section fulfill the requirements of RCW 46.12.160. Motor carriers may not be eligible for a new department of transportation number, vehicle registration, or temporary permits to operate unless the violations that resulted in the out-of-service order have been corrected.

(3) Any penalty provided in this section is due and payable when the person incurring it receives a notice in writing from the state patrol describing the violation and advising the person that the penalty is due. ((~~If the amount of the penalty is not paid to the state patrol within twenty days after the later of (a) receipt of the notice imposing the penalty, or (b) disposition of an adjudicative proceeding regarding the penalty, the state patrol may commence an adjudicative proceeding under chapter 34.05 RCW in the name of the state of Washington to confirm the violation and recover the penalty.~~))

(a)(i) Any motor carrier who incurs a penalty as provided in this section, except for a high-risk carrier that incurs a penalty for a repeat violation during a follow-up compliance review, may, upon written application, request that the state patrol mitigate the penalty. An application for mitigation must be received by the state patrol within twenty days of the receipt of notice.

(ii) The state patrol may decline to consider any application for mitigation.

(b) Any motor carrier who incurs a penalty as provided in this section has a right to an administrative hearing under chapter 34.05 RCW to contest the violation or the penalty imposed, or both. In all such ((~~proceedings~~)) hearings, the procedure and rules of evidence are as specified in chapter 34.05 RCW except as otherwise provided in this chapter. Any request for an administrative hearing must be made in writing and must be received by the state patrol within

twenty days after the later of (i) receipt of the notice imposing the penalty, or (ii) disposition of a request for mitigation, or the right to a hearing is waived.

(c) All penalties recovered under this section shall be paid into the state treasury and credited to the state patrol highway account of the motor vehicle fund.

Sec. 5. RCW 46.16.615 and 2007 c 419 s 5 are each amended to read as follows:

(1) The department shall refuse to register a commercial motor vehicle that is owned by a motor carrier subject to RCW 46.32.080, 46.87.294, and 46.87.296 upon notification to the department by the Washington state patrol or the federal motor carrier safety administration that an out-of-service order has been placed on the department of transportation number issued to the motor carrier.

(2) The department shall revoke the vehicle registration of all commercial motor vehicles that are owned by a motor carrier subject to RCW 46.32.080, upon notification to the department by the Washington state patrol or the federal motor carrier safety administration that an out-of-service order has been placed on the department of transportation number issued to the motor carrier. The revocation must remain in effect until the department has been notified by the Washington state patrol that the out-of-service order has been rescinded.

(3) Except as provided in subsections (4) and (5) of this section, by June 30, 2009, any original or renewal application for registration of a commercial motor vehicle that is owned by a motor carrier subject to RCW 46.32.080 that is submitted to the department must be accompanied by:

(a) The department of transportation number issued to the motor carrier; and

(b) The federal taxpayer identification number of the motor carrier.

(4) ((~~Beginning on~~)) By June 30, 2010, the requirements of subsection (3) of this section apply to any original or renewal application that is submitted to the department for registration of a commercial motor vehicle that is to be operated by an entity with authority under chapter 81.66, 81.68, 81.70, or 81.77 RCW, or by a household goods carrier with authority under chapter 81.80 RCW.

(5) By June 30, 2012, the requirements of subsection (3) of this section apply to any original or renewal application that is submitted to the department for registration of a commercial motor vehicle that is owned by a motor carrier subject to RCW 46.32.080, and that has a gross vehicle weight rating of 7,258 kilograms (16,001 pounds) or more.

NEW SECTION. **Sec. 6.** 2007 c 419 s 18 (uncodified) is repealed.

NEW SECTION. **Sec. 7.** A new section is added to chapter 46.32 RCW to read as follows:

This chapter does not apply to vehicles exempted from registration by RCW 46.16.020.

Passed by the House March 4, 2009.

Passed by the Senate March 31, 2009.

Approved by the Governor April 9, 2009.

Filed in Office of Secretary of State April 10, 2009.

CHAPTER 47

[House Bill 1878]

ACCUMULATED LEAVE—TRANSFERABILITY—SCHOOLS

AN ACT Relating to transfers of accumulated leave of employees of the state school for the blind and the school for the deaf; and amending RCW 28A.310.240 and 28A.400.300.

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

Sec. 1. RCW 28A.310.240 and 2008 c 174 s 1 are each amended to read as follows:

(1) Every educational service district board shall adopt written policies granting leaves to persons under contracts of employment with the district in positions requiring either certification or classified qualifications, including but not limited to leaves for attendance at official or private institutes and conferences and sabbatical leaves for employees in positions requiring certification qualification, and leaves for illness, injury, bereavement, and emergencies for both certificated and classified employees, with such compensation as the board prescribes. The board shall adopt written policies granting annual leave with compensation for illness, injury, and emergencies as follows:

(a) For persons under contract with the district for a full fiscal year, at least ten days;

(b) For persons under contract with the district as part-time employees, at least that portion of ten days as the total number of days contracted for bears to one hundred eighty days;

(c) For certificated and classified employees, annual leave with compensation for illness, injury, and emergencies shall be granted and accrue at a rate not to exceed twelve days per fiscal year. Provisions of any contract in force on July 23, 1989, which conflict with requirements of this subsection shall continue in effect until contract expiration; after expiration, any new contract executed between the parties shall be consistent with this subsection;

(d) Compensation for leave for illness or injury actually taken shall be the same as the compensation the person would have received had the person not taken the leave provided in this section;

(e) Leave provided in this section not taken shall accumulate from fiscal year to fiscal year up to a maximum of one hundred eighty days for the purposes of RCW 28A.310.490, and for leave purposes up to a maximum of the number of contract days agreed to in a given contract, but not greater than one fiscal year. Such accumulated time may be taken at any time during the fiscal year, or up to twelve days per year may be used for the purpose of payments for unused sick leave; and

(f) Accumulated leave under this section shall be transferred to educational service districts, school districts, the office of the superintendent of public instruction, the state school for the blind, the school for the deaf, institutions of higher education, and community and technical colleges, and from any such district, school, or office to another such district, school, office, institution of higher education, or community or technical college. An intervening customary summer break in employment or the performance of employment duties shall not preclude such a transfer.

(2) Leave accumulated by a person in a district prior to leaving the district may, under rules of the board, be granted to the person when the person returns to the employment of the district.

(3) Leave for illness or injury accumulated before July 23, 1989, under the administrative practices of an educational service district, and such leave transferred before July 23, 1989, to or from an educational service district, school district, or the office of the superintendent of public instruction under the administrative practices of the district or office, is declared valid and shall be added to such leave for illness or injury accumulated after July 23, 1989.

Sec. 2. RCW 28A.400.300 and 2008 c 174 s 2 are each amended to read as follows:

Every board of directors, unless otherwise specially provided by law, shall:

(1) Employ for not more than one year, and for sufficient cause discharge all certificated and classified employees;

(2) Adopt written policies granting leaves to persons under contracts of employment with the school district(s) in positions requiring either certification or classified qualifications, including but not limited to leaves for attendance at official or private institutes and conferences and sabbatical leaves for employees in positions requiring certification qualification, and leaves for illness, injury, bereavement and, emergencies for both certificated and classified employees, and with such compensation as the board of directors prescribe: PROVIDED, That the board of directors shall adopt written policies granting to such persons annual leave with compensation for illness, injury and emergencies as follows:

(a) For such persons under contract with the school district for a full year, at least ten days;

(b) For such persons under contract with the school district as part time employees, at least that portion of ten days as the total number of days contracted for bears to one hundred eighty days;

(c) For certificated and classified employees, annual leave with compensation for illness, injury, and emergencies shall be granted and accrue at a rate not to exceed twelve days per year; provisions of any contract in force on June 12, 1980, which conflict with requirements of this subsection shall continue in effect until contract expiration; after expiration, any new contract executed between the parties shall be consistent with this subsection;

(d) Compensation for leave for illness or injury actually taken shall be the same as the compensation such person would have received had such person not taken the leave provided in this proviso;

(e) Leave provided in this proviso not taken shall accumulate from year to year up to a maximum of one hundred eighty days for the purposes of RCW 28A.400.210 and 28A.400.220, and for leave purposes up to a maximum of the number of contract days agreed to in a given contract, but not greater than one year. Such accumulated time may be taken at any time during the school year or up to twelve days per year may be used for the purpose of payments for unused sick leave;

(f) Sick leave heretofore accumulated under section 1, chapter 195, Laws of 1959 (former RCW 28.58.430) and sick leave accumulated under administrative practice of school districts prior to the effective date of section 1, chapter 195, Laws of 1959 (former RCW 28.58.430) is hereby declared valid, and shall be added to leave for illness or injury accumulated under this proviso;

(g) Any leave for injury or illness accumulated up to a maximum of forty-five days shall be creditable as service rendered for the purpose of determining the time at which an employee is eligible to retire, if such leave is taken it may not be compensated under the provisions of RCW 28A.400.210 and 28A.310.490;

(h) Accumulated leave under this proviso shall be transferred to and from one district to another, the office of superintendent of public instruction, offices of educational service district superintendents and boards, the state school for the blind, the school for the deaf, institutions of higher education, and community and technical colleges, to and from such districts, schools, offices, institutions of higher education, and community and technical colleges;

(i) Leave accumulated by a person in a district prior to leaving said district may, under rules ((~~and regulations~~)) of the board, be granted to such person when the person returns to the employment of the district.

When any certificated or classified employee leaves one school district within the state and commences employment with another school district within the state, the employee shall retain the same seniority, leave benefits and other benefits that the employee had in his or her previous position: PROVIDED, That classified employees who transfer between districts after July 28, 1985, shall not retain any seniority rights other than longevity when leaving one school district and beginning employment with another. If the school district to which the person transfers has a different system for computing seniority, leave benefits, and other benefits, then the employee shall be granted the same seniority, leave benefits and other benefits as a person in that district who has similar occupational status and total years of service.

Passed by the House March 6, 2009.
Passed by the Senate March 31, 2009.
Approved by the Governor April 9, 2009.
Filed in Office of Secretary of State April 10, 2009.

CHAPTER 48

[Senate Bill 5944]

LAKE WHATCOM PHOSPHORUS LOADING

AN ACT Relating to Lake Whatcom phosphorus loading; adding a new section to chapter 90.71 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:

(a) The Puget Sound 2020 action agenda identifies water pollution as a primary threat to the health of Puget Sound and restoration of polluted waters as a top priority;

(b) Lake Whatcom is the drinking water reservoir for the city of Bellingham and the Lake Whatcom watershed provides fresh drinking water to one-half the population of Whatcom county;

(c) Whatcom creek flows out of Lake Whatcom and directly into Bellingham Bay which is the subject of a multiagency clean-up effort, the Bellingham Bay demonstration pilot project;

(d) The Puget Sound 2020 action agenda's area profile for Whatcom county identifies phosphorous pollution of Lake Whatcom as a key threat;

(e) Silver Beach creek is a major tributary to Lake Whatcom and its watershed is shared by the city of Bellingham and Whatcom county;

(f) Two decades of monitoring has shown that Silver Beach creek has some of the highest phosphorus loading of Lake Whatcom tributaries;

(g) Implementation of the recently completed watershed management plan and water cleanup plan for Lake Whatcom is identified as a priority strategy in the Puget Sound 2020 action agenda's priorities for Whatcom county; and

(h) Implementation of operations and management plans to manage on-site sewage systems around Lake Whatcom is identified as a key restoration strategy in Whatcom county.

(2) The legislature intends by this act to assist the city of Bellingham and Whatcom county in implementing a demonstration program to reduce phosphorus loading in the Lake Whatcom and Whatcom creek watershed and to share the lessons learned from this program with other jurisdictions in the Puget Sound basin working to reduce phosphorus loading.

NEW SECTION. **Sec. 2.** A new section is added to chapter 90.71 RCW to read as follows:

(1) The partnership shall assist the city of Bellingham and Whatcom county to implement a demonstration program regarding phosphorus loading into Lake Whatcom. The partnership shall assist the city and county to secure funding from federal and nongovernmental sources and work to secure funding commitments from the city and county as well. The demonstration program must be implemented by the city and the county and include elements for prevention, education, compliance, and monitoring to reduce to a minimum the introduction of phosphorus-bearing materials into Lake Whatcom. The partnership shall share the results of this program with other jurisdictions in Puget Sound seeking to reduce phosphorus loading.

(2) Any grant made under this section must be matched by at least an equal amount from nonstate sources.

Passed by the Senate March 7, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 49

[Substitute Senate Bill 5388]

MOTOR VEHICLE DEALERS—DISCLOSURE—NEW VEHICLE DAMAGE

AN ACT Relating to motor vehicle dealer disclosure of damage and repairs in the sale of new motor vehicles; and amending RCW 46.70.180.

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

Sec. 1. RCW 46.70.180 and 2007 c 155 s 2 are each amended to read as follows:

Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever,

any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2)(a) To incorporate within the terms of any purchase and sale or lease agreement any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price or capitalized cost of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale. However, an amount not to exceed fifty dollars per vehicle sale or lease may be charged by a dealer to recover administrative costs for collecting motor vehicle excise taxes, licensing and registration fees and other agency fees, verifying and clearing titles, transferring titles, perfecting, releasing, or satisfying liens or other security interests, and other administrative and documentary services rendered by a dealer in connection with the sale or lease of a vehicle and in carrying out the requirements of this chapter or any other provisions of state law.

(b) A dealer may charge the documentary service fee in (a) of this subsection under the following conditions:

(i) The documentary service fee is disclosed in writing to a prospective purchaser or lessee before the execution of a purchase and sale or lease agreement;

(ii) The documentary service fee is not represented to the purchaser or lessee as a fee or charge required by the state to be paid by either the dealer or prospective purchaser or lessee;

(iii) The documentary service fee is separately designated from the selling price or capitalized cost of the vehicle and from any other taxes, fees, or charges; and

(iv) Dealers disclose in any advertisement that a documentary service fee in an amount up to fifty dollars may be added to the sale price or the capitalized cost.

For the purposes of this subsection (2), the term "documentary service fee" means the optional amount charged by a dealer to provide the services specified in (a) of this subsection.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold or leased to a person for a consideration and upon further consideration that the purchaser or lessee agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser or lessee being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Entering into a written contract, written purchase order or agreement, retail installment sales agreement, note and security agreement, or written lease agreement, hereinafter collectively referred to as contract or lease, signed by the prospective buyer or lessee of a vehicle, which:

(a) Is subject to any conditions or the dealer's or his or her authorized representative's future acceptance, and the dealer fails or refuses within four calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer or lessee to inform the buyer or lessee either: (i) That the dealer unconditionally accepts the contract or lease, having satisfied, removed, or waived all conditions to acceptance or performance, including, but not limited to, financing, assignment, or lease approval; or (ii) that the dealer rejects the contract or lease, thereby automatically voiding the contract or lease, as long as such voiding does not negate commercially reasonable contract or lease provisions pertaining to the return of the subject vehicle and any physical damage, excessive mileage after the demand for return of the vehicle, and attorneys' fees authorized by law, and tenders the refund of any initial payment or security made or given by the buyer or lessee, including, but not limited to, any down payment, and tenders return of the trade-in vehicle, key, other trade-in, or certificate of title to a trade-in. Tender may be conditioned on return of the subject vehicle if previously delivered to the buyer or lessee.

The provisions of this subsection (4)(a) do not impair, prejudice, or abrogate the rights of a dealer to assert a claim against the buyer or lessee for misrepresentation or breach of contract and to exercise all remedies available at law or in equity, including those under chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing company discovers that approval of the contract or financing or approval of the lease was based upon material misrepresentations made by the buyer or lessee, including, but not limited to, misrepresentations regarding income, employment, or debt of the buyer or lessee, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation. A dealer shall not be in violation of this subsection (4)(a) if the buyer or lessee made a material misrepresentation to the dealer, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation.

When a dealer informs a buyer or lessee under this subsection (4)(a) regarding the unconditional acceptance or rejection of the contract, lease, or financing by an electronic mail message, the dealer must also transmit the communication by any additional means;

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer or lessee as part of the purchase price or lease, for any reason except:

(i) Failure to disclose that the vehicle's certificate of ownership has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075; or

(ii) Substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(iii) Excessive additional miles or a discrepancy in the mileage. "Excessive additional miles" means the addition of five hundred miles or more, as reflected on the vehicle's odometer, between the time the vehicle was first valued by the dealer for purposes of determining its trade-in value and the time of actual delivery of the vehicle to the dealer. "A discrepancy in the mileage" means (A) a discrepancy between the mileage reflected on the vehicle's odometer and the stated mileage on the signed odometer statement; or (B) a discrepancy between the mileage stated on the signed odometer statement and the actual mileage on the vehicle; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesperson to refuse to furnish, upon request of a prospective purchaser or lessee, for vehicles previously registered to a business or governmental entity, the name and address of the business or governmental entity.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle. However, a dealer may issue a second temporary permit on a vehicle if the following conditions are met:

(a) The lienholder fails to deliver the vehicle title to the dealer within the required time period;

(b) The dealer has satisfied the lien; and

(c) The dealer has proof that payment of the lien was made within two calendar days, exclusive of Saturday, Sunday, or a legal holiday, after the sales contract has been executed by all parties and all conditions and contingencies in the sales contract have been met or otherwise satisfied.

(9) For a dealer, salesperson, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser or lessee prior to the delivery of the bargained-for vehicle, to commingle the "on deposit" funds with assets of the dealer, salesperson, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser or lessee has taken delivery of the bargained-for vehicle. Delivery of a manufactured

home shall be deemed to occur in accordance with RCW 46.70.135(5). Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does not include any loan proceeds or moneys that might have been paid on an installment contract.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser or lessee, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales or lease agreement signed by the seller and buyer or lessee.

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, purchase moneys or funds that have been deposited into or withdrawn out of any account controlled or used by any buyer's agent, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle.

(12) For a buyer's agent, acting directly or through a subsidiary, to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle. In addition, it is unlawful for any buyer's agent to engage in any of the following acts on behalf of or in the name of the consumer:

(a) Receiving or paying any purchase moneys or funds into or out of any account controlled or used by any buyer's agent;

(b) Signing any vehicle purchase orders, sales contracts, leases, odometer statements, or title documents, or having the name of the buyer's agent appear on the vehicle purchase order, sales contract, lease, or title; or

(c) Signing any other documentation relating to the purchase, sale, lease, or transfer of any new motor vehicle.

It is unlawful for a buyer's agent to use a power of attorney obtained from the consumer to accomplish or effect the purchase, sale, lease, or transfer of ownership documents of any new motor vehicle by any means which would otherwise be prohibited under (a) through (c) of this subsection. However, the buyer's agent may use a power of attorney for physical delivery of motor vehicle license plates to the consumer.

Further, it is unlawful for a buyer's agent to engage in any false, deceptive, or misleading advertising, disseminated in any manner whatsoever, including but not limited to making any claim or statement that the buyer's agent offers, obtains, or guarantees the lowest price on any motor vehicle or words to similar effect.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. This subsection also applies to leased vehicles. In addition, it is unlawful for any buyer's agent to fail to have a written agreement with the customer that: (a) Sets forth the terms of the parties' agreement; (b) discloses to the customer the total amount of any fees or other compensation being paid by the customer to the buyer's agent for the agent's services; and (c) further discloses whether the fee or any portion of the fee is refundable.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.93 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his or her capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he or she is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) the cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith;

(c) Encourage, aid, abet, or teach a vehicle dealer to sell or lease vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale or lease of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser or lessee of any new or unused vehicle that has been sold or leased, distributed for sale or lease, or transferred into this state for resale or lease by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

(16) To knowingly and intentionally engage in collusion with a registered owner of a vehicle to repossess and return or resell the vehicle to the registered owner in an attempt to avoid a suspended license impound under chapter 46.55 RCW. However, compliance with chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise disposing of the vehicle, including providing redemption rights to the debtor, is not a violation of this section.

(17)(a) For a dealer to enter into a new motor vehicle sales contract without disclosing in writing to a buyer of the new motor vehicle, or to a dealer in the case of an unregistered motor vehicle, any known damage and repair to the new motor vehicle if the damage exceeds five percent of the manufacturer's suggested retail price as calculated at the dealer's authorized warranty rate for labor and parts, or one thousand dollars, whichever amount is greater. A manufacturer or new motor vehicle dealer is not required to disclose to a dealer or buyer that glass, tires, bumpers, or cosmetic parts of a new motor vehicle were damaged at any time if the damaged item has been replaced with original or comparable equipment. A replaced part is not part of the cumulative damage required to be disclosed under this subsection.

(b) A manufacturer is required to provide the same disclosure to a dealer of any known damage or repair as required in (a) of this subsection.

(c) If disclosure of any known damage or repair is not required under this section, a buyer may not revoke or rescind a sales contract due to the fact that the new motor vehicle was damaged and repaired before completion of the sale.

(d) As used in this section:

(i) "Cosmetic parts" means parts that are attached by and can be replaced in total through the use of screws, bolts, or other fasteners without the use of welding or thermal cutting, and includes windshields, bumpers, hoods, or trim panels.

(ii) "Manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer, and includes the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer that is not included within the retail price suggested by the manufacturer for the new motor vehicle.

Passed by the Senate February 26, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 50

[Substitute Senate Bill 5009]

UNEMPLOYMENT INSURANCE BENEFITS—
EXPERIENCE RATING ACCOUNTS—EXEMPTION

AN ACT Relating to benefits charged to the experience rating accounts of employers; and amending RCW 50.29.021.

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

Sec. 1. RCW 50.29.021 and 2008 c 323 s 2 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(2)(b)(i), as applicable, and became unemployed after having worked and earned wages in the bona fide work; or

(ii) RCW 50.20.050(2)(b) (v) through (x).

(3) The legislature finds that certain benefit payments, in whole or in part, should not be charged to the experience rating accounts of employers except those employers described in RCW 50.44.010, 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(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.

(4)(a) A contribution paying base year employer, not otherwise eligible for relief of charges for benefits under this section, may receive such relief if the benefit charges result from payment to an individual who:

(i) Last left the employ of such employer voluntarily for reasons not attributable to the employer;

(ii) Was discharged for misconduct or gross misconduct connected with his or her work not a result of inability to meet the minimum job requirements;

(iii) Is unemployed as a result of closure or severe curtailment of operation at the employer's plant, building, worksite, or other facility. This closure must be for reasons directly attributable to a catastrophic occurrence such as fire, flood, or other natural disaster; ((~~or~~))

(iv) Continues to be employed on a regularly scheduled permanent part-time basis by a base year employer and who at some time during the base year was concurrently employed and subsequently separated from at least one other base year employer. Benefit charge relief ceases when the employment relationship between the employer requesting relief and the claimant is terminated. This subsection does not apply to shared work employers under chapter 50.06 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.

Passed by the Senate March 2, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 51

[Substitute Senate Bill 5136]
HOMEOWNERS' ASSOCIATIONS—GOVERNING DOCUMENTS—
SOLAR ENERGY PANELS

AN ACT Relating to the use of solar energy panels by members of homeowners' associations; and adding a new section to chapter 64.38 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 64.38 RCW to read as follows:

(1) The governing documents may not prohibit the installation of a solar energy panel by an owner or resident on the owner's or resident's property as long as the solar energy panel:

(a) Meets applicable health and safety standards and requirements imposed by state and local permitting authorities;

(b) If used to heat water, is certified by the solar rating certification corporation or another nationally recognized certification agency. Certification must be for the solar energy panel and for installation; and

(c) If used to produce electricity, meets all applicable safety and performance standards established by the national electric code, the institute of electrical and electronics engineers, accredited testing laboratories, such as underwriters laboratories, and, where applicable, rules of the utilities and transportation commission regarding safety and reliability.

(2) The governing documents may:

(a) Prohibit the visibility of any part of a roof-mounted solar energy panel above the roof line;

(b) Permit the attachment of a solar energy panel to the slope of a roof facing a street only if:

(i) The solar energy panel conforms to the slope of the roof; and

(ii) The top edge of the solar energy panel is parallel to the roof ridge; or

(c) Require:

(i) A solar energy panel frame, a support bracket, or any visible piping or wiring to be painted to coordinate with the roofing material;

(ii) An owner or resident to shield a ground-mounted solar energy panel if shielding the panel does not prohibit economic installation of the solar energy panel or degrade the operational performance quality of the solar energy panel by more than ten percent; or

(iii) Owners or residents who install solar energy panels to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of a solar energy panel.

(3) The governing documents may include other reasonable rules regarding the placement and manner of a solar energy panel.

(4) For purposes of this section, "solar energy panel" means a panel device or system or combination of panel devices or systems that relies on direct sunlight as an energy source, including a panel device or system or combination of panel devices or systems that collects sunlight for use in:

(a) The heating or cooling of a structure or building;

(b) The heating or pumping of water;

(c) Industrial, commercial, or agricultural processes; or

(d) The generation of electricity.

(5) This section does not apply to common areas as defined in RCW 64.38.010.

(6) This section applies retroactively to a governing document in effect on the effective date of this section. A provision in a governing document in effect on the effective date of this section that is inconsistent with this section is void and unenforceable.

Passed by the Senate February 26, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 52

[Substitute Senate Bill 5369]

COUNSELING PROFESSIONS—UNIFORM DISCIPLINARY ACT

AN ACT Relating to adding and deleting counseling professions subject to the authority of the secretary of health under the uniform disciplinary act; amending RCW 18.130.040 and 18.130.040; providing effective dates; and declaring an emergency.

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

Sec. 1. RCW 18.130.040 and 2009 c 2 s 16 (Initiative Measure No. 1029) are each 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) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

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

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

(x) ((~~Persons registered under chapter 18.19 RCW~~)) Counselors, hypnotherapists, and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

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

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

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

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

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

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

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

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

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW;

(xxiv) Athletic trainers licensed under chapter 18.250 RCW; and

(xxv) Home care aides certified under chapter 18.88B 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 and licenses and registrations issued under chapter 18.260 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; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. 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. 2. RCW 18.130.040 and 2009 c ... s 1 (section 1 of this act) (Initiative Measure No. 1029) are each 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) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

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

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

(x) ((~~Counselors,~~)) Hypnotherapists((~~,~~)) and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

(xi) 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;

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

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

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

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

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

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

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

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW;

(xxiv) Athletic trainers licensed under chapter 18.250 RCW; and

(xxv) Home care aides certified under chapter 18.88B 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 and licenses and registrations issued under chapter 18.260 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; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. 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. 3.** Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009.

NEW SECTION. **Sec. 4.** Section 2 of this act takes effect July 1, 2010.

Passed by the Senate March 5, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 53

[Substitute Senate Bill 5380]

CRIMES—STATUTES OF LIMITATION

AN ACT Relating to the statute of limitations for certain crimes; and amending RCW 9A.04.080.

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

Sec. 1. RCW 9A.04.080 and 2006 c 132 s 1 are each amended to read as follows:

(1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

(i) Murder;

(ii) Homicide by abuse;

(iii) Arson if a death results;

(iv) Vehicular homicide;

(v) Vehicular assault if a death results;

(vi) Hit-and-run injury-accident if a death results (RCW 46.52.020(4)).

(b) The following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results; or

(iii) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is reported to a law enforcement agency within one year of its commission; except that if the victim is under fourteen years of age when the rape is committed and the rape is reported to a law enforcement agency within one year of its commission, the violation may be prosecuted up to three years after the victim's eighteenth birthday or up to ten years after the rape's commission, whichever is later. If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted: (A) More than three years after its commission if the violation was committed against a victim fourteen years of age or older; or (B) more than three years after the victim's eighteenth birthday or more than seven years after the rape's commission, whichever is later, if the violation was committed against a victim under fourteen years of age.

(c) Violations of the following statutes shall not be prosecuted more than three years after the victim's eighteenth birthday or more than seven years after their commission, whichever is later: RCW 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080, 9A.44.100(1)(b), or 9A.64.020.

(d) The following offenses shall not be prosecuted more than six years after their commission or their discovery, whichever occurs later:

(i) Violations of RCW 9A.82.060 or 9A.82.080;

(ii) Any felony violation of chapter 9A.83 RCW;

(iii) Any felony violation of chapter 9.35 RCW; or

(iv) Theft in the first or second degree under chapter 9A.56 RCW when accomplished by color or aid of deception.

(e) The following offenses shall not be prosecuted more than five years after their commission: Any class C felony under chapter 74.09, 82.36, or 82.38 RCW.

(f) Bigamy shall not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(g) A violation of RCW 9A.56.030 must not be prosecuted more than three years after the discovery of the offense when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

(h) No other felony may be prosecuted more than three years after its commission; except that in a prosecution under RCW 9A.44.115, if the person who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed, or filmed.

(i) No gross misdemeanor may be prosecuted more than two years after its commission.

(j) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) In any prosecution for a sex offense as defined in RCW 9.94A.030, the periods of limitation prescribed in subsection (1) of this section run from the date of commission or one year from the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid testing, whichever is later.

(4) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside.

Passed by the Senate March 10, 2009.

Passed by the House April 1, 2009.

Approved by the Governor April 10, 2009.

Filed in Office of Secretary of State April 13, 2009.

CHAPTER 54

[Engrossed Senate Bill 5423]

CRITICAL ACCESS HOSPITALS—CERTIFICATE OF NEED REVIEWS

AN ACT Relating to critical access hospitals not subject to certificate of need reviews; and amending RCW 70.38.105.

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

Sec. 1. RCW 70.38.105 and 2004 c 261 s 6 are each amended to read as follows:

(1) The department is authorized and directed to implement the certificate of need program in this state pursuant to the provisions of this chapter.

(2) There shall be a state certificate of need program which is administered consistent with the requirements of federal law as necessary to the receipt of federal funds by the state.

(3) No person shall engage in any undertaking which is subject to certificate of need review under subsection (4) of this section without first having received from the department either a certificate of need or an exception granted in accordance with this chapter.

(4) The following shall be subject to certificate of need review under this chapter:

(a) The construction, development, or other establishment of a new health care facility;

(b) The sale, purchase, or lease of part or all of any existing hospital as defined in RCW 70.38.025;

(c) Any capital expenditure for the construction, renovation, or alteration of a nursing home which substantially changes the services of the facility after January 1, 1981, provided that the substantial changes in services are specified by the department in rule;

(d) Any capital expenditure for the construction, renovation, or alteration of a nursing home which exceeds the expenditure minimum as defined by RCW 70.38.025. However, a capital expenditure which is not subject to certificate of need review under (a), (b), (c), or (e) of this subsection and which is solely for any one or more of the following is not subject to certificate of need review:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities which are necessary to maintain state licensure, however, other additional repairs, remodeling, or replacement projects that are not related to one or more deficiency citations and are not necessary to maintain state licensure are not exempt from certificate of need review except as otherwise permitted by (d)(vi) of this subsection or RCW 70.38.115(13);

(v) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;

(vi) Construction or renovation at an existing nursing home which involves physical plant facilities, including administrative, dining areas, kitchen, laundry, therapy areas, and support facilities, by an existing licensee who has operated the beds for at least one year;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt;

(e) A change in bed capacity of a health care facility which increases the total number of licensed beds or redistributes beds among acute care, nursing home care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months, or a change in bed capacity of a rural health care facility licensed under RCW 70.175.100 that increases the total number of nursing home beds or redistributes beds from acute care or boarding home care to nursing home care if the bed redistribution is to be effective for a period in excess of six months. A health care facility certified as a critical access hospital under 42 U.S.C. 1395i-4 may increase its total number of licensed beds to the total number of beds permitted under 42 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under 42 U.S.C. 1395i-4 among acute care and nursing home care without being subject to certificate of need review. If there is a nursing home licensed under chapter 18.51 RCW within twenty-seven miles of the critical access hospital, the critical access hospital is subject to certificate of need review except for:

(i) Critical access hospitals which had designated beds to provide nursing home care, in excess of five swing beds, prior to December 31, 2003; ((~~or~~))

(ii) Up to five swing beds; or

(iii) Up to twenty-five swing beds for critical access hospitals which do not have a nursing home licensed under chapter 18.51 RCW within the same city or town limits. No more than one-half of the additional beds designated for swing bed services under this subsection (4)(e)(iii) may be so designated before July 1, 2009, with the balance designated no sooner than July 1, 2010.

Critical access hospital beds not subject to certificate of need review under this subsection (4)(e) will not be counted as either acute care or nursing home care for certificate of need review purposes. If a health care facility ceases to be certified as a critical access hospital under 42 U.S.C. 1395i-4, the hospital may revert back to the type and number of licensed hospital beds as it had when it requested critical access hospital designation;

(f) Any new tertiary health services which are offered in or through a health care facility or rural health care facility licensed under RCW 70.175.100, and which were not offered on a regular basis by, in, or through such health care facility or rural health care facility within the twelve-month period prior to the time such services would be offered;

(g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum made in preparation for any undertaking under subsection (4) of this section and any arrangement or commitment made for financing such undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made; and

(h) Any increase in the number of dialysis stations in a kidney disease center.

(5) The department is authorized to charge fees for the review of certificate of need applications and requests for exemptions from certificate of need review.

The fees shall be sufficient to cover the full cost of review and exemption, which may include the development of standards, criteria, and policies.

(6) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section.

Passed by the Senate March 9, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 55

[Engrossed Substitute Senate Bill 5437]
STATE CONSERVATION COMMISSION

AN ACT Relating to the state conservation commission; and amending RCW 89.08.040, 89.08.050, and 89.08.070.

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

Sec. 1. RCW 89.08.040 and 1984 c 287 s 112 are each amended to read as follows:

Members shall be compensated in accordance with RCW ((~~43.03.240~~)) 43.03.250 and shall be entitled to travel expenses in accordance with RCW 43.03.050 and 43.03.060 incurred in the discharge of their duties.

The commission shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform such acts, hold such public hearings, and ((~~promulgate~~)) adopt such rules ((~~and regulations~~)) as may be necessary for the execution of its functions under chapter 184, Laws of 1973 1st ex. sess. The state department of ecology is empowered to pay the travel expenses of the elected and appointed members of the state conservation commission, and the salaries, wages and other expenses of such administrative officers or other employees as may be required under the provisions of this chapter.

Sec. 2. RCW 89.08.050 and 1973 1st ex.s. c 184 s 6 are each amended to read as follows:

The commission may employ an administrative officer, and such technical experts and such other agents and employees, permanent and temporary as it may require, and shall determine their qualifications, duties, and compensation. The commission may call upon the attorney general for such legal services as it may require.

It shall have authority to delegate to its ((~~chairman~~)) chair, to one or more of its members, to one or more agents or employees such duties and powers as it deems proper. ((~~It~~)) As long as the commission and the office of financial management under the provisions of chapter 43.82 RCW deems it appropriate and financially justifiable to do so, the commission shall be supplied with suitable office accommodations at the central office of the department of ecology, and shall be furnished the necessary supplies and equipment.

The commission shall organize annually and select a ((~~chairman~~)) chair from among its members, who shall serve for one year from the date of ((~~his~~)) the chair's selection. A majority of the commission shall constitute a quorum

and all actions of the commission shall be by a majority vote of the members present and voting at a meeting at which a quorum is present.

Sec. 3. RCW 89.08.070 and 1973 1st ex.s. c 184 s 8 are each amended to read as follows:

In addition to the duties and powers hereinafter conferred upon the commission, it shall have the following duties and powers:

(1) To offer such assistance as may be appropriate to the supervisors of conservation districts organized under the provisions of chapter 184, Laws of 1973 1st ex. sess., in the carrying out of any of their powers and programs:

(a) To assist and guide districts in the preparation and carrying out of programs for resource conservation authorized under chapter 184, Laws of 1973 1st ex. sess.;

(b) To review district programs;

(c) To coordinate the programs of the several districts and resolve any conflicts in such programs;

(d) To facilitate, promote, assist, harmonize, coordinate, and guide the resource conservation programs and activities of districts as they relate to other special purpose districts, counties, and other public agencies.

(2) To keep the supervisors of each of the several conservation districts organized under the provisions of chapter 184, Laws of 1973 1st ex. sess. informed of the activities and experience of all other districts organized hereunder, and to facilitate an interchange of advice and experience between such districts and cooperation between them.

(3) To review agreements, or forms of agreements, proposed to be entered into by districts with other districts or with any state, federal, interstate, or other public or private agency, organization, or individual, and advise the districts concerning such agreements or forms of agreements.

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state in the work of such districts.

(5) To recommend the inclusion in annual and longer term budgets and appropriation legislation of the state of Washington of funds necessary for appropriation by the legislature to finance the activities of the commission and the conservation districts; to administer the provisions of any law hereinafter enacted by the legislature appropriating funds for expenditure in connection with the activities of conservation districts; to distribute to conservation districts funds, equipment, supplies and services received by the commission for that purpose from any source, subject to such conditions as shall be made applicable thereto in any state or federal statute or local ordinance making available such funds, property or services; to ((~~issue regulations~~)) adopt rules establishing guidelines and suitable controls to govern the use by conservation districts of such funds, property and services; and to review all budgets, administrative procedures and operations of such districts and advise the districts concerning their conformance with applicable laws and ((~~regulations~~)) rules.

(6) To encourage the cooperation and collaboration of state, federal, regional, interstate and local public and private agencies with the conservation districts, and facilitate arrangements under which the conservation districts may serve county governing bodies and other agencies as their local operating agencies in the administration of any activity concerned with the conservation of renewable natural resources.

(7) To disseminate information throughout the state concerning the activities and programs of the conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable; to make available information concerning the needs and the work of the conservation district and the commission to the governor, the legislature, executive agencies of the government of this state, political subdivisions of this state, cooperating federal agencies, and the general public.

(8) Pursuant to procedures developed mutually by the commission and other state and local agencies that are authorized to plan or administer activities significantly affecting the conservation of renewable natural resources, to receive from such agencies for review and comment suitable descriptions of their plans, programs and activities for purposes of coordination with district conservation programs; to arrange for and participate in conferences necessary to avoid conflict among such plans and programs, to call attention to omissions, and to avoid duplication of effort.

(9) To compile information and make studies, summaries and analysis of district programs in relation to each other and to other resource conservation programs on a statewide basis.

(10) To assist conservation districts in obtaining legal services from state and local legal officers.

(11) To require annual reports from conservation districts, the form and content of which shall be developed by the commission.

(12) To establish by ((~~regulations~~)) rule, with the assistance and advice of the state auditor's office, adequate and reasonably uniform accounting and auditing procedures which shall be used by conservation districts.

(13) To seek and accept grants from any source, public or private, to fulfill the purposes of the agency. The commission may also accept gifts or endowments that are made from time to time, in trust or otherwise, including real and personal property, for the use and benefit consistent with the purposes of this chapter.

(14) To conduct conferences, seminars, and training sessions consistent with the purposes of this chapter, and may accept grants, gifts, and contributions, and may contract for services, to accomplish these activities. The commission may recover costs for these activities, whether the activity is sponsored or cosponsored by the commission, at a rate determined by the commission. The commission may provide reimbursement to participants in these activities and other commission sponsored meetings and events, as appropriate and approved by the commission, consistent with applicable statutes. The commission may provide meals for participants in working meetings.

(15) To adopt rules to implement this section as it deems appropriate.

Passed by the Senate March 3, 2009.

Passed by the House April 1, 2009.

Approved by the Governor April 10, 2009.

Filed in Office of Secretary of State April 13, 2009.

CHAPTER 56

[Substitute Senate Bill 5481]

BURIAL OF VETERANS

AN ACT Relating to veterans' burials; and amending RCW 68.50.230.

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

Sec. 1. RCW 68.50.230 and 2005 c 365 s 146 are each amended to read as follows:

(1) Whenever any human remains shall have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more, and the relatives of, or persons interested in, the deceased person shall fail, neglect, or refuse to direct the disposition, the human remains may be disposed of by the person, firm, corporation, or association having such lawful possession thereof, under and in accordance with rules adopted by the cemetery board and the board of funeral directors and embalmers, not inconsistent with any statute of the state of Washington or rule adopted by the state board of health.

(2)(a) The department of veterans affairs may certify that the deceased person to whom subsection (1) of this section applies was a veteran or the dependent of a veteran eligible for interment at a federal or state veterans' cemetery.

(b) Upon certification of eligible veteran or dependent of a veteran status under (a) of this subsection, the person, firm, corporation, or association in possession of the veteran's or veteran's dependent's remains shall transfer the custody and control of the remains to the department of veterans affairs.

(c) The transfer of human remains under (b) of this subsection does not create:

(i) A private right of action against the state or its officers and employees or instrumentalities, or against any person, firm, corporation, or association transferring the remains; or

(ii) Liability on behalf of the state, the state's officers, employees, or instrumentalities; or on behalf of the person, firm, corporation, or association transferring the remains.

Passed by the Senate March 3, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 57

[Senate Bill 5487]

CERTIFICATED EMPLOYEES—NONRENEWAL OF CONTRACTS—NOTICE

AN ACT Relating to notification of nonrenewal of contracts for certificated employees; amending RCW 28A.405.210, 28A.405.220, 28A.405.230, and 28A.310.250; and declaring an emergency.

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

Sec. 1. RCW 28A.405.210 and 2005 c 497 s 216 are each amended to read as follows:

No teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with a school district, hereinafter referred

to as "employee", shall be employed except by written order of a majority of the directors of the district at a regular or special meeting thereof, nor unless he or she is the holder of an effective teacher's certificate or other certificate required by law or the Washington professional educator standards board for the position for which the employee is employed.

The board shall make with each employee employed by it a written contract, which shall be in conformity with the laws of this state, and except as otherwise provided by law, limited to a term of not more than one year. Every such contract shall be made in duplicate, one copy to be retained by the school district superintendent or secretary and one copy to be delivered to the employee. No contract shall be offered by any board for the employment of any employee who has previously signed an employment contract for that same term in another school district of the state of Washington unless such employee shall have been released from his or her obligations under such previous contract by the board of directors of the school district to which he or she was obligated. Any contract signed in violation of this provision shall be void.

In the event it is determined that there is probable cause or causes that the employment contract of an employee should not be renewed by the district for the next ensuing term such employee shall be notified in writing on or before May 15th preceding the commencement of such term of that determination, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June ((~~1st~~)) 15th, which notification shall specify the cause or causes for nonrenewal of contract. Such determination of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notice shall be served upon the employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for hearing pursuant to RCW 28A.405.310 to determine whether there is sufficient cause or causes for nonrenewal of contract: PROVIDED, That any employee receiving notice of nonrenewal of contract due to an enrollment decline or loss of revenue may, in his or her request for a hearing, stipulate that initiation of the arrangements for a hearing officer as provided for by RCW 28A.405.310(4) shall occur within ten days following July 15 rather than the day that the employee submits the request for a hearing. If any such notification or opportunity for hearing is not timely given, the employee entitled thereto shall be conclusively presumed to have been reemployed by the district for the next ensuing term upon contractual terms identical with those which would have prevailed if his or her employment had actually been renewed by the board of directors for such ensuing term.

This section shall not be applicable to "provisional employees" as so designated in RCW 28A.405.220; transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.405.230 shall not be construed as a nonrenewal of contract for the purposes of this section.

Sec. 2. RCW 28A.405.220 and 1996 c 201 s 2 are each amended to read as follows:

Notwithstanding the provisions of RCW 28A.405.210, every person employed by a school district in a teaching or other nonsupervisory certificated position shall be subject to nonrenewal of employment contract as provided in this section during the first two years of employment by such district, unless the employee has previously completed at least two years of certificated employment in another school district in the state of Washington, in which case the employee shall be subject to nonrenewal of employment contract pursuant to this section during the first year of employment with the new district. Employees as defined in this section shall hereinafter be referred to as "provisional employees".

In the event the superintendent of the school district determines that the employment contract of any provisional employee should not be renewed by the district for the next ensuing term such provisional employee shall be notified thereof in writing on or before May 15th preceding the commencement of such school term, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June ((~~1st~~)) 15th, which notification shall state the reason or reasons for such determination. Such notice shall be served upon the provisional employee personally, or by certified or registered mail, or by leaving a copy of the notice at the place of his or her usual abode with some person of suitable age and discretion then resident therein. The determination of the superintendent shall be subject to the evaluation requirements of RCW 28A.405.100.

Every such provisional employee so notified, at his or her request made in writing and filed with the superintendent of the district within ten days after receiving such notice, shall be given the opportunity to meet informally with the superintendent for the purpose of requesting the superintendent to reconsider his or her decision. Such meeting shall be held no later than ten days following the receipt of such request, and the provisional employee shall be given written notice of the date, time and place of meeting at least three days prior thereto. At such meeting the provisional employee shall be given the opportunity to refute any facts upon which the superintendent's determination was based and to make any argument in support of his or her request for reconsideration.

Within ten days following the meeting with the provisional employee, the superintendent shall either reinstate the provisional employee or shall submit to the school district board of directors for consideration at its next regular meeting a written report recommending that the employment contract of the provisional employee be nonrenewed and stating the reason or reasons therefor. A copy of such report shall be delivered to the provisional employee at least three days prior to the scheduled meeting of the board of directors. In taking action upon the recommendation of the superintendent, the board of directors shall consider any written communication which the provisional employee may file with the secretary of the board at any time prior to that meeting.

The board of directors shall notify the provisional employee in writing of its final decision within ten days following the meeting at which the superintendent's recommendation was considered. The decision of the board of directors to nonrenew the contract of a provisional employee shall be final and not subject to appeal.

This section applies to any person employed by a school district in a teaching or other nonsupervisory certificated position after June 25, 1976. This

section provides the exclusive means for nonrenewing the employment contract of a provisional employee and no other provision of law shall be applicable thereto, including, without limitation, RCW 28A.405.210 and chapter 28A.645 RCW.

Sec. 3. RCW 28A.405.230 and 1996 c 201 s 3 are each amended to read as follows:

Any certificated employee of a school district employed as an assistant superintendent, director, principal, assistant principal, coordinator, or in any other supervisory or administrative position, hereinafter in this section referred to as "administrator", shall be subject to transfer, at the expiration of the term of his or her employment contract, to any subordinate certificated position within the school district. "Subordinate certificated position" as used in this section, shall mean any administrative or nonadministrative certificated position for which the annual compensation is less than the position currently held by the administrator.

Every superintendent determining that the best interests of the school district would be served by transferring any administrator to a subordinate certificated position shall notify that administrator in writing on or before May 15th preceding the commencement of such school term of that determination, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June ((~~1st~~)) 15th, which notification shall state the reason or reasons for the transfer, and shall identify the subordinate certificated position to which the administrator will be transferred. Such notice shall be served upon the administrator personally, or by certified or registered mail, or by leaving a copy of the notice at the place of his or her usual abode with some person of suitable age and discretion then resident therein.

Every such administrator so notified, at his or her request made in writing and filed with the president or chair, or secretary of the board of directors of the district within ten days after receiving such notice, shall be given the opportunity to meet informally with the board of directors in an executive session thereof for the purpose of requesting the board to reconsider the decision of the superintendent. Such board, upon receipt of such request, shall schedule the meeting for no later than the next regularly scheduled meeting of the board, and shall notify the administrator in writing of the date, time and place of the meeting at least three days prior thereto. At such meeting the administrator shall be given the opportunity to refute any facts upon which the determination was based and to make any argument in support of his or her request for reconsideration. The administrator and the board may invite their respective legal counsel to be present and to participate at the meeting. The board shall notify the administrator in writing of its final decision within ten days following its meeting with the administrator. No appeal to the courts shall lie from the final decision of the board of directors to transfer an administrator to a subordinate certificated position: PROVIDED, That in the case of principals such transfer shall be made at the expiration of the contract year and only during the first three consecutive school years of employment as a principal by a school district; except that if any such principal has been previously employed as a principal by another school district in the state of Washington for three or more consecutive school years the provisions of this section shall apply only to the first full school year of such employment.

This section applies to any person employed as an administrator by a school district on June 25, 1976 and to all persons so employed at any time thereafter. This section provides the exclusive means for transferring an administrator to a subordinate certificated position at the expiration of the term of his or her employment contract.

Sec. 4. RCW 28A.310.250 and 1996 c 201 s 4 are each amended to read as follows:

No certificated employee of an educational service district shall be employed as such except by written contract, which shall be in conformity with the laws of this state. Every such contract shall be made in duplicate, one copy of which shall be retained by the educational service district superintendent and the other shall be delivered to the employee.

Every educational service district superintendent or board determining that there is probable cause or causes that the employment contract of a certificated employee thereof is not to be renewed for the next ensuing term shall be notified in writing on or before May 15th preceding the commencement of such term of that determination or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June ((~~1st~~)) 15th, which notification shall specify the cause or causes for nonrenewal of contract. Such notice shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. The procedure and standards for the review of the decision of the hearing officer, superintendent or board and appeal therefrom shall be as prescribed for nonrenewal cases of teachers in RCW 28A.405.210, 28A.405.300 through 28A.405.380, and 28A.645.010. Appeals may be filed in the superior court of any county in the educational service district.

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

Passed by the Senate March 9, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 58

[Senate Bill 5680]

PROPERTY TAX EXEMPTION—NONPROFIT ORGANIZATIONS

AN ACT Relating to the property tax exemption for nonprofit artistic, scientific, historical, and performing arts organizations; and amending RCW 84.36.060.

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

Sec. 1. RCW 84.36.060 and 2003 c 121 s 1 are each amended to read as follows:

(1) The following property shall be exempt from taxation:

(a) All art, scientific, or historical collections of associations maintaining and exhibiting such collections for the benefit of the general public and not for

profit, together with all real and personal property of such associations used exclusively for the safekeeping, maintaining and exhibiting of such collections;

(b) All the real and personal property owned by or leased to associations engaged in the production and performance of musical, dance, artistic, dramatic, or literary works for the benefit of the general public and not for profit, which real and personal property is used exclusively for this production or performance;

(c) All fire engines and other implements used for the extinguishment of fire, and the buildings used exclusively for their safekeeping, and for meetings of fire companies, as long as the property belongs to any city or town or to a fire company; and

(d) All property owned by humane societies in this state in actual use by the societies.

(2) To receive an exemption under subsection (1)(a) or (b) of this section:

(a) An organization must be organized and operated exclusively for artistic, scientific, historical, literary, musical, dance, dramatic, or educational purposes and receive a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its purpose or function) from the United States or any state or any political subdivision thereof or from direct or indirect contributions from the general public.

(b) If the property is not currently being used for an exempt purpose but will be used for an exempt purpose within a reasonable period of time, the nonprofit organization, association, or corporation claiming the exemption must submit proof that a reasonably specific and active program is being carried out to construct, remodel, or otherwise enable the property to be used for an exempt purpose. The property does not qualify for an exemption during this interim period if the property is used by, loaned to, or rented to a for-profit organization or business enterprise. Proof of a specific and active program to build or remodel the property so it may be used for an exempt purpose may include, but is not limited to:

(i) Affirmative action by the board of directors, trustees, or governing body of the nonprofit organization, association, or corporation toward an active program of construction or remodeling;

(ii) Itemized reasons for the proposed construction or remodeling;

(iii) Clearly established plans for financing the construction or remodeling; or

(iv) Building permits.

(3) The use of property exempt under subsection (1)(a) or (b) of this section by entities not eligible for a property tax exemption under this chapter, except as provided in this section, nullifies the exemption otherwise available for the property for the assessment year. The exemption is not nullified if:

(a) The property is used by entities not eligible for a property tax exemption under this chapter for periods of not more than ((~~twenty-five~~)) fifty days in the calendar year;

(b) The property is not used for pecuniary gain or to promote business activities for more than ((~~seven~~)) fifteen of the ((~~twenty-five~~)) fifty days in the calendar year; and

(c) The property is used for artistic, scientific, or historic purposes, for the production and performance of musical, dance, artistic, dramatic, or literary works, or for community gatherings or assembly, or meetings((~~; and~~

~~(d) The amount of any rent or donations is reasonable and does not exceed maintenance and operation expenses created by the user~~)).

(4) The fifty and fifteen-day limitations in subsection (3) of this section do not include days used for setup and takedown activities preceding or following a meeting or other event by an entity using the property as provided in subsection (3) of this section.

Passed by the Senate March 10, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 59

[Senate Bill 5739]

CONCEALED PISTOL LICENSES—RENEWAL—MEMBERS OF ARMED FORCES

AN ACT Relating to renewing a concealed pistol license by members of the armed forces; and amending RCW 9.41.070.

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

Sec. 1. RCW 9.41.070 and 2002 c 302 s 703 are each amended to read as follows:

(1) The chief of police of a municipality or the sheriff of a county shall within thirty days after the filing of an application of any person, issue a license to such person to carry a pistol concealed on his or her person within this state for five years from date of issue, for the purposes of protection or while engaged in business, sport, or while traveling. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card or has not been a resident of the state for the previous consecutive ninety days, the issuing authority shall have up to sixty days after the filing of the application to issue a license. The issuing authority shall not refuse to accept completed applications for concealed pistol licenses during regular business hours.

The applicant's constitutional right to bear arms shall not be denied, unless:

(a) He or she is ineligible to possess a firearm under the provisions of RCW 9.41.040 or 9.41.045;

(b) The applicant's concealed pistol license is in a revoked status;

(c) He or she is under twenty-one years of age;

(d) He or she is subject to a court order or injunction regarding firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590;

(e) He or she is free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense;

(f) He or she has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor; or

(g) He or she has been ordered to forfeit a firearm under RCW 9.41.098(1)(e) within one year before filing an application to carry a pistol concealed on his or her person.

No person convicted of a felony may have his or her right to possess firearms restored or his or her privilege to carry a concealed pistol restored, unless the person has been granted relief from disabilities by the secretary of the treasury under 18 U.S.C. Sec. 925(c), or RCW 9.41.040 (3) or (4) applies.

(2) The issuing authority shall check with the national crime information center, the Washington state patrol electronic data base, the department of social and health services electronic data base, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess a firearm and therefore ineligible for a concealed pistol license. This subsection applies whether the applicant is applying for a new concealed pistol license or to renew a concealed pistol license.

(3) Any person whose firearms rights have been restricted and who has been granted relief from disabilities by the secretary of the treasury under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C. Sec. 921(a)(20)(A) shall have his or her right to acquire, receive, transfer, ship, transport, carry, and possess firearms in accordance with Washington state law restored except as otherwise prohibited by this chapter.

(4) The license application shall bear the full name, residential address, telephone number at the option of the applicant, date and place of birth, race, gender, description, not more than two complete sets of fingerprints, and signature of the licensee, and the licensee's driver's license number or state identification card number if used for identification in applying for the license. A signed application for a concealed pistol license shall constitute a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release information relevant to the applicant's eligibility for a concealed pistol license to an inquiring court or law enforcement agency.

The application for an original license shall include two complete sets of fingerprints to be forwarded to the Washington state patrol.

The license and application shall contain a warning substantially as follows:

> CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. A state license is not a defense to a federal prosecution.

The license shall contain a description of the major differences between state and federal law and an explanation of the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law. The application shall contain questions about the applicant's eligibility under RCW 9.41.040 to possess a pistol, the applicant's place of birth, and whether the applicant is a United States citizen. The applicant shall not be required to produce a birth certificate or other evidence of citizenship. A person who is not a citizen of the United States shall meet the additional requirements of RCW 9.41.170 and produce proof of compliance with RCW 9.41.170 upon application. The license shall be in triplicate and in a form to be prescribed by the department of licensing.

The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing the license.

The department of licensing shall make available to law enforcement and corrections agencies, in an on-line format, all information received under this subsection.

(5) The nonrefundable fee, paid upon application, for the original five-year license shall be thirty-six dollars plus additional charges imposed by the Federal Bureau of Investigation that are passed on to the applicant. No other state or local branch or unit of government may impose any additional charges on the applicant for the issuance of the license.

The fee shall be distributed as follows:

(a) Fifteen dollars shall be paid to the state general fund;

(b) Four dollars shall be paid to the agency taking the fingerprints of the person licensed;

(c) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and

(d) Three dollars to the firearms range account in the general fund.

(6) The nonrefundable fee for the renewal of such license shall be thirty-two dollars. No other branch or unit of government may impose any additional charges on the applicant for the renewal of the license.

The renewal fee shall be distributed as follows:

(a) Fifteen dollars shall be paid to the state general fund;

(b) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and

(c) Three dollars to the firearms range account in the general fund.

(7) The nonrefundable fee for replacement of lost or damaged licenses is ten dollars to be paid to the issuing authority.

(8) Payment shall be by cash, check, or money order at the option of the applicant. Additional methods of payment may be allowed at the option of the issuing authority.

(9) A licensee may renew a license if the licensee applies for renewal within ninety days before or after the expiration date of the license. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license must pay a late renewal penalty of ten dollars in addition to the renewal fee specified in subsection (6) of this section. The fee shall be distributed as follows:

(a) Three dollars shall be deposited in the state wildlife ((~~fund~~)) account and used exclusively first for the printing and distribution of a pamphlet on the legal limits of the use of firearms, firearms safety, and the preemptive nature of state law, and subsequently the support of volunteer instructors in the basic firearms safety training program conducted by the department of fish and wildlife. The pamphlet shall be given to each applicant for a license; and

(b) Seven dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(10) Notwithstanding the requirements of subsections (1) through (9) of this section, the chief of police of the municipality or the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section. However, a temporary

emergency license issued under this subsection shall not exempt the holder of the license from any records check requirement. Temporary emergency licenses shall be easily distinguishable from regular licenses.

(11) A political subdivision of the state shall not modify the requirements of this section or chapter, nor may a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(12) A person who knowingly makes a false statement regarding citizenship or identity on an application for a concealed pistol license is guilty of false swearing under RCW 9A.72.040. In addition to any other penalty provided for by law, the concealed pistol license of a person who knowingly makes a false statement shall be revoked, and the person shall be permanently ineligible for a concealed pistol license.

(13) A person may apply for a concealed pistol license:

(a) To the municipality or to the county in which the applicant resides if the applicant resides in a municipality;

(b) To the county in which the applicant resides if the applicant resides in an unincorporated area; or

(c) Anywhere in the state if the applicant is a nonresident.

(14) Any person who, as a member of the armed forces, including the national guard and armed forces reserves, is unable to renew his or her license under subsections (6) and (9) of this section because of the person's assignment, reassignment, or deployment for out-of-state military service may renew his or her license within ninety days after the person returns to this state from out-of-state military service, if the person provides the following to the issuing authority no later than ninety days after the person's date of discharge or assignment, reassignment, or deployment back to this state: (a) A copy of the person's original order designating the specific period of assignment, reassignment, or deployment for out-of-state military service, and (b) if appropriate, a copy of the person's discharge or amended or subsequent assignment, reassignment, or deployment order back to this state. A license so renewed under this subsection (14) shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license under this subsection (14) shall pay only the renewal fee specified in subsection (6) of this section and shall not be required to pay a late renewal penalty in addition to the renewal fee.

Passed by the Senate March 2, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 60

[Engrossed Substitute Senate Bill 5808]

FIRE PROTECTION DISTRICTS—ANNEXATION—UNINCORPORATED AREAS

AN ACT Relating to the annexation of unincorporated areas served by fire protection districts; amending RCW 35.10.360, 35.10.365, 35.13.130, 35.13.215, and 35.13.225; adding new sections to chapter 35.13 RCW; adding a new section to chapter 35.103 RCW; adding new sections to chapter 35A.14 RCW; and adding a new section to chapter 35A.92 RCW.

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

Sec. 1. RCW 35.10.360 and 1986 c 254 s 4 are each amended to read as follows:

(1) If any portion of a fire protection district is proposed for annexation to or incorporation into a city, code city, or town, both the fire protection district and the city, code city, or town shall jointly inform the employees of the fire protection district about hires, separations, terminations, and any other changes in employment that are a direct consequence of annexation or incorporations at the earliest reasonable opportunity.

(2) Upon the annexation of two or more cities or code cities, any employee of the fire department of the former city or cities who ((~~(1)~~)) (a) was at the time of annexation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire department of the annexed city or code city, as the case may be, ((~~(2)~~)) (b) will, as a direct consequence of annexation, be separated from the employ of the former city, code city or town, and ((~~(3)~~)) (c) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer employment to the fire department of the annexing city, as provided in this section and RCW 35.10.365 and 35.10.370.

(3) For purposes of this section and RCW 35.10.365 and 35.10.370, employee means an individual whose employment has been terminated because of annexation by a city, code city or town.

Sec. 2. RCW 35.10.365 and 1994 c 73 s 1 are each amended to read as follows:

(1) An eligible employee may transfer into the civil service system of the annexing city, code city, or town by filing a written request with the city, code city, or town civil service commission. Upon receipt of ((~~such~~)) the request by the civil service commission, the transfer of employment ((~~shall~~)) must be made. ((~~The employee so transferring will (a) be on probation for the same period as are new employees in the position filled, but if the transferring employee has already completed a probationary period as a firefighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period, (c) receive a salary at least equal to that of other new employees in the position filled, and (d) in all other matters, such as retirement, sick leave, and vacation, have, within the city, code city, or town civil service system, all the rights, benefits, and privileges to which he or she would have been entitled as a member of the annexed city, code city, or town fire department from the beginning of his or her employment with the former city or code city fire department: PROVIDED, That for purposes of layoffs by the annexing city or code city, only the time of service accrued with the annexing city or code city shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. A record of the employee's service with the former city or code city fire department shall be transmitted to the applicable civil service commission which shall be credited to such employee as a part of the period of employment in the annexed city, code city, or town fire department. All accrued benefits are transferable provided that the recipient~~

~~agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.~~

~~(2) As many of the transferring employees shall be placed upon the payroll of the annexing city, code city, or town fire department as the department determines are needed to provide services. These~~)) The needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.10.360 and 35.10.370 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the city, code city, or town fire department when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the city, code city, or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

(2)(a) Upon transfer, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district, including rights to:

(i) Compensation at least equal to the level of compensation at the time of transfer, unless the employee's rank and duties have been reduced as a result of the transfer. If the transferring employee is placed in a position with reduced rank and duties, the employee's compensation may be adjusted, but the adjustment may not result in a decrease of greater than fifty percent of the difference between the employee's compensation before the transfer and the compensation level for the position that the employee is transferred to;

(ii) Retirement, vacation, sick leave, and any other accrued benefit;

(iii) Promotion and service time accrual; and

(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) (a) of this subsection does not apply if upon transfer an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions.

(3) If upon transfer, the transferring employee receives the rights, benefits, and privileges established under subsection (2)(a)(i) through (iv) of this section, those rights, benefits, and privileges are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred.

(4) Such bargaining must take into account the years of service the transferring employee accumulated before the transfer and must be treated as if those years of service occurred in the jurisdiction to which the employee has transferred.

Sec. 3. RCW 35.13.130 and 1990 c 33 s 566 are each amended to read as follows:

A petition for annexation of an area contiguous to a city or town may be made in writing addressed to and filed with the legislative body of the municipality to which annexation is desired. Except where all the property sought to be annexed is property of a school district, and the school directors

thereof file the petition for annexation as in RCW 28A.335.110 authorized, the petition must be signed by the owners of not less than ((~~seventy-five~~)) sixty percent in value according to the assessed valuation for general taxation of the property for which annexation is petitioned: PROVIDED, That in cities and towns with populations greater than one hundred sixty thousand located east of the Cascade mountains, the owner of tax exempt property may sign an annexation petition and have the tax exempt property annexed into the city or town, but the value of the tax exempt property shall not be used in calculating the sufficiency of the required property owner signatures unless only tax exempt property is proposed to be annexed into the city or town. The petition shall set forth a description of the property according to government legal subdivisions or legal plats which is in compliance with RCW 35.02.170, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. If the legislative body has required the assumption of all or of any portion of city or town indebtedness by the area annexed, and/or the adoption of a comprehensive plan for the area to be annexed, these facts, together with a quotation of the minute entry of such requirement or requirements shall be set forth in the petition.

Sec. 4. RCW 35.13.215 and 1986 c 254 s 7 are each amended to read as follows:

(1) If any portion of a fire protection district is proposed for annexation to or incorporation into a city, code city, or town, both the fire protection district and the city, code city, or town shall jointly inform the employees of the fire protection district about hires, separations, terminations, and any other changes in employment that are a direct consequence of annexation or incorporations at the earliest reasonable opportunity.

(2) If any portion of a fire protection district is annexed to or incorporated into a city, code city or town, any employee of the fire protection district who ((~~(1)~~)) (a) was at the time of such annexation or incorporation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the city, code city or town fire department ((~~(2)~~)) (b) will, as a direct consequence of annexation or incorporation, be separated from the employ of the fire protection district, and ((~~(3)~~)) (c) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer employment to the civil service system of the city, code city or town fire department as provided for in this section and RCW 35.13.225 and 35.13.235.

(3) For purposes of this section and RCW 35.13.225 and 35.13.235, employee means an individual whose employment with a fire protection district has been terminated because the fire protection district was annexed by a city, code city or town for purposes of fire protection.

Sec. 5. RCW 35.13.225 and 1994 c 73 s 3 are each amended to read as follows:

(1) An eligible employee may transfer into the civil service system of the city, code city, or town fire department by filing a written request with the city, code city, or town civil service commission and by giving written notice ((~~thereof~~)) of the request to the board of commissioners of the fire protection district. Upon receipt of ((~~such~~)) the request by the civil service commission, the

transfer of employment ((~~shall~~)) must be made. ((~~The employee so transferring will (a) be on probation for the same period as are new employees of the city, code city, or town fire department in the position filled, but if the transferring employee has already completed a probationary period as a firefighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period, (c) receive a salary at least equal to that of other new employees of the city, code city, or town fire department in the position filled, and (d) in all other matters, such as retirement, sick leave, and vacation, have, within the city, code city, or town civil service system, all the rights, benefits, and privileges to which he or she would have been entitled as a member of the city, code city, or town fire department from the beginning of employment with the fire protection district: PROVIDED, That for purposes of layoffs by the annexing fire agency, only the time of service accrued with the annexing agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. The board of commissioners of the fire protection district shall, upon receipt of such notice, transmit to any applicable civil service commission a record of the employee's service with the fire protection district which shall be credited to such employee as a part of the period of employment in the city, code city, or town fire department. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.~~

~~(2) As many of the transferring employees shall be placed upon the payroll of the city, code city, or town fire department as the department determines are needed to provide services. These~~)) The needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.13.215 and 35.13.235 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the city, code city, or town fire department when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the city, code city, or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

(2)(a) Upon transfer, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district, including rights to:

(i) Compensation at least equal to the level of compensation at the time of transfer, unless the employee's rank and duties have been reduced as a result of the transfer. If the transferring employee is placed in a position with reduced rank and duties, the employee's compensation may be adjusted, but the adjustment may not result in a decrease of greater than fifty percent of the difference between the employee's compensation before the transfer and the compensation level for the position that the employee is transferred to;

(ii) Retirement, vacation, sick leave, and any other accrued benefit;

(iii) Promotion and service time accrual; and

(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) (a) of this subsection does not apply if upon transfer an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions.

(3) If upon transfer, the transferring employee receives the rights, benefits, and privileges established under subsection (2)(a)(i) through (iv) of this section, those rights, benefits, and privileges are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred.

(4) Such bargaining must take into account the years of service the transferring employee accumulated before the transfer and must be treated as if those years of service occurred in the jurisdiction to which the employee has transferred.

NEW SECTION. **Sec. 6.** A new section is added to chapter 35.13 RCW to read as follows:

Upon the written request of a fire protection district, cities and towns annexing territory under this chapter shall, prior to completing the annexation, issue a report regarding the likely effects that the annexation and any associated asset transfers may have upon the safety of residents within and outside the proposed annexation area. The report must address, but is not limited to, the provisions of fire protection and emergency medical services within and outside of the proposed annexation area. A fire protection district may only request a report under this section when at least five percent of the assessed valuation of the fire protection district will be annexed.

NEW SECTION. **Sec. 7.** A new section is added to chapter 35.13 RCW to read as follows:

(1)(a) An annexation by a city or town that is proposing to annex territory served by one or more fire protection districts may be accomplished by ordinance after entering into an interlocal agreement as provided in chapter 39.34 RCW with the county and the fire protection district or districts that have jurisdiction over the territory proposed for annexation.

(b) A city or town proposing to annex territory shall initiate the interlocal agreement process by sending notice to the fire protection district representative and county representative stating the city's or town's interest to enter into an interlocal agreement negotiation process. The parties have forty-five days to respond in the affirmative or negative. A negative response must state the reasons the parties do not wish to participate in an interlocal agreement negotiation. A failure to respond within the forty-five day period is deemed an affirmative response and the interlocal agreement negotiation process may proceed. The interlocal agreement process may not proceed if any negative responses are received within the forty-five day period.

(c) The interlocal agreement must describe the boundaries of the territory proposed for annexation and must be consistent with the boundaries identified in

an ordinance describing the boundaries of the territory proposed for annexation and setting a date for a public hearing on the ordinance. If the boundaries of the territory proposed for annexation are agreed to by all parties, a notice of intention must be filed with the boundary review board created under RCW 36.93.030. However, the jurisdiction of the board may not be invoked as described in RCW 36.93.100 for annexations that are the subject of such agreement.

(2) An interlocal annexation agreement under this section must include the following:

(a) A statement of the goals of the agreement. Goals must include, but are not limited to:

(i) The transfer of revenues and assets between the fire protection districts and the city or town;

(ii) A consideration and discussion of the impact to the level of service of annexation on the unincorporated area, and an agreement that the impact on the ability of fire protection and emergency medical services within the incorporated area must not be negatively impacted at least through the budget cycle in which the annexation occurs;

(iii) A discussion with fire protection districts regarding the division of assets and its impact to citizens inside and outside the newly annexed area;

(iv) Community involvement, including an agreed upon schedule of public meetings in the area or areas proposed for annexation;

(v) Revenue sharing, if any;

(vi) Debt distribution;

(vii) Capital facilities obligations of the city, county, and fire protection districts;

(viii) An overall schedule or plan on the timing of any annexations covered under this agreement; and

(ix) A description of which of the annexing cities' development regulations will apply and be enforced in the area.

(b) The subject areas and policies and procedures the parties agree to undertake in annexations. Subject areas may include, but are not limited to:

(i) Roads and traffic impact mitigation;

(ii) Surface and storm water management;

(iii) Coordination and timing of comprehensive plan and development regulation updates;

(iv) Outstanding bonds and special or improvement district assessments;

(v) Annexation procedures;

(vi) Distribution of debt and revenue sharing for annexation proposals, code enforcement, and inspection services;

(vii) Financial and administrative services; and

(viii) Consultation with other service providers, including water-sewer districts, if applicable.

(c) A term of at least five years, which may be extended by mutual agreement of the city or town, the county, and the fire protection district.

(3) If the fire protection district, annexing city or town, and county reach an agreement on the enumerated goals, the annexation ordinance may proceed and is not subject to referendum. If only the annexing city or town and county reach an agreement on the enumerated goals, the city or town and county may proceed

with annexation under the interlocal agreement, but the annexation ordinance provided for in this section is subject to referendum for forty-five days after its passage. Upon the filing of a timely and sufficient referendum petition with the legislative body of the city or town, signed by qualified electors in a number not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation must be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose according to RCW 29A.04.330. Notice of the election must be given as provided in RCW 35.13.080, and the election must be conducted as provided in the general election laws under Title 29A RCW. The annexation must be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition to the annexation.

After the expiration of the forty-fifth day from, but excluding, the date of passage of the annexation ordinance, if a timely and sufficient referendum petition has not been filed, the area annexed becomes a part of the city or town upon the date fixed in the ordinance of annexation.

(4) If any portion of a fire protection district is proposed for annexation to or incorporation into a city or town, both the fire protection district and the city or town shall jointly inform the employees of the fire protection district about hires, separations, terminations, and any other changes in employment that are a direct consequence of annexation or incorporation at the earliest reasonable opportunity.

(5) The needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.10.360 and 35.10.370 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the city or town fire department when appropriate positions become available. Employees who are not immediately hired by the city or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

(6)(a) Upon transfer, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district, including rights to:

(i) Compensation at least equal to the level of compensation at the time of transfer, unless the employee's rank and duties have been reduced as a result of the transfer. If the transferring employee is placed in a position with reduced rank and duties, the employee's compensation may be adjusted, but the adjustment may not result in a decrease of greater than fifty percent of the difference between the employee's compensation before the transfer and the compensation level for the position that the employee is transferred to;

(ii) Retirement, vacation, sick leave, and any other accrued benefit;

(iii) Promotion and service time accrual; and

(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) (a) of this subsection does not apply if upon transfer an agreement for different terms of transfer is reached between the collective bargaining

representatives of the transferring employees and the participating fire protection jurisdictions.

(7) If upon transfer, the transferring employee receives the rights, benefits, and privileges established under subsection (6)(a)(i) through (iv) of this section, those rights, benefits, and privileges are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred.

(8) Such bargaining must take into account the years of service the transferring employee accumulated before the transfer and must be treated as if those years of service occurred in the jurisdiction to which the employee has transferred.

NEW SECTION. **Sec. 8.** A new section is added to chapter 35.103 RCW to read as follows:

Cities and towns conducting annexations of all or part of fire protection districts shall, at least through the budget cycle, or the following budget cycle if the annexation occurs in the last half of the current budget cycle, in which the annexation occurs, maintain existing fire protection and emergency services response times in the newly annexed areas consistent with response times recorded prior to the annexation as defined in the previous annual report for the fire protection district and as reported in RCW 52.33.040. If the city or town is unable to maintain these service levels in the newly annexed area, the transfer of firefighters from the annexed fire protection district as a direct result of the annexation must occur pursuant to section 7(4) through (8) of this act.

NEW SECTION. **Sec. 9.** A new section is added to chapter 35A.14 RCW to read as follows:

(1)(a) An annexation by a code city proposing to annex territory served by one or more fire protection districts may be accomplished by ordinance after entering into an interlocal agreement as provided in chapter 39.34 RCW with the county and the fire protection district or districts that have jurisdiction over the territory proposed for annexation.

(b) A code city proposing to annex territory shall initiate the interlocal agreement process by sending notice to the fire protection district representative and county representative stating the code city's interest to enter into an interlocal agreement negotiation process. The parties have forty-five days to respond in the affirmative or negative. A negative response must state the reasons the parties do not wish to participate in an interlocal agreement negotiation. A failure to respond within the forty-five day period is deemed an affirmative response and the interlocal agreement negotiation process may proceed. The interlocal agreement process may not proceed if any negative responses are received within the forty-five day period.

(c) The interlocal agreement must describe the boundaries of the territory proposed for annexation and must be consistent with the boundaries identified in an ordinance describing the boundaries of the territory proposed for annexation and setting a date for a public hearing on the ordinance. If the boundaries of the territory proposed for annexation are agreed to by all parties, a notice of intention must be filed with the boundary review board created under RCW 36.93.030. However, the jurisdiction of the board may not be invoked as

described in RCW 36.93.100 for annexations that are the subject of such agreement.

(2) An interlocal annexation agreement under this section must include the following:

(a) A statement of the goals of the agreement. Goals must include, but are not limited to:

(i) The transfer of revenues and assets between the fire protection district and the code city;

(ii) A consideration and discussion of the impact to the level of service of annexation on the unincorporated area, and an agreement that the impact on the ability of fire protection and emergency medical services within the incorporated area must not be negatively impacted at least through the budget cycle in which the annexation occurs;

(iii) A discussion with fire protection districts regarding the division of assets and its impact to citizens inside and outside the newly annexed area;

(iv) Community involvement, including an agreed upon schedule of public meetings in the area or areas proposed for annexation;

(v) Revenue sharing, if any;

(vi) Debt distribution;

(vii) Capital facilities obligations of the code city, county, and fire protection districts;

(viii) An overall schedule or plan on the timing of any annexations covered under this agreement; and

(ix) A description of which of the annexing code cities' development regulations will apply and be enforced in the area.

(b) The subject areas and policies and procedures the parties agree to undertake in annexations. Subject areas may include, but are not limited to:

(i) Roads and traffic impact mitigation;

(ii) Surface and storm water management;

(iii) Coordination and timing of comprehensive plan and development regulation updates;

(iv) Outstanding bonds and special or improvement district assessments;

(v) Annexation procedures;

(vi) Distribution of debt and revenue sharing for annexation proposals, code enforcement, and inspection services;

(vii) Financial and administrative services; and

(viii) Consultation with other service providers, including water-sewer districts, if applicable.

(c) A term of at least five years, which may be extended by mutual agreement of the code city, the county, and the fire protection district.

(3) If the fire protection district, annexing code city, and county reach an agreement on the enumerated goals, the annexation ordinance may proceed and is not subject to referendum. If only the annexing code city and county reach an agreement on the enumerated goals, the code city and county may proceed with annexation under the interlocal agreement, but the annexation ordinance provided for in this section is subject to referendum for forty-five days after its passage. Upon the filing of a timely and sufficient referendum petition with the legislative body of the code city, signed by qualified electors in a number not less than ten percent of the votes cast in the last general state election in the area

to be annexed, the question of annexation must be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose according to RCW 29A.04.330. Notice of the election must be given as provided in RCW 35A.14.070, and the election must be conducted as provided in the general election laws under Title 29A RCW. The annexation must be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition to the annexation.

After the expiration of the forty-fifth day from, but excluding, the date of passage of the annexation ordinance, if a timely and sufficient referendum petition has not been filed, the area annexed becomes a part of the code city upon the date fixed in the ordinance of annexation.

NEW SECTION. **Sec. 10.** A new section is added to chapter 35A.14 RCW to read as follows:

(1) If any portion of a fire protection district is proposed for annexation to or incorporation into a code city, both the fire protection district and the code city shall jointly inform the employees of the fire protection district about hires, separations, terminations, and any other changes in employment that are a direct consequence of annexation or incorporation at the earliest reasonable opportunity.

(2) An eligible employee may transfer into the civil service system of the code city fire department by filing a written request with the code city civil service commission and by giving written notice of the request to the board of commissioners of the fire protection district. Upon receipt of the request by the civil service commission, the transfer of employment must be made. The needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.10.360 and 35.10.370 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the code city fire department when appropriate positions become available. Employees who are not immediately hired by the code city shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

(3)(a) Upon transfer, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district, including rights to:

(i) Compensation at least equal to the level of compensation at the time of transfer, unless the employee's rank and duties have been reduced as a result of the transfer. If the transferring employee is placed in a position with reduced rank and duties, the employee's compensation may be adjusted, but the adjustment may not result in a decrease of greater than fifty percent of the difference between the employee's compensation before the transfer and the compensation level for the position that the employee is transferred to;

(ii) Retirement, vacation, sick leave, and any other accrued benefit;

(iii) Promotion and service time accrual; and

(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) (a) of this subsection does not apply if upon transfer an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions.

(4) If upon transfer, the transferring employee receives the rights, benefits, and privileges established under subsection (3)(a)(i) through (iv) of this section, those rights, benefits, and privileges are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred.

(5) Such bargaining must take into account the years of service the transferring employee accumulated before the transfer and must be treated as if those years of service occurred in the jurisdiction to which the employee has transferred.

NEW SECTION. **Sec. 11.** A new section is added to chapter 35A.14 RCW to read as follows:

Upon the written request of a fire protection district, code cities annexing territory under this chapter shall, prior to completing the annexation, issue a report regarding the likely effects that the annexation and any associated asset transfers may have upon the safety of residents within and outside the proposed annexation area. The report must address, but is not limited to, the provisions of fire protection and emergency medical services within and outside of the proposed annexation area. A fire protection district may only request a report under this section when at least five percent of the assessed valuation of the fire protection district will be annexed.

NEW SECTION. **Sec. 12.** A new section is added to chapter 35A.92 RCW to read as follows:

Code cities conducting annexations of all or part of fire protection districts shall, at least through the budget cycle, or the following budget cycle if the annexation occurs in the last half of the current budget cycle, in which the annexation occurs, maintain existing fire protection and emergency services response times in the newly annexed areas consistent with response times recorded prior to the annexation as defined in the previous annual report for the fire protection district and as reported in RCW 52.33.040. If the code city is unable to maintain these service levels in the newly annexed area, the transfer of firefighters from the annexed fire protection district as a direct result of the annexation must occur as outlined in section 10 of this act.

Passed by the Senate March 6, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 61

[Senate Bill 5832]

STATUTES OF LIMITATION—SEX OFFENSES—AGE OF VICTIM

AN ACT Relating to allowing the prosecution of sex offenses against minor victims until the victim's twenty-eighth birthday if the offense is listed in RCW 9A.04.080(1) (b)(iii)(A) or (c); and amending RCW 9A.04.080.

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

Sec. 1. RCW 9A.04.080 and 2006 c 132 s 1 are each amended to read as follows:

(1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

(i) Murder;

(ii) Homicide by abuse;

(iii) Arson if a death results;

(iv) Vehicular homicide;

(v) Vehicular assault if a death results;

(vi) Hit-and-run injury-accident if a death results (RCW 46.52.020(4)).

(b) The following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results; or

(iii)(A) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is reported to a law enforcement agency within one year of its commission; except that if the victim is under fourteen years of age when the rape is committed and the rape is reported to a law enforcement agency within one year of its commission, the violation may be prosecuted up to ((~~three years after~~)) the victim's ((~~eighteenth~~)) twenty-eighth birthday ((~~or up to ten years after the rape's commission, whichever is later~~)).

(B) If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted: (((~~(A)~~))) (I) More than three years after its commission if the violation was committed against a victim fourteen years of age or older; or (((~~(B)~~))) (II) more than three years after the victim's eighteenth birthday or more than seven years after the rape's commission, whichever is later, if the violation was committed against a victim under fourteen years of age.

(c) Violations of the following statutes ((~~shall not~~)) may be prosecuted ((~~more than three years after~~)) up to the victim's ((~~eighteenth~~)) twenty-eighth birthday ((~~or more than seven years after their commission, whichever is later~~)): RCW 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, 9A.44.070, 9A.44.080, 9A.44.100(1)(b), 9A.44.079, 9A.44.089, or 9A.64.020.

(d) The following offenses shall not be prosecuted more than six years after their commission: Violations of RCW 9A.82.060 or 9A.82.080.

(e) The following offenses shall not be prosecuted more than five years after their commission: Any class C felony under chapter 74.09, 82.36, or 82.38 RCW.

(f) Bigamy shall not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(g) A violation of RCW 9A.56.030 must not be prosecuted more than three years after the discovery of the offense when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

(h) No other felony may be prosecuted more than three years after its commission; except that in a prosecution under RCW 9A.44.115, if the person

who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed, or filmed.

(i) No gross misdemeanor may be prosecuted more than two years after its commission.

(j) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) In any prosecution for a sex offense as defined in RCW 9.94A.030, the periods of limitation prescribed in subsection (1) of this section run from the date of commission or one year from the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid testing, whichever is later.

(4) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside.

Passed by the Senate March 4, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 62

[Senate Bill 5903]

PUBLIC WORKS CONTRACTS—RESIDENTIAL CONSTRUCTION

AN ACT Relating to public works contracts for residential construction; and amending RCW 39.12.030.

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

Sec. 1. RCW 39.12.030 and 1989 c 12 s 9 are each amended to read as follows:

(1) The specifications for every contract for the construction, reconstruction, maintenance or repair of any public work to which the state or any county, municipality, or political subdivision created by its laws is a party, shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation required for such public work employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall contain a stipulation that such laborers, workers, or mechanics shall be paid not less than such specified hourly minimum rate of wage. If the awarding agency determines that the work

contracted for meets the definition of residential construction, the contract must include that information.

(2) If the hourly minimum rate of wage stated in the contract specifies residential construction rates and it is later determined that the work performed is commercial and subject to commercial construction rates, the state, county, municipality, or political subdivision that entered into the contract must pay the difference between the residential rate stated and the actual commercial rate to the contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work under the contract.

Passed by the Senate March 6, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 63

[Substitute Senate Bill 5904]

PREVAILING WAGE—PUBLIC WORKS—INDEPENDENT CONTRACTOR

AN ACT Relating to defining independent contractor for purposes of prevailing wage; and adding a new section to chapter 39.12 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 39.12 RCW to read as follows:

For the purposes of this chapter, an individual employed on a public works project is not considered to be a laborer, worker, or mechanic when:

(1) The individual has been and is free from control or direction over the performance of the service, both under the contract of service and in fact;

(2) The service is either outside the usual course of business for the contractor or contractors for whom the individual performs services, or the service is performed outside all of the places of business of the enterprise for which the individual performs services, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract of service, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of

all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and

(7) On the effective date of the contract of service, if the nature of the work performed requires registration under chapter 18.27 RCW or licensure under chapter 19.28 RCW, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW.

Passed by the Senate March 7, 2009.
Passed by the House April 1, 2009.
Approved by the Governor April 10, 2009.
Filed in Office of Secretary of State April 13, 2009.

CHAPTER 64

[Substitute House Bill 1328]

TECHNICAL COLLEGES—ASSOCIATE DEGREES

AN ACT Relating to allowing public technical colleges to offer associate degrees; amending RCW 28B.50.020, 28B.50.030, 28B.50.090, and 28B.50.140; 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 allow public technical colleges under the authority of the state board for community and technical colleges to offer associate degrees that prepare students for transfer to bachelor's degrees in professional fields, subject to rules adopted by the state board for community and technical colleges.

Sec. 2. RCW 28B.50.020 and 2005 c 258 s 7 are each amended to read as follows:

The purpose of this chapter is to provide for the dramatically increasing number of students requiring high standards of education either as a part of the continuing higher education program or for occupational education and training, or for adult basic skills and literacy education, by creating a new, independent system of community and technical colleges which will:

(1) Offer an open door to every citizen, regardless of his or her academic background or experience, at a cost normally within his or her economic means;

(2) Ensure that each college district shall offer thoroughly comprehensive educational, training, and service programs to meet the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and workforce literacy programs and services((~~. However, college districts containing only technical colleges shall maintain programs solely for occupational education, basic skills, and literacy purposes, and, for as long as a need exists, may continue those programs, activities, and services offered by the technical colleges during the twelve-month period preceding September 1, 1991~~));

(3) Provide for basic skills and literacy education, and occupational education and technical training at technical colleges in order to prepare students for careers in a competitive workforce;

(4) Provide or coordinate related and supplemental instruction for apprentices at community and technical colleges;

(5) Provide administration by state and local boards which will avoid unnecessary duplication of facilities or programs; and which will encourage efficiency in operation and creativity and imagination in education, training, and service to meet the needs of the community and students;

(6) Allow for the growth, improvement, flexibility and modification of the community colleges and their education, training, and service programs as future needs occur; and

(7) Establish firmly that, except on a pilot basis as provided under RCW 28B.50.810, community colleges are, for purposes of academic training, two year institutions, and are an independent, unique, and vital section of our state's higher education system, separate from both the common school system and other institutions of higher learning, and never to be considered for conversion into four-year liberal arts colleges.

Sec. 3. RCW 28B.50.030 and 2007 c 277 s 301 are each amended to read as follows:

((~~As used in~~)) The definitions in this section apply throughout this chapter((~~,~~)) unless the context clearly requires otherwise((~~, the term:~~)).

(1) "System" ((~~shall~~)) means the state system of community and technical colleges, which shall be a system of higher education.

(2) "Board" ((~~shall~~)) means the workforce training and education coordinating board.

(3) "College board" ((~~shall~~)) means the state board for community and technical colleges created by this chapter.

(4) "Director" ((~~shall~~)) means the administrative director for the state system of community and technical colleges.

(5) "District" ((~~shall~~)) means any one of the community and technical college districts created by this chapter.

(6) "Board of trustees" ((~~shall~~)) means the local community and technical college board of trustees established for each college district within the state.

(7) "Occupational education" ((~~shall~~)) means ((~~that~~)) education or training that will prepare a student for employment that does not require a baccalaureate degree, and education and training ((~~leading to an applied baccalaureate degree~~)) that will prepare a student for transfer to bachelor's degrees in professional fields, subject to rules adopted by the college board.

(8) "K-12 system" ((~~shall~~)) means the public school program including kindergarten through the twelfth grade.

(9) "Common school board" ((~~shall~~)) means a public school district board of directors.

(10) "Community college" ((~~shall~~)) includes those higher education institutions that conduct education programs under RCW 28B.50.020.

(11) "Technical college" ((~~shall~~)) includes those higher education institutions with the ((~~sole~~)) mission of conducting occupational education, basic skills, literacy programs, and offering on short notice, when appropriate, programs that meet specific industry needs. ((~~The programs of technical~~

~~colleges shall include, but not be limited to, continuous enrollment, competency-based instruction, industry-experienced faculty, curriculum integrating vocational and basic skills education, and curriculum approved by representatives of employers and labor.~~)) For purposes of this chapter, technical colleges shall include Lake Washington Vocational-Technical Institute, Renton Vocational-Technical Institute, Bates Vocational-Technical Institute, Clover Park Vocational Institute, and Bellingham Vocational-Technical Institute.

(12) "Adult education" ((~~shall~~)) means all education or instruction, including academic, vocational education or training, basic skills and literacy training, and "occupational education" provided by public educational institutions, including common school districts for persons who are eighteen years of age and over or who hold a high school diploma or certificate. However, "adult education" shall not include academic education or instruction for persons under twenty-one years of age who do not hold a high school degree or diploma and who are attending a public high school for the sole purpose of obtaining a high school diploma or certificate, nor shall "adult education" include education or instruction provided by any four-year public institution of higher education.

(13) "Dislocated forest product worker" ((~~shall~~)) means a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business' services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(14) "Forest products worker" ((~~shall~~)) means a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries assigned the major group standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment. The commissioner may adopt rules further interpreting these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(3).

(15) "Dislocated salmon fishing worker" means a finfish products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(16) "Salmon fishing worker" means a worker in the finfish industry affected by 1994 or future salmon disasters. The workers included within this

definition shall be determined by the employment security department, but shall include workers employed in the industries involved in the commercial and recreational harvesting of finfish including buying and processing finfish. The commissioner may adopt rules further interpreting these definitions.

(17) "Rural natural resources impact area" means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets three of the five criteria set forth in subsection (18) of this section;

(b) A nonmetropolitan county with a population of less than forty thousand in the 1990 decennial census, that meets two of the five criteria as set forth in subsection (18) of this section; or

(c) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets three of the five criteria set forth in subsection (18) of this section.

(18) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area of which any part is ten miles or more from an urbanized area is considered nonurbanized. A zip code totally surrounded by zip codes qualifying as nonurbanized under this definition is also considered nonurbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

(19) "Applied baccalaureate degree" means a baccalaureate degree awarded by a college under RCW 28B.50.810 for successful completion of a program of study that is:

(a) Specifically designed for individuals who hold an associate of applied science degree, or its equivalent, in order to maximize application of their technical course credits toward the baccalaureate degree; and

(b) Based on a curriculum that incorporates both theoretical and applied knowledge and skills in a specific technical field.

(20) "Qualified institutions of higher education" means:

(a) Washington public community and technical colleges;

(b) Private career schools that are members of an accrediting association recognized by rule of the higher education coordinating board for the purposes of chapter 28B.92 RCW; and

(c) Washington state apprenticeship and training council-approved apprenticeship programs.

Sec. 4. RCW 28B.50.090 and 2004 c 275 s 57 are each amended to read as follows:

The college board shall have general supervision and control over the state system of community and technical colleges. In addition to the other powers and duties imposed upon the college board by this chapter, the college board shall be charged with the following powers, duties and responsibilities:

(1) Review the budgets prepared by the boards of trustees, prepare a single budget for the support of the state system of community and technical colleges and adult education, and submit this budget to the governor as provided in RCW 43.88.090;

(2) Establish guidelines for the disbursement of funds; and receive and disburse such funds for adult education and maintenance and operation and capital support of the college districts in conformance with the state and district budgets, and in conformance with chapter 43.88 RCW;

(3) Ensure, through the full use of its authority:

(a) That each college district shall offer thoroughly comprehensive educational, training, and service programs to meet the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; and community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and workforce literacy programs and services((~~. However, technical colleges, and college districts containing only technical colleges, shall maintain programs solely for occupational education, basic skills, and literacy purposes. For as long as a need exists, technical colleges may continue those programs, activities, and services they offered during the twelve-month period preceding May 17, 1991~~));

(b) That each college district shall maintain an open-door policy, to the end that no student will be denied admission because of the location of the student's residence or because of the student's educational background or ability; that, insofar as is practical in the judgment of the college board, curriculum offerings will be provided to meet the educational and training needs of the community generally and the students thereof; and that all students, regardless of their differing courses of study, will be considered, known and recognized equally as members of the student body: PROVIDED, That the administrative officers of a community or technical college may deny admission to a prospective student or attendance to an enrolled student if, in their judgment, the student would not be competent to profit from the curriculum offerings of the college, or would, by his or her presence or conduct, create a disruptive atmosphere within the college not consistent with the purposes of the institution. This subsection (3)(b) shall not apply to competency, conduct, or presence associated with a disability in a person twenty-one years of age or younger attending a technical college;

(4) Prepare a comprehensive master plan for the development of community and technical college education and training in the state; and assist the office of financial management in the preparation of enrollment projections to support plans for providing adequate college facilities in all areas of the state. The master plan shall include implementation of the vision, goals, priorities, and strategies in the statewide strategic master plan for higher education under RCW 28B.76.200 based on the community and technical college system's role and

mission. The master plan shall also contain measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities;

(5) Define and administer criteria and guidelines for the establishment of new community and technical colleges or campuses within the existing districts;

(6) Establish criteria and procedures for modifying district boundary lines consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended and in accordance therewith make such changes as it deems advisable;

(7) Establish minimum standards to govern the operation of the community and technical colleges with respect to:

(a) Qualifications and credentials of instructional and key administrative personnel, except as otherwise provided in the state plan for vocational education,

(b) Internal budgeting, accounting, auditing, and financial procedures as necessary to supplement the general requirements prescribed pursuant to chapter 43.88 RCW,

(c) The content of the curriculums and other educational and training programs, and the requirement for degrees and certificates awarded by the colleges,

(d) Standard admission policies,

(e) Eligibility of courses to receive state fund support;

(8) Establish and administer criteria and procedures for all capital construction including the establishment, installation, and expansion of facilities within the various college districts;

(9) Encourage innovation in the development of new educational and training programs and instructional methods; coordinate research efforts to this end; and disseminate the findings thereof;

(10) Exercise any other powers, duties and responsibilities necessary to carry out the purposes of this chapter;

(11) Authorize the various community and technical colleges to offer programs and courses in other districts when it determines that such action is consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended;

(12) Notwithstanding any other law or statute regarding the sale of state property, sell or exchange and convey any or all interest in any community and technical college real and personal property, except such property as is received by a college district in accordance with RCW 28B.50.140(8), when it determines that such property is surplus or that such a sale or exchange is in the best interests of the community and technical college system;

(13) In order that the treasurer for the state board for community and technical colleges appointed in accordance with RCW 28B.50.085 may make vendor payments, the state treasurer will honor warrants drawn by the state board providing for an initial advance on July 1, 1982, of the current biennium and on July 1 of each succeeding biennium from the state general fund in an amount equal to twenty-four percent of the average monthly allotment for such budgeted biennium expenditures for the state board for community and technical colleges as certified by the office of financial management; and at the conclusion of such initial month and for each succeeding month of any biennium, the state treasurer will reimburse expenditures incurred and reported monthly by the state board treasurer in accordance with chapter 43.88 RCW: PROVIDED, That the

reimbursement to the state board for actual expenditures incurred in the final month of each biennium shall be less the initial advance made in such biennium;

(14) Notwithstanding the provisions of subsection (12) of this section, may receive such gifts, grants, conveyances, devises, and bequests of real or personal property from private sources as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs and may sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof; and

(15) The college board shall have the power of eminent domain((;

~~(16) Provide general supervision over the state's technical colleges. The president of each technical college shall report directly to the director of the state board for community and technical colleges, or the director's designee, until local control is assumed by a new or existing board of trustees as appropriate, except that a college president shall have authority over program decisions of his or her college until the establishment of a board of trustees for that college. The directors of the vocational technical institutes on March 1, 1991, shall be designated as the presidents of the new technical colleges~~)).

Sec. 5. RCW 28B.50.140 and 2005 c 258 s 9 are each amended to read as follows:

Each board of trustees:

(1) Shall operate all existing community and technical colleges in its district;

(2) Shall create comprehensive programs of community and technical college education and training and maintain an open-door policy in accordance with the provisions of RCW 28B.50.090(3)((~~. However, technical colleges, and college districts containing only technical colleges, shall maintain programs solely for occupational education, basic skills, and literacy purposes. For as long as a need exists, technical colleges may continue those programs, activities, and services they offered during the twelve-month period preceding September 1, 1991~~));

(3) Shall employ for a period to be fixed by the board a college president for each community and technical college and, may appoint a president for the district, and fix their duties and compensation, which may include elements other than salary. Compensation under this subsection shall not affect but may supplement retirement, health care, and other benefits that are otherwise applicable to the presidents as state employees. The board shall also employ for a period to be fixed by the board members of the faculty and such other administrative officers and other employees as may be necessary or appropriate and fix their salaries and duties. Compensation and salary increases under this subsection shall not exceed the amount or percentage established for those purposes in the state appropriations act by the legislature as allocated to the board of trustees by the state board for community and technical colleges. The state board for community and technical colleges shall adopt rules defining the permissible elements of compensation under this subsection;

(4) May establish, under the approval and direction of the college board, new facilities as community needs and interests demand. However, the authority

of boards of trustees to purchase or lease major off-campus facilities shall be subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230;

(5) May establish or lease, operate, equip and maintain dormitories, food service facilities, bookstores and other self-supporting facilities connected with the operation of the community and technical college;

(6) May, with the approval of the college board, borrow money and issue and sell revenue bonds or other evidences of indebtedness for the construction, reconstruction, erection, equipping with permanent fixtures, demolition and major alteration of buildings or other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances, for dormitories, food service facilities, and other self-supporting facilities connected with the operation of the community and technical college in accordance with the provisions of RCW 28B.10.300 through 28B.10.330 where applicable;

(7) May establish fees and charges for the facilities authorized hereunder, including reasonable rules and regulations for the government thereof, not inconsistent with the rules of the college board; each board of trustees operating a community and technical college may enter into agreements, subject to rules of the college board, with owners of facilities to be used for housing regarding the management, operation, and government of such facilities, and any board entering into such an agreement may:

(a) Make rules for the government, management and operation of such housing facilities deemed necessary or advisable; and

(b) Employ necessary employees to govern, manage and operate the same;

(8) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs as specified by law and the rules of the state college board; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits and income thereof;

(9) May establish and maintain night schools whenever in the discretion of the board of trustees it is deemed advisable, and authorize classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for community and technical college purposes;

(10) May make rules for pedestrian and vehicular traffic on property owned, operated, or maintained by the district;

(11) Shall prescribe, with the assistance of the faculty, the course of study in the various departments of the community and technical college or colleges under its control, and publish such catalogues and bulletins as may become necessary;

(12) May grant to every student, upon graduation or completion of a course of study, a suitable diploma, degree, or certificate((~~. Technical colleges shall offer only technical degrees~~)) under the rules of the state board for community and technical colleges that are appropriate to their ((~~workforce education and training~~)) mission. The ((~~primary~~)) purposes of these diplomas, certificates, and degrees ((~~is~~)) are to lead ((~~the~~)) individuals directly to employment in a specific

occupation or prepare individuals for a bachelor's degree or beyond. Technical colleges may ((~~not~~)) only offer transfer degrees that prepare students for bachelor's degrees in professional fields, subject to rules adopted by the college board. In adopting rules, the college board, where possible, shall create consistency between community and technical colleges and may address issues related to tuition and fee rates; tuition waivers; enrollment counting, including the use of credits instead of clock hours; degree granting authority; or any other rules necessary to offer the associate degrees that prepare students for transfer to bachelor's degrees in professional areas. Only pilot colleges under RCW 28B.50.810 may award baccalaureate degrees. The board, upon recommendation of the faculty, may also confer honorary associate of arts degrees upon persons other than graduates of the community college, in recognition of their learning or devotion to education, literature, art, or science. No degree may be conferred in consideration of the payment of money or the donation of any kind of property;

(13) Shall enforce the rules prescribed by the state board for community and technical colleges for the government of community and technical colleges, students and teachers, and adopt such rules and perform all other acts not inconsistent with law or rules of the state board for community and technical colleges as the board of trustees may in its discretion deem necessary or appropriate to the administration of college districts: PROVIDED, That such rules shall include, but not be limited to, rules relating to housing, scholarships, conduct at the various community and technical college facilities, and discipline: PROVIDED, FURTHER, That the board of trustees may suspend or expel from community and technical colleges students who refuse to obey any of the duly adopted rules;

(14) May, by written order filed in its office, delegate to the president or district president any of the powers and duties vested in or imposed upon it by this chapter. Such delegated powers and duties may be exercised in the name of the district board;

(15) May perform such other activities consistent with this chapter and not in conflict with the directives of the college board;

(16) Notwithstanding any other provision of law, may offer educational services on a contractual basis other than the tuition and fee basis set forth in chapter 28B.15 RCW for a special fee to private or governmental entities, consistent with rules adopted by the state board for community and technical colleges: PROVIDED, That the whole of such special fee shall go to the college district and be not less than the full instructional costs of such services including any salary increases authorized by the legislature for community and technical college employees during the term of the agreement: PROVIDED FURTHER, That enrollments generated hereunder shall not be counted toward the official enrollment level of the college district for state funding purposes;

(17) Notwithstanding any other provision of law, may offer educational services on a contractual basis, charging tuition and fees as set forth in chapter 28B.15 RCW, counting such enrollments for state funding purposes, and may additionally charge a special supplemental fee when necessary to cover the full instructional costs of such services: PROVIDED, That such contracts shall be subject to review by the state board for community and technical colleges and to such rules as the state board may adopt for that purpose in order to assure that

the sum of the supplemental fee and the normal state funding shall not exceed the projected total cost of offering the educational service: PROVIDED FURTHER, That enrollments generated by courses offered on the basis of contracts requiring payment of a share of the normal costs of the course will be discounted to the percentage provided by the college;

(18) Shall be authorized to pay dues to any association of trustees that may be formed by the various boards of trustees; such association may expend any or all of such funds to submit biennially, or more often if necessary, to the governor and to the legislature, the recommendations of the association regarding changes which would affect the efficiency of such association;

(19) May participate in higher education centers and consortia that involve any four-year public or independent college or university: PROVIDED, That new degree programs or off-campus programs offered by a four-year public or independent college or university in collaboration with a community or technical college are subject to approval by the higher education coordinating board under RCW 28B.76.230; and

(20) Shall perform any other duties and responsibilities imposed by law or rule of the state board.

Passed by the House March 5, 2009.
Passed by the Senate April 2, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 65

[Engrossed Second Substitute House Bill 1007]
SUSTAINABLE ENERGY TRUST

AN ACT Relating to creating a sustainable energy trust; amending RCW 43.180.020; adding a new section to chapter 43.180 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** The legislature intends to promote the development of renewable energy technologies and the application of energy efficiency measures by authorizing the issuance of revenue bonds to finance renewable energy and energy efficiency improvement costs. The legislature finds that by providing access to low-cost capital to finance renewable energy and energy efficiency projects, a key barrier is eliminated.

Sec. 2. RCW 43.180.020 and 1990 c 167 s 1 are each amended to read as follows:

((~~Unless the context clearly requires otherwise,~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bonds" means the bonds, notes, or other evidences of indebtedness of the commission, the interest paid on which may or may not qualify for tax exemption.

(2) "Certifying authority" means: (a) For improvements involving solar electric systems, the Washington climate and rural energy development center at Washington State University, established under RCW 28B.30.642; or (b) for all other energy efficiency and renewable energy improvements, any utility

company or other institution qualified to assess and certify the feasibility and benefit of energy efficiency and renewable energy improvements in a manner that is efficient and minimizes the amount of time or cost.

(3) "Code" means the federal internal revenue code of 1954, as now or hereafter amended, and the regulations and rulings promulgated thereunder.

((~~(3)~~)) (4) "Commission" means the Washington state housing finance commission or any board, body, commission, department, or officer succeeding to the principal functions thereof or to whom the powers conferred upon the commission shall be given by law.

((~~(4)~~)) (5) "Costs of housing" means all costs related to the development, design, acquisition, construction, reconstruction, leasing, rehabilitation, and other improvements of housing, as determined by the commission.

((~~(5)~~)) (6) "Eligible applicant" means, with respect to the sustainable energy trust program, an owner of a residential, agricultural, commercial, state, or municipal property.

(7) "Eligible person" means a person or family eligible in accordance with standards promulgated by the commission. Such persons shall include those persons whose income is insufficient to obtain at a reasonable cost, without financial assistance, decent, safe, and sanitary housing in the area in which the person or family resides, and may include such other persons whom the commission determines to be eligible.

((~~(6)~~)) (8) "Energy efficiency improvement" means an installation or modification that is designed to reduce energy consumption in residential, agricultural, commercial, state, or municipal properties. The term includes, but is not limited to: Insulation; storm windows and doors; automatic energy control systems; heating, ventilating, or air conditioning and distribution system modifications or replacements in buildings or central plants; caulking and weather stripping; energy recovery systems; geothermal heat pumps; and day lighting systems.

(9) "Housing" means specific new, existing, or improved residential dwellings within this state or dwellings to be constructed within this state. The term includes land, buildings, and manufactured dwellings, and improvements, furnishings, and equipment, and such other nonhousing facilities, furnishings, equipment, and costs as may be incidental or appurtenant thereto if in the judgment of the commission the facilities, furnishings, equipment and costs are an integral part of the project. Housing may consist of single-family or multifamily dwellings in one or more structures located on contiguous or noncontiguous parcels or any combination thereof. Improvements may include such equipment and materials as are appropriate to accomplish energy efficiency within a dwelling. The term also includes a dwelling constructed by a person who occupies and owns the dwelling, and nursing homes licensed under chapter 18.51 RCW.

((~~(7)~~)) (10) "Mortgage" means a mortgage, mortgage deed, deed of trust, security agreement, or other instrument securing a mortgage loan and constituting a lien on or security interest in housing. The property may be held in fee simple or on a leasehold under a lease having a remaining term, at the time the mortgage is acquired, of not less than the term of repayment of the mortgage loan secured by the mortgage. The property may also be housing which is evidenced by an interest in a cooperative association or corporation if ownership

of the interest entitles the owner of the interest to occupancy of a dwelling owned by the association or corporation.

(((~~(8)~~))) (11) "Mortgage lender" means any of the following entities which customarily provide service or otherwise aid in the financing of housing and which are approved as a mortgage lender by the commission: A bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, mortgage company, credit union, life insurance company, or any other financial institution, governmental agency, municipal corporation, or any holding company for any of the entities specified in this subsection.

(((~~(9)~~))) (12) "Mortgage loan" means an interest-bearing loan or a participation therein, made to a borrower, for the purpose of financing the costs of housing, evidenced by a promissory note, and which may or may not be secured (a) under a mortgage agreement, (b) under any other security agreement, regardless of whether the collateral is personal or real property, or (c) by insurance or a loan guarantee of a third party. However, an unsecured loan shall not be considered a mortgage loan under this definition unless the amount of the loan is under two thousand five hundred dollars.

(13) "Qualified improvement" means an energy efficiency improvement which has been approved by a certifying authority or a net metering system as defined under RCW 80.60.010.

NEW SECTION. **Sec. 3.** A new section is added to chapter 43.180 RCW to read as follows:

(1) If economically feasible, the commission shall develop and implement a sustainable energy trust program to provide financing for qualified improvement projects. In developing the sustainable energy trust program, the commission shall establish eligibility criteria for financing that will enable it to choose eligible applicants who are likely to repay loans made or acquired by the commission and funded from the proceeds of commission bonds.

(2) The commission shall, if economically feasible:

(a) Issue bonds, as defined in RCW 43.180.020, for the purpose of financing loans for qualified energy efficiency and renewable energy improvement projects in accordance with RCW 43.180.150;

(b) Participate fully in federal and other governmental programs and take actions that are necessary and consistent with this chapter to secure to itself and the people of the state the benefits of programs to promote energy efficiency and renewable energy technologies;

(c) Contract with a certifying authority to accept applications for energy efficiency and renewable energy improvement projects, to review applications, including binding fixed price bids for the improvements, and to approve qualified improvements for financing by the commission. For solar electric systems, the certifying authority must use an application certification process similar to the investment cost recovery incentive application process provided under RCW 82.16.120. No work by a certifying authority may commence under this section until a request has been made by the commission; and

(d) Before entering into a contract with a certifying authority as defined in RCW 43.180.020(2)(b), consult with the Washington State University energy extension program to determine which potential improvement technologies are appropriate.

(3) No general fund resources may be expended to implement this section.

Passed by the House March 9, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 66

[Substitute House Bill 1011]

IDENTIFICATION DEVICES—REGULATION

AN ACT Relating to regulating the use of identification devices; amending RCW 19.300.010; adding new sections to chapter 19.300 RCW; and creating a new section.

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

Sec. 1. RCW 19.300.010 and 2008 c 138 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) "Affiliate" means any company that controls, is controlled by, or is under common control with another company. Affiliate may also include a supplier, distributor, business partner, or any entity that effects, administers, or enforces a government or business transaction.

(2) "Identification device" means an item that uses radio frequency identification technology or facial recognition technology.

((~~(2)~~)) (3) "Issued" means either:

(a) To have provided the identification device to a person; or

(b) To have placed, requested the placement, or be the intended beneficiary of the placement of, the identification device in a product, product packaging, or product inventory mechanism.

(4) "Person" means a natural person who resides in Washington.

((~~(3)~~)) (5) "Personal information" has the same meaning as in RCW 19.255.010.

(((~~(4) "Data" means personal information, numerical values associated with a person's facial features, or unique personal identifier numbers stored on an identification device.~~

~~(5)~~)) (6) "Radio frequency identification" means ((~~a technology that uses radio waves to transmit data remotely to readers~~)) the use of electromagnetic radiating waves or reactive field coupling in the radio frequency portion of the spectrum to communicate to or from a tag through a variety of modulation and encoding schemes to uniquely read the identity of a radio frequency tag or other data stored on it.

(((~~(6) "Reader" means a scanning device that is capable of using radio waves to communicate with an identification device and read the data transmitted by that identification device.~~))

(7) "Remotely reading" means that no physical contact is required between the identification device and the ((~~reader is necessary in order to transmit~~)) mechanical device that captures data.

(8) "Unique personal identifier number" means a randomly assigned string of numbers or symbols that is encoded on the identification device and is intended to identify the identification device.

NEW SECTION. **Sec. 2.** A new section is added to chapter 19.300 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, a governmental or business entity may not remotely read an identification device using radio frequency identification technology for commercial purposes, unless that governmental or business entity, or one of their affiliates, is the same governmental or business entity that issued the identification device.

(2) This section does not apply to the following:

(a) Remotely reading or storing data from an identification device as part of a commercial transaction initiated by the person in possession of the identification device;

(b) Remotely reading or storing data from an identification device for triage or medical care during a disaster and immediate hospitalization or immediate outpatient care directly relating to a disaster;

(c) Remotely reading or storing data from an identification device by an emergency responder or health care professional for reasons relating to the health or safety of that person;

(d) Remotely reading or storing data from a person's identification device issued to a patient for emergency purposes;

(e) Remotely reading or storing data from an identification device of a person pursuant to court-ordered electronic monitoring;

(f) Remotely reading or storing data from an identification device of a person who is incarcerated in a correctional institution, juvenile detention facility, or mental health facility;

(g) Remotely reading or storing data from an identification device by law enforcement or government personnel who need to read a lost identification device when the owner is unavailable for notice, knowledge, or consent, or those parties specifically authorized by law enforcement or government personnel for the limited purpose of reading a lost identification device when the owner is unavailable for notice, knowledge, or consent;

(h) Remotely reading or storing data from an identification device by law enforcement personnel who need to read a person's identification device after an accident in which the person is unavailable for notice, knowledge, or consent;

(i) Remotely reading or storing data from an identification device by a person or entity that in the course of operating its own identification device system collects data from another identification device, provided that the inadvertently received data comports with all of the following:

(i) The data is not disclosed to any other party;

(ii) The data is not used for any purpose; and

(iii) The data is not stored or is promptly destroyed;

(j) Remotely reading or storing data from a person's identification device in the course of an act of good faith security research, experimentation, or scientific inquiry including, but not limited to, activities useful in identifying and analyzing security flaws and vulnerabilities;

(k) Remotely reading or storing data from an identification device by law enforcement personnel who need to scan a person's identification device pursuant to a search warrant; and

(l) Remotely reading or storing data from an identification device by a business if it is necessary to complete a transaction.

(3) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

***NEW SECTION.** Sec. 3. A new section is added to chapter 19.300 RCW to read as follows:*

The office of the attorney general shall, on an annual basis, make recommendations to the legislature on other personally invasive technologies that may warrant further legislative action.

***Sec. 3 was vetoed. See message at end of chapter.**

NEW SECTION. **Sec. 4.** If any provision of this act is found to be in conflict with federal law or regulations, the conflicting provision of this act is declared to be inoperative solely to the extent of the conflict, and that finding or determination shall not affect the operation of the remainder of this act.

Passed by the House March 3, 2009.
Passed by the Senate April 2, 2009.
Approved by the Governor April 13, 2009, with the exception of certain items that were vetoed.
Filed in Office of Secretary of State April 14, 2009.

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

"I am returning herewith, without my approval as to Section 3, Substitute House Bill 1011 entitled:

"AN ACT Relating to regulating the use of identification devices."

Section 3 places a requirement on the Attorney General to make annual recommendations to the Legislature with respect to potentially invasive technologies which may warrant further action by the Legislature. This requirement is unfunded and will require the Attorney General's Office to divert its scarce financial resources away from other higher priority activities. Additionally, a presumptive label as "personally invasive" may stifle emerging technologies with high potential in the research and commercial fields.

For these reasons, I have vetoed Section 3 of Substitute House Bill No. 1011.

With the exception of Section 3, Substitute House Bill No. 1011 is approved."

CHAPTER 67

[House Bill 1030]

PUBLIC DISCLOSURE—EXEMPTION—CIVIL COMMITMENT CENTER FACILITY SECURITY INFORMATION

AN ACT Relating to exempting special commitment center security information from disclosure under the public records act; and amending RCW 42.56.420.

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

Sec. 1. RCW 42.56.420 and 2005 c 274 s 422 are each amended to read as follows:

The following information relating to security is exempt from disclosure under this chapter:

(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism;

(2) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, or secure facility for persons civilly confined under chapter 71.09 RCW, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility, secure facility for persons civilly confined under chapter 71.09 RCW, or any individual's safety;

(3) Information compiled by school districts or schools in the development of their comprehensive safe school plans under RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school;

(4) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities; and

(5) The security section of transportation system safety and security program plans required under RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180.

Passed by the House February 23, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 68

[Substitute House Bill 1041]

OCCUPATIONAL THERAPISTS—AUTHORITY—MEDICATIONS

AN ACT Relating to the authority of occupational therapists to purchase, store, and administer medications; and adding a new section to chapter 18.59 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 18.59 RCW to read as follows:

An occupational therapist licensed under this chapter may purchase, store, and administer topical and transdermal medications such as hydrocortisone, dexamethasone, fluocinonide, topical anesthetics, lidocaine, magnesium sulfate, and other similar medications for the practice of occupational therapy as prescribed by a health care provider with prescribing authority as authorized in RCW 18.59.100. Administration of medication must be documented in the patient's medical record. Some medications may be applied by the use of iontophoresis and phonophoresis. An occupational therapist may not purchase, store, or administer controlled substances. A pharmacist who dispenses such drugs to a licensed occupational therapist is not liable for any adverse reactions caused by any method of use by the occupational therapist. Application of a prescribed medication to a wound as authorized in this statute does not constitute wound care management.

Passed by the House February 13, 2009.
Passed by the Senate April 2, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 69

[House Bill 1076]

CRIME VICTIM INPUT—WORK RELEASE OFFENDER PLACEMENT

AN ACT Relating to allowing crime victims to submit input to the department of corrections regarding an offender's placement in work release; adding a new section to chapter 72.09 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 72.09 RCW to read as follows:

(1) When a victim of a crime or the victim's next of kin requests notice under RCW 72.09.712 regarding a specific inmate, the department shall advise the requester in writing of the possibility that part of the sentence may be served by the inmate in a work release facility and instruct the requester on how to submit input to the department regarding the inmate's work release placement.

(2) When the department notifies a victim or the victim's next of kin under RCW 72.09.712 of an offender's placement in work release, the department shall also provide instruction on how to submit input regarding the offender's work release placement.

(3) The department shall consider any input received from a victim or the victim's next of kin under subsection (1) or (2) of this section if the input is received at least seven days prior to the offender's placement in work release. The department may consider any input from a victim or the victim's next of kin under subsection (1) or (2) of this section if the input is received less than seven days prior to the offender's placement in work release. The department may alter its placement decision based on any input considered under this subsection.

NEW SECTION. **Sec. 2.** Section 1 of this act takes effect August 1, 2009.

Passed by the House February 23, 2009.
Passed by the Senate April 2, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 70

[Engrossed Second Substitute House Bill 1078]

EXCHANGE FACILITATORS—STANDARDS—PROHIBITED PRACTICES

AN ACT Relating to exchange facilitators; adding a new chapter to Title 19 RCW; creating a new section; prescribing penalties; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** The legislature finds that there are no statutory requirements pertaining to persons who facilitate like-kind exchanges pursuant to section 1031 of the internal revenue code and associated treasury regulations. The purpose of this chapter is to create a statutory framework that provides some consumer protections to those who entrust money or property to persons acting as exchange facilitators.

NEW SECTION. **Sec. 2.** 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)(a)(i) of this section.

(3)(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

(ii) 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) "Financial institution" means a 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) "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) "Prudent investor standard" means the standard for investment as described under RCW 11.100.020.

NEW SECTION. **Sec. 3.** An exchange facilitator may not bring a suit or action for the collection of compensation in connection with duties performed as an exchange facilitator unless the exchange facilitator alleges and proves that he or she was fully in compliance with this chapter at the time of the offering to perform or performing an act or service regulated under this chapter.

NEW SECTION. **Sec. 4.** (1) Except as provided under subsection (2) of this section, a person who engages in business as an exchange facilitator shall notify all existing exchange clients whose relinquished property is located in this state, or whose replacement property held under a qualified exchange accommodation agreement is located in this state, of any change in control of the exchange facilitator. Notification must be provided within ten business days of the effective date of the change in control by hand delivery, facsimile, electronic mail, overnight mail, or first-class mail, and must be posted on the exchange facilitator's internet web site for at least ninety days following the change in control. The notification must set forth the name, address, and other contact information of the transferees.

(2) If an exchange facilitator is a publicly traded company or wholly owned subsidiary of the publicly traded company and remains a publicly traded

company or wholly owned subsidiary of the publicly traded company after a change in control, the publicly traded company or wholly owned subsidiary of the publicly traded company is not required to notify its existing clients of the change in control.

(3) For purposes of this section, "change in control" means any transfer of more than fifty percent of the assets or ownership interests, directly or indirectly, of the exchange facilitator.

NEW SECTION. **Sec. 5.** (1) A person who engages in business as an exchange facilitator shall:

(a) 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; or

(b) Deposit an amount of cash or securities or irrevocable letters of credit in an amount of not less than one million dollars into an interest-bearing deposit account or a money market account with the financial institution of the exchange facilitator's choice. Interest on that amount accrues to the exchange facilitator; or

(c) 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 and provide that a withdrawal from that escrow account or trust requires the exchange facilitator's and the client's written authorization.

(2) A person who engages in business as an exchange facilitator may maintain a bond or bonds or deposit an amount of cash or securities or irrevocable letters of credit in excess of the minimum required amounts under this section.

(3) The requirements under subsection (1)(a) of this section are satisfied if the person engaging in business as an exchange facilitator is listed as a named insured on one or more fidelity bonds that have an aggregate total of at least one million dollars.

(4) An exchange facilitator must provide evidence to each client that the requirements of this section are satisfied before entering into an exchange agreement.

(5) Upon request of a current 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.

NEW SECTION. **Sec. 6.** (1) A person who claims to have sustained damages by reason of the fraudulent or dishonest acts of an exchange facilitator or an exchange facilitator's employee may file a claim on the fidelity bond or approved alternative described in section 5 of this act 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.

NEW SECTION. **Sec. 7.** (1) A person who engages in business as an exchange facilitator shall:

(a) Maintain a policy of errors and omissions insurance in an amount of not less than two hundred fifty thousand dollars executed by an insurer authorized to do business in this state; or

(b) Deposit an amount of cash or securities or irrevocable letters of credit in an amount of not less than two hundred fifty thousand dollars into an interest-

bearing deposit account or a money market account with the financial institution of the exchange facilitator's choice. Interest on that amount accrues to the exchange facilitator.

(2) A person who engages in business as an exchange facilitator may maintain insurance or deposit an amount of cash or securities or irrevocable letters of credit in excess of the minimum required amounts under this section.

(3) The requirements under subsection (1)(a) of this section are satisfied if the person engaging in business as an exchange facilitator is listed as a named insured on one or more errors and omissions policies that have an aggregate total of at least two hundred fifty thousand dollars.

(4) An exchange facilitator must provide evidence to each client that the requirements of this section are satisfied before entering into an exchange agreement.

(5) Upon request of a current 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.

NEW SECTION. **Sec. 8.** (1) A person who claims to have sustained damages by reason of an unintentional error or omission of an exchange facilitator or an exchange facilitator's employee may file a claim on the errors and omissions insurance policy or approved alternative described in section 7 of this act 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.

NEW SECTION. **Sec. 9.** (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 principal, 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. 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.

NEW SECTION. **Sec. 10.** A person who engages in business as an exchange facilitator must administer each of his, her, or its places of business under the direct management of an officer or an employee who is either:

(1) An attorney or certified public accountant admitted to practice in any state or territory of the United States; or

(2) A person who has passed a test specific to the subject matter of exchange facilitation.

NEW SECTION. **Sec. 11.** 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 section 9(1)(a) of this act;

(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;

(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.

NEW SECTION. **Sec. 12.** (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; or

(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.

NEW SECTION. **Sec. 13.** A person who engages in business as an exchange facilitator and who violates section 11 (1) through (8) of this act is guilty of a class B felony under chapter 9A.20 RCW.

NEW SECTION. **Sec. 14.** A person who engages in business as an exchange facilitator and who violates section 11 (11) or (12) of this act is guilty of a misdemeanor under chapter 9A.20 RCW.

NEW SECTION. **Sec. 15.** (1) Exchange facilitators must provide the director of financial institutions with a report of exchange facilitator activity by December 31, 2009. The director may by rule create a format for the report, which must cover the period of January 1, 2009, through December 31, 2009. The report may only include the following information for exchange facilitation activity in Washington state:

(a) The total number of property exchanges facilitated by the exchange facilitator;

(b) The total dollar volume of property exchanges facilitated by the exchange facilitator;

(c) The primary type of business the exchange facilitator engages in if the primary type of business is not exchange facilitation, including a description of any required licenses; and

(d) The percentage of the exchange facilitator's business that is exchange facilitation, both by client and by gross income.

Any information provided by an exchange facilitator in this report that constitutes a trade secret as defined in RCW 19.108.010 is exempt from the disclosure requirements in chapters 42.17 and 42.56 RCW, unless aggregated with information supplied by other exchange facilitators in such a manner that the individual information of an exchange facilitator is not identifiable.

(2) Any information produced or obtained in examining an exchange facilitator under this section is exempt from disclosure as provided in RCW 42.56.270.

(3) The director must compile the reports from exchange facilitators and report to the financial institutions and insurance committee of the house of representatives and the financial institutions, housing and insurance committee of the senate by January 15, 2010.

(4) This section expires June 1, 2010.

NEW SECTION. **Sec. 16.** A person who violates this chapter is subject to civil suit in a court of competent jurisdiction.

NEW SECTION. **Sec. 17.** The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for purposes of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. **Sec. 18.** This chapter does not affect the application of chapter 21.20 RCW.

NEW SECTION. **Sec. 19.** Sections 1 through 18 of this act constitute a new chapter in Title 19 RCW.

Passed by the House March 9, 2009.
Passed by the Senate April 2, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 71

[House Bill 1121]

WASHINGTON STATE FLAG ACCOUNT

AN ACT Relating to creating the Washington state flag account; amending RCW 43.07.370; adding a new section to chapter 43.07 RCW; and adding a new section to chapter 42.52 RCW.

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

Sec. 1. RCW 43.07.370 and 2008 c 222 s 12 are each amended to read as follows:

(1) The secretary of state may solicit and accept gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend these donations or the proceeds, rents, profits, and income from the donations except as limited by the donor's terms.

(2) Moneys received under this section may be used only for the following purposes:

(a) Conducting the Washington state legacy project;

(b) Archival activities;

(c) Washington state library activities; ((~~and~~))

(d) Development, construction, and operation of the Washington state heritage center; and

(e) Donation of Washington state flags.

(3)(a) Moneys received under subsection (2)(a) through (c) of this section must be deposited in the Washington state legacy project, state library, and archives account established in RCW 43.07.380.

(b) Moneys received under subsection (2)(d) of this section must be deposited in the Washington state heritage center account created in RCW 43.07.129.

(c) Moneys received under subsection (2)(e) of this section must be deposited in the Washington state flag account created in section 2 of this act.

(4) The secretary of state shall adopt rules to govern and protect the receipt and expenditure of the proceeds.

NEW SECTION. **Sec. 2.** A new section is added to chapter 43.07 RCW to read as follows:

The Washington state flag account is created in the custody of the state treasurer. All moneys received under RCW 43.07.370(2)(e) must be deposited in the account. Expenditures from the account may be used only for the purpose of donating Washington state flags to Washington state military personnel. Only the secretary of state or the secretary of state's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 3.** A new section is added to chapter 42.52 RCW to read as follows:

This chapter does not prohibit the secretary of state or the secretary of state's designee from soliciting and accepting contributions to the Washington state flag account created in section 2 of this act.

Passed by the House February 23, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 72

[Substitute House Bill 1128]
INNOVATION PARTNERSHIP ZONES

AN ACT Relating to innovation partnership zones; and amending RCW 43.330.270 and 43.330.280.

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

Sec. 1. RCW 43.330.270 and 2007 c 227 s 1 are each amended to read as follows:

(1) The department shall design and implement an innovation partnership zone program through which the state will encourage and support research institutions, workforce training organizations, and globally competitive companies to work cooperatively in close geographic proximity to create commercially viable products and jobs.

(2) The director shall designate innovation partnership zones on the basis of the following criteria:

(a) Innovation partnership zones must have three types of institutions operating within their boundaries, or show evidence of planning and local partnerships that will lead to dense concentrations of these institutions:

(i) Research capacity in the form of a university or community college fostering commercially valuable research, nonprofit institutions creating commercially applicable innovations, or a national laboratory;

(ii) Dense proximity of globally competitive firms in a research-based industry or industries or of individual firms with innovation strategies linked to (a)(i) of this subsection. A globally competitive firm may be signified through

international organization for standardization 9000 or 1400 certification, or other recognized evidence of international success; and

(iii) Training capacity either within the zone or readily accessible to the zone. The training capacity requirement may be met by the same institution as the research capacity requirement, to the extent both are associated with an educational institution in the proposed zone.

(b) The support of a local jurisdiction, a research institution, an educational institution, an industry or cluster association, a workforce development council, and an associate development organization, port, or chamber of commerce;

(c) Identifiable boundaries for the zone within which the applicant will concentrate efforts to connect innovative researchers, entrepreneurs, investors, industry associations or clusters, and training providers. The geographic area defined should lend itself to a distinct identity and have the capacity to accommodate firm growth;

(d) The innovation partnership zone administrator must be an economic development council, port, workforce development council, city, or county.

((~~(2)~~)) (3) With respect solely to the research capacity required in subsection (2)(a)(i) of this section, the director may waive the requirement that the research institution be located within the zone. To be considered for such a waiver, an applicant must provide a specific plan that demonstrates the research institution's unique qualifications and suitability for the zone, and the types of jointly executed activities that will be used to ensure ongoing, face-to-face interaction and research collaboration among the zone's partners.

(4) On October 1st of each odd-numbered year, the director shall designate innovation partnership zones on the basis of applications that meet the legislative criteria, estimated economic impact of the zone, evidence of forward planning for the zone, and other criteria as recommended by the Washington state economic development commission. Estimated economic impact must include evidence of anticipated private investment, job creation, innovation, and commercialization. The director shall require evidence that zone applicants will promote commercialization, innovation, and collaboration among zone residents.

((~~(3)~~)) (5) Innovation partnership zones are eligible for funds and other resources as provided by the legislature or at the discretion of the governor.

((~~(4)~~)) (6) If the innovation partnership zone meets the other requirements of the fund sources, then the zone is eligible for the following funds relating to:

(a) The local infrastructure financing tools program;

(b) The sales and use tax for public facilities in rural counties; and

(c) Job skills.

((~~(5)~~)) (7) An innovation partnership zone shall be designated as a zone for a four-year period. At the end of the four-year period, the zone must reapply for the designation through the department.

((~~(6)~~)) (8) If the director finds at any time after the initial year of designation that an innovation partnership zone is failing to meet the performance standards required in its contract with the department, the director may withdraw such designation and cease state funding of the zone.

(9) The department shall convene annual information sharing events for innovation partnership zone administrators and other interested parties.

(((~~(7)~~))) (10) An innovation partnership zone shall provide performance measures as required by the director, including but not limited to private investment measures, job creation measures, and measures of innovation such as licensing of ideas in research institutions, patents, or other recognized measures of innovation.

(11) The department shall compile a biennial report on the innovation partnership zone program by December 1st of every even-numbered year. The report shall provide information for each zone on its: Objectives; funding, tax incentives, and other support obtained from public sector sources; major activities; partnerships; performance measures; and outcomes achieved since the inception of the zone or since the previous biennial report. The Washington state economic development commission shall review ((~~annually the individual innovation partnership zone's performance measures and make recommendations to the department regarding additional zone designation criteria~~)) the department's draft report and make recommendations on ways to increase the effectiveness of individual zones and the program overall. The department shall submit the report, including the commission's recommendations, to the governor and legislature beginning December 1, 2010.

Sec. 2. RCW 43.330.280 and 2007 c 227 s 2 are each amended to read as follows:

(1) The Washington state economic development commission shall, with the advice of an innovation partnership advisory group selected by the commission((~~, have oversight responsibility for the implementation of the state's efforts to further innovation partnerships throughout the state. The commission shall~~)):

(a) Provide information and advice to the department of community, trade, and economic development to assist in the implementation of the innovation partnership zone program, including criteria to be used in the selection of grant applicants for funding;

(b) Document clusters of companies throughout the state that have comparative competitive advantage or the potential for comparative competitive advantage, using the process and criteria for identifying strategic clusters developed by the working group specified in subsection (2) of this section;

(c) Conduct an innovation opportunity analysis to identify (i) the strongest current intellectual assets and research teams in the state focused on emerging technologies and their commercialization, and (ii) faculty and researchers that could increase their focus on commercialization of technology if provided the appropriate technical assistance and resources;

(d) Based on its findings and analysis, and in conjunction with the higher education coordinating board and research institutions:

(i) Develop a plan to build on existing, and develop new, intellectual assets and innovation research teams in the state in research areas where there is a high potential to commercialize technologies. The commission shall present the plan to the governor and legislature by December 31, ((~~2007~~)) 2009. The higher education coordinating board shall be responsible for implementing the plan in conjunction with the publicly funded research institutions in the state. The plan shall address the following elements and such other elements as the commission deems important:

(A) Specific mechanisms to support, enhance, or develop innovation research teams and strengthen their research and commercialization capacity in areas identified as useful to strategic clusters and innovative firms in the state;

(B) Identification of the funding necessary for laboratory infrastructure needed to house innovation research teams;

(C) Specification of the most promising research areas meriting enhanced resources and recruitment of significant entrepreneurial researchers to join or lead innovation research teams;

(D) The most productive approaches to take in the recruitment, in the identified promising research areas, of a minimum of ten significant entrepreneurial researchers over the next ten years to join or lead innovation research teams;

(E) Steps to take in solicitation of private sector support for the recruitment of entrepreneurial researchers and the commercialization activity of innovation research teams; and

(F) Mechanisms for ensuring the location of innovation research teams in innovation partnership zones;

(ii) Provide direction for the development of comprehensive entrepreneurial assistance programs at research institutions. The programs may involve multidisciplinary students, faculty, entrepreneurial researchers, entrepreneurs, and investors in building business models and evolving business plans around innovative ideas. The programs may provide technical assistance and the support of an entrepreneur-in-residence to innovation research teams and offer entrepreneurial training to faculty, researchers, undergraduates, and graduate students. Curriculum leading to a certificate in entrepreneurship may also be offered;

(e) Develop performance measures to be used in evaluating the performance of innovation research teams, the implementation of the plan and programs under (d)(i) and (ii) of this subsection, and the performance of innovation partnership zone grant recipients, including but not limited to private investment measures, business initiation measures, job creation measures, and measures of innovation such as licensing of ideas in research institutions, patents, or other recognized measures of innovation. The performance measures developed shall be consistent with the economic development commission's comprehensive plan for economic development and its standards and metrics for program evaluation. The commission shall report to the legislature and the governor by ((~~December 31, 2008~~)) June 30, 2009, on the measures developed; and

(f) Using the performance measures developed, perform a biennial assessment and report, the first of which shall be due December 31, 2012, on:

(i) Commercialization of technologies developed at state universities, found at other research institutions in the state, and facilitated with public assistance at existing companies;

(ii) Outcomes of the funding of innovation research teams and recruitment of significant entrepreneurial researchers;

(iii) Comparison with other states of Washington's outcomes from the innovation research teams and efforts to recruit significant entrepreneurial researchers; and

(iv) Outcomes of the grants for innovation partnership zones.

The report shall include recommendations for modifications of chapter 227, Laws of 2007 and of state commercialization efforts that would enhance the state's economic competitiveness.

(2) The economic development commission and the workforce training and education coordinating board shall jointly convene a working group to:

(a) Specify the process and criteria for identification of substate geographic concentrations of firms or employment in an industry and the industry's customers, suppliers, supporting businesses, and institutions, which process will include the use of labor market information from the employment security department and local labor markets; and

(b) Establish criteria for identifying strategic clusters which are important to economic prosperity in the state, considering cluster size, growth rate, and wage levels among other factors.

Passed by the House February 23, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 73

[House Bill 1155]

SPECIAL EDUCATION PROGRAMS—MEDICAL SERVICES BILLING—REPEAL

AN ACT Relating to billing for medical services provided through special education programs; and repealing RCW 74.09.5241, 74.09.5243, 74.09.5245, 74.09.5247, 74.09.5249, 74.09.5251, 74.09.5253, 74.09.5254, 74.09.5255, and 74.09.5256.

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

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

(1) RCW 74.09.5241 (Special education programs—Medical services—Finding—Intent) and 1993 c 149 s 1;

(2) RCW 74.09.5243 (Special education programs—Definitions) and 1994 c 180 s 1 & 1993 c 149 s 2;

(3) RCW 74.09.5245 (Special education programs—Medical services—Billing agent contract process) and 1993 c 149 s 3;

(4) RCW 74.09.5247 (Special education programs—Medical services—District as billing agent—Administrative fee) and 1994 c 180 s 2 & 1993 c 149 s 4;

(5) RCW 74.09.5249 (Special education programs—Medical services—Billing agent duties) and 1994 c 180 s 3 & 1993 c 149 s 5;

(6) RCW 74.09.5251 (Special education programs—Medical services—Categories of services—Reimbursement system) and 1993 c 149 s 6;

(7) RCW 74.09.5253 (Special education programs—Medical services—Student information—Report to legislature) and 1994 c 180 s 4 & 1993 c 149 s 7;

(8) RCW 74.09.5254 (Special education programs—Medical services—Reports to superintendent of public instruction) and 1994 c 180 s 5;

(9) RCW 74.09.5255 (Special education programs—Medical services—Incentive payments) and 1999 c 318 s 2, 1999 c 318 s 1, & 1994 c 180 s 6; and

(10) RCW 74.09.5256 (Special education programs—Medical services—Disbursement of revenue) and 1999 c 318 s 4, 1999 c 318 s 3, & 1994 c 180 s 7.

Passed by the House February 23, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 74

[House Bill 1196]

SMALL WORKS ROSTER PROJECTS—LIMITS

AN ACT Relating to increasing the dollar limits for small works roster projects; and amending RCW 39.04.155 and 53.08.120.

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

Sec. 1. RCW 39.04.155 and 2008 c 130 s 17 are each amended to read as follows:

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of ((~~two~~)) three hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small

works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred fifty thousand dollars to ((~~two~~)) three hundred thousand dollars, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

Sec. 2. RCW 53.08.120 and 2008 c 130 s 1 are each amended to read as follows:

(1) All material and work required by a port district not meeting the definition of public work in RCW 39.04.010(4) may be procured in the open market or by contract and all work ordered may be done by contract or day labor.

(2)(a) All such contracts for work meeting the definition of "public work" in RCW 39.04.010(4), the estimated cost of which exceeds ((~~two~~)) three hundred thousand dollars, shall be awarded using a competitive bid process. The contract must be awarded at public bidding upon notice published in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, calling for bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder. The competitive bidding requirements for purchases or public works may be waived pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

(b) For all contracts related to work meeting the definition of "public work" in RCW 39.04.010(4) that are estimated at ((~~two~~)) three hundred thousand dollars or less, a port district may let contracts using the small works roster process under RCW 39.04.155 in lieu of advertising for bids. Whenever possible, the managing official shall invite at least one proposal from a minority contractor who shall otherwise qualify under this section.

When awarding such a contract for work, when utilizing proposals from the small works roster, the managing official shall give weight to the contractor submitting the lowest and best proposal, and whenever it would not violate the public interest, such contracts shall be distributed equally among contractors, including minority contractors, on the small works roster.

Passed by the House February 23, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 75

[House Bill 1197]

ALTERNATIVE PUBLIC WORKS

AN ACT Relating to alternative public works; amending RCW 39.10.230, 39.10.250, 39.10.270, 39.10.300, 39.10.330, 39.10.360, and 39.10.420; and repealing RCW 39.10.310.

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

Sec. 1. RCW 39.10.230 and 2007 c 494 s 103 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 potential future use of other alternative contracting procedures including competitive negotiation contracts;

(3) Develop guidelines to be used by the committee for the review and approval of design-build demonstration projects that procure operations and maintenance services;

(4) Appoint members of the committee; and

(((~~(4)~~))) (5) Develop and administer questionnaires designed to provide quantitative and qualitative data on alternative public works contracting procedures on which evaluations are based.

Sec. 2. RCW 39.10.250 and 2007 c 494 s 105 are each amended to read as follows:

The committee shall:

(1) Certify, or recertify, public bodies for a period of three years to use the design-build or general contractor/construction manager, 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; ((~~and~~))

(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 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, the committee shall report to the board regarding the committee's review procedure of these projects and its recommendations for further use; and

(5) 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. 3. RCW 39.10.270 and 2007 c 494 s 107 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 three years. 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) ((~~demonstrated success in managing at least one general contractor/construction manager or design-build project within the previous five years; (vi)~~)) the ability to properly manage its capital facilities plan including, but not limited to, appropriate project planning and budgeting experience; and (((~~(vii)~~))) (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.

(((~~(3)~~))) (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.

(((~~(4)~~))) (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.

(((~~(5)~~))) (6) The committee may renew the certification of a public body for one additional three-year period. 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, and any other information requested 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.

(((~~(6)~~))) (7) Certified public bodies must submit project data information as required in RCW 39.10.320 and 39.10.350.

Sec. 4. RCW 39.10.300 and 2007 c 494 s 201 are each amended to read as follows:

(1) Subject to the process in RCW 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; or

(b) The project design is repetitive in nature and is an incidental part of the installation or construction; or

(c) Regular interaction with and feedback from facilities users and operators during design is not critical to an effective facility design.

(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 ((~~also~~)) may be used for the construction or erection of preengineered metal buildings or prefabricated modular buildings, 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. 5. RCW 39.10.330 and 2007 c 494 s 204 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. 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. 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) The form of the contract to be awarded;

(f) The amount to be paid to finalists submitting responsive proposals and who are not awarded a design-build contract;

(g) The schedule for the procurement process and the project; and

(h) 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 on the factors, weighting, and process identified in the request for qualifications. 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) 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) 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 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 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) The firm awarded the contract shall provide a performance and payment bond for the contracted amount. The public body shall provide appropriate

honorarium payments to finalists submitting ((~~best and final~~)) 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. 6. RCW 39.10.360 and 2007 c 494 s 303 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;

(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) Evaluation factors for selection of the general contractor/construction ((~~[manager]~~)) manager shall include, but not be limited to:

(a) Ability of the firm's professional personnel;

(b) The firm's past performance in negotiated and complex projects;

(c) The firm's ability to meet time and budget requirements;

(d) The scope of work the firm proposes to self-perform and its ability to perform that work;

(e) The firm's proximity to the project location;

(f) Recent, current, and projected workloads of the firm; and

(g) The firm's approach to executing the project.

(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) 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. 7. RCW 39.10.420 and 2007 c 494 s 401 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 general administration;

(b) The University of Washington;

(c) Washington State University;

(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 general administration may issue job order contract work orders for Washington state parks department projects.

(b) The department of general administration, 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.

NEW SECTION. **Sec. 8.** RCW 39.10.310 (Design-build procedure—Negotiated adjustments to lowest bid or proposal—When allowed) and 2007 c 494 s 202 & 1994 c 132 s 8 are each repealed.

Passed by the House March 10, 2009.

Passed by the Senate April 7, 2009.

Approved by the Governor April 13, 2009.

Filed in Office of Secretary of State April 14, 2009.

CHAPTER 76

[Substitute House Bill 1202]

LIFE INSURANCE POLICIES—NONINSURANCE BENEFITS

AN ACT Relating to noninsurance benefits included in life insurance policies; adding a new section to chapter 48.23 RCW; and adding a new section to chapter 48.24 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 48.23 RCW to read as follows:

(1) A life insurer may include the following noninsurance benefits as part of a policy of individual life insurance, with the prior approval of the commissioner:

(a) Will preparation services;

(b) Financial planning and estate planning services;

(c) Probate and estate settlement services; and

(d) Such other services as the commissioner may identify by rule.

(2) The commissioner may adopt rules to ensure disclosure of the noninsurance benefits permitted under this section, including but not limited to guidelines concerning the provision of the coverage.

(3) Those providing the services listed in subsection (1) of this section must be appropriately licensed.

(4) This section does not require the commissioner to approve any particular proposed noninsurance benefit. The commissioner may disapprove any proposed noninsurance benefit that the commissioner determines may tend to promote or facilitate the violation of any other section of this title.

(5) This section does not expand, limit, or otherwise affect the authority and ethical obligations of those who are authorized by the state supreme court to practice law in this state. This section does not limit the prohibition against the unauthorized practice of law under chapter 2.48 RCW.

(6) This section does not affect the application of chapter 21.20 RCW.

NEW SECTION. **Sec. 2.** A new section is added to chapter 48.24 RCW to read as follows:

(1) A life insurer may include the following noninsurance benefits as part of a policy or certificate of group life insurance, with the prior approval of the commissioner:

(a) Will preparation services;

(b) Financial planning and estate planning services;

(c) Probate and estate settlement services; and

(d) Such other services as the commissioner may identify by rule.

(2) The commissioner may adopt rules to regulate the disclosure of noninsurance benefits permitted under this section, including but not limited to guidelines regarding the coverage provided under the policy or certificate of insurance.

(3) Those providing the services listed in subsection (1) of this section must be appropriately licensed.

(4) This section does not require the commissioner to approve any particular proposed noninsurance benefit. The commissioner may disapprove any proposed noninsurance benefit that the commissioner determines may tend to promote or facilitate the violation of any other section of this title.

(5) This section does not expand, limit, or otherwise affect the authority and ethical obligations of those who are authorized by the state supreme court to practice law in this state. This section does not limit the prohibition against the unauthorized practice of law under chapter 2.48 RCW.

(6) This section does not affect the application of chapter 21.20 RCW.

Passed by the House March 5, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 77

[Substitute House Bill 1205]

COURT OF APPEALS—NUMBER OF JUDGES

AN ACT Relating to changing the number of court of appeals judges; and amending RCW 2.06.020; and adding a new section to chapter 2.06 RCW.

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

Sec. 1. RCW 2.06.020 and 1999 c 75 s 1 are each amended to read as follows:

The court shall have three divisions, one of which shall be headquartered in Seattle, one of which shall be headquartered in Spokane, and one of which shall be headquartered in Tacoma:

(1) The first division shall have twelve judges from three districts, as follows:

(a) District 1 shall consist of King county and shall have eight judges;

(b) District 2 shall consist of Snohomish county and shall have two judges; and

(c) District 3 shall consist of Island, San Juan, Skagit, and Whatcom counties and shall have two judges.

(2) The second division shall have ((~~seven~~)) eight judges from the following districts:

(a) District 1 shall consist of Pierce county and shall have three judges;

(b) District 2 shall consist of Clallam, Grays Harbor, Jefferson, Kitsap, Mason, and Thurston counties and shall have ((~~two~~)) three judges;

(c) District 3 shall consist of Clark, Cowlitz, Lewis, Pacific, Skamania, and Wahkiakum counties and shall have two judges.

(3) The third division shall have five judges from the following districts:

(a) District 1 shall consist of Ferry, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties and shall have two judges;

(b) District 2 shall consist of Adams, Asotin, Benton, Columbia, Franklin, Garfield, Grant, Walla Walla, and Whitman counties and shall have one judge;

(c) District 3 shall consist of Chelan, Douglas, Kittitas, Klickitat, and Yakima counties and shall have two judges.

NEW SECTION. **Sec. 2.** A new section is added to chapter 2.06 RCW to read as follows:

The judicial position created by section 1 of this act shall become effective only if that position is specifically funded and is referenced by division and district in an omnibus appropriations act.

Passed by the House March 5, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 78

[House Bill 1217]

GAMBLING COMMISSION—AUTHORITY—AMUSEMENT GAMES

AN ACT Relating to providing the gambling commission with authority to determine locations where amusement games may be conducted; and amending RCW 9.46.0331.

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

Sec. 1. RCW 9.46.0331 and 1991 c 287 s 1 are each amended to read as follows:

The legislature hereby authorizes any person to conduct or operate amusement games when licensed and operated pursuant to the provisions of this chapter and rules and regulations adopted by the commission at such locations as the commission may authorize. The rules shall provide for at least the following:

(1) Persons other than bona fide charitable or bona fide nonprofit organizations shall conduct amusement games only after obtaining a special amusement game license from the commission.

(2) Amusement games may be conducted under such a license only as a part of, and upon the site of:

(a) Any agricultural fair as authorized under chapter 15.76 or 36.37 RCW; or

(b) A civic center of a county, city, or town; or

(c) A world's fair or similar exposition that is approved by the bureau of international expositions at Paris, France; or

(d) A community-wide civic festival held not more than once annually and sponsored or approved by the city, town, or county in which it is held; or

(e) A commercial exposition organized and sponsored by an organization or association representing the retail sales and service operators conducting business in a shopping center or other commercial area developed and operated for retail sales and service, but only upon a parking lot or similar area located in said shopping center or commercial area for a period of no more than seventeen consecutive days by any licensee during any calendar year; or

(f) An amusement park. An amusement park is a group of activities, at a permanent location, to which people go to be entertained through a combination of various mechanical or aquatic rides, theatrical productions, motion picture, and/or slide show presentations with food and drink service. The amusement park must include at least five different mechanical, or aquatic rides, three additional activities, and the gross receipts must be primarily from these amusement activities; or

(g) Within a regional shopping center. A regional shopping center is a shopping center developed and operated for retail sales and service by retail sales and service operators and consisting of more than six hundred thousand gross square feet not including parking areas. Amusement games conducted as a

part of, and upon the site of, a regional shopping center shall not be subject to the prohibition on revenue sharing set forth in RCW 9.46.120(2); or

(h) A location that possesses a valid license from the Washington state liquor ((~~[control]~~)) control board and prohibits minors on their premises; or

(i) Movie theaters, bowling alleys, miniature golf course facilities, and amusement centers. For the purposes of this section an amusement center shall be defined as a permanent location whose primary source of income is from the operation of ten or more amusement devices; or

(j) Any business whose primary activity is to provide food service for on premises consumption and who offers family entertainment which includes at least three of the following activities: Amusement devices; theatrical productions; mechanical rides; motion pictures; and slide show presentations; or

(k) Other locations as the commission may authorize.

(3) No amusement games may be conducted in any location except in conformance with local zoning, fire, health, and similar regulations. In no event may the licensee conduct any amusement games at any of the locations set out in subsection (2) of this section without first having obtained the written permission to do so from the person or organization owning the premises or an authorized agent thereof, and from the persons sponsoring the fair, exhibition, commercial exhibition, or festival, or from the city or town operating the civic center, in connection with which the games are to be operated.

(4) In no event may a licensee conduct any amusement games at the location described in subsection (2)(g) of this section, without, at the location of such games, providing adult supervision during all hours the licensee is open for business at such location, prohibiting school-age minors from entry during school hours, maintaining full-time personnel whose responsibilities include maintaining security and daily machine maintenance, and providing for hours for the close of business at such location that are no later than 10:00 p.m. on Fridays and Saturdays and on all other days that are the same as those of the regional shopping center in which the licensee is located.

(5) In no event may a licensee conduct any amusement game at a location described in subsection (2)(i) or (j) of this section, without, at the location of such games, providing adult supervision during all hours the licensee is open for business at such location, prohibiting school-age minors from playing licensed amusement games during school hours, maintaining full-time personnel whose responsibilities include maintaining security and daily machine maintenance, and prohibiting minors from playing the amusement games after 10:00 p.m. on any day.

Passed by the House February 23, 2009.
Passed by the Senate April 2, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 79

[Engrossed House Bill 1227]

RECREATIONAL VEHICLES—PRIMARY RESIDENCES

AN ACT Relating to recreational vehicles used as primary residences in manufactured/mobile home communities; and amending RCW 35.21.684, 35A.21.312, and 36.01.225.

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

Sec. 1. RCW 35.21.684 and 2008 c 117 s 1 are each amended to read as follows:

(1) A city or town may not adopt an ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other state construction or local design standard. However, except as provided in subsection (2) of this section, any city or town may require that:

(a) A manufactured home be a new manufactured home;

(b) The manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative;

(c) The manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located;

(d) The home is thermally equivalent to the state energy code; and

(e) The manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.

A city with a population of one hundred thirty-five thousand or more may choose to designate its building official as the person responsible for issuing all permits, including department of labor and industries permits issued under chapter 43.22 RCW in accordance with an interlocal agreement under chapter 39.34 RCW, for alterations, remodeling, or expansion of manufactured housing located within the city limits under this section.

(2) A city or town may not adopt an ordinance that has the effect, directly or indirectly, of restricting the location of ((~~mobile homes or manufactured homes in mobile home parks or manufactured housing~~)) manufactured/mobile homes in manufactured/mobile home communities((~~, as defined in RCW 59.20.030, which~~)) that were legally in existence before June 12, 2008, based exclusively on the age or dimensions of the ((~~mobile home or~~)) manufactured/mobile home. This does not preclude a city or town from restricting the location of a ((~~mobile home or manufactured home in mobile home parks or manufactured housing~~)) manufactured/mobile home in manufactured/mobile home communities for any other reason including, but not limited to, failure to comply with fire, safety, or other local ordinances or state laws related to ((~~mobile homes and~~)) manufactured/mobile homes.

(3) Except as provided under subsection (4) of this section, a city or town may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities.

(4) Subsection (3) of this section does not apply to any local ordinance or state law that:

(a) Imposes fire, safety, or other regulations related to recreational vehicles;

(b) Requires utility hookups in manufactured/mobile home communities to meet state or federal building code standards for manufactured/mobile home communities; or

(c) Includes both of the following provisions:

(i) A recreational vehicle must contain at least one internal toilet and at least one internal shower; and

(ii) If the requirement in (c)(i) of this subsection is not met, a manufactured/mobile home community must provide toilets and showers.

(5) For the purposes of this section, "manufactured/mobile home community" has the same meaning as in RCW 59.20.030.

(6) This section does not override any legally recorded covenants or deed restrictions of record.

((~~(4)~~)) (7) This section does not affect the authority granted under chapter 43.22 RCW.

Sec. 2. RCW 35A.21.312 and 2008 c 117 s 2 are each amended to read as follows:

(1) A code city may not adopt an ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other state construction or local design standard. However, except as provided in subsection (2) of this section, any code city may require that:

(a) A manufactured home be a new manufactured home;

(b) The manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative;

(c) The manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located;

(d) The home is thermally equivalent to the state energy code; and

(e) The manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.

A code city with a population of one hundred thirty-five thousand or more may choose to designate its building official as the person responsible for issuing all permits, including department of labor and industries permits issued under chapter 43.22 RCW in accordance with an interlocal agreement under chapter 39.34 RCW, for alterations, remodeling, or expansion of manufactured housing located within the city limits under this section.

(2) A code city may not adopt an ordinance that has the effect, directly or indirectly, of restricting the location of ((~~mobile homes or manufactured homes in mobile home parks or manufactured housing~~)) manufactured/mobile homes in manufactured/mobile home communities((~~, as defined in RCW 59.20.030, which~~)) that were legally in existence before June 12, 2008, based exclusively on the age or dimensions of the ((~~mobile home or~~)) manufactured/mobile home. This does not preclude a code city from restricting the location of a ((~~mobile home or manufactured home in mobile home parks or manufactured housing~~))

manufactured/mobile home in manufactured/mobile home communities for any other reason including, but not limited to, failure to comply with fire, safety, or other local ordinances or state laws related to ((~~mobile homes and~~)) manufactured/mobile homes.

(3) Except as provided under subsection (4) of this section, a code city may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities.

(4) Subsection (3) of this section does not apply to any local ordinance or state law that:

(a) Imposes fire, safety, or other regulations related to recreational vehicles;

(b) Requires utility hookups in manufactured/mobile home communities to meet state or federal building code standards for manufactured/mobile home communities or recreational vehicle parks; or

(c) Includes both of the following provisions:

(i) A recreational vehicle must contain at least one internal toilet and at least one internal shower; and

(ii) If the requirement in (c)(i) of this subsection is not met, a manufactured/mobile home community must provide toilets and showers.

(5) For the purposes of this section, "manufactured/mobile home community" has the same meaning as in RCW 59.20.030.

(6) This section does not override any legally recorded covenants or deed restrictions of record.

(((~~(4)~~))) (7) This section does not affect the authority granted under chapter 43.22 RCW.

Sec. 3. RCW 36.01.225 and 2008 c 117 s 3 are each amended to read as follows:

(1) A county may not adopt an ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other state construction or local design standard. However, except as provided in subsection (2) of this section, any county may require that:

(a) A manufactured home be a new manufactured home;

(b) The manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative;

(c) The manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located;

(d) The home is thermally equivalent to the state energy code; and

(e) The manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.

(2) A county may not adopt an ordinance that has the effect, directly or indirectly, of restricting the location of ((~~mobile homes or manufactured homes in mobile home parks or manufactured housing~~)) manufactured/mobile homes in

manufactured/mobile home communities, as defined in RCW 59.20.030, which were legally in existence before June 12, 2008, based exclusively on the age or dimensions of the ((~~mobile home or~~)) manufactured/mobile home. This does not preclude a county from restricting the location of a ((~~mobile home or manufactured home in mobile home parks or manufactured housing~~)) manufactured/mobile home in manufactured/mobile home communities for any other reason including, but not limited to, failure to comply with fire, safety, or other local ordinances or state laws related to ((~~mobile homes and~~)) manufactured/mobile homes.

(3) A county may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities, as defined in RCW 59.20.030, unless the recreational vehicle fails to comply with the fire, safety, or other local ordinances or state laws related to recreational vehicles.

(4) This section does not override any legally recorded covenants or deed restrictions of record.

((~~(4)~~)) (5) This section does not affect the authority granted under chapter 43.22 RCW.

Passed by the House March 4, 2009.
Passed by the Senate April 2, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 80

[Engrossed House Bill 1464]

AFFORDABLE HOUSING INCENTIVE PROGRAMS

AN ACT Relating to affordable housing incentive programs; and amending RCW 36.70A.540.

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

Sec. 1. RCW 36.70A.540 and 2006 c 149 s 2 are each amended to read as follows:

(1)(a) Any city or county planning under RCW 36.70A.040 may enact or expand affordable housing incentive programs providing for the development of low-income housing units through development regulations or conditions on rezoning or permit decisions, or both, on one or more of the following types of development: Residential; commercial; industrial; or mixed-use. An affordable housing incentive program may include, but is not limited to, one or more of the following:

(i) Density bonuses within the urban growth area;

(ii) Height and bulk bonuses;

(iii) Fee waivers or exemptions;

(iv) Parking reductions; or

(v) Expedited permitting((~~, conditioned on provision of low-income housing units; or~~

~~(vi) Mixed use projects~~)).

(b) The city or county may enact or expand such programs whether or not the programs may impose a tax, fee, or charge on the development or construction of property.

(c) If a developer chooses not to participate in an optional affordable housing incentive program adopted and authorized under this section, a city, county, or town may not condition, deny, or delay the issuance of a permit or development approval that is consistent with zoning and development standards on the subject property absent incentive provisions of this program.

(2) Affordable housing incentive programs enacted or expanded under this section shall comply with the following:

(a) The incentives or bonuses shall provide for the ((~~construction~~)) development of low-income housing units;

(b) Jurisdictions shall establish standards for low-income renter or owner occupancy housing, including income guidelines consistent with local housing needs, to assist low-income households that cannot afford market-rate housing. Low-income households are defined for renter and owner occupancy program purposes as follows:

(i) Rental housing units to be developed shall be affordable to and occupied by households with an income of fifty percent or less of the county median family income, adjusted for family size; ((~~and~~))

(ii) Owner occupancy housing units shall be affordable to and occupied by households with an income of eighty percent or less of the county median family income, adjusted for family size. The legislative authority of a jurisdiction, after holding a public hearing, may establish lower income levels((~~.~~)); and

(iii) The legislative authority of a jurisdiction, after holding a public hearing, may also establish higher income levels for rental housing or for owner occupancy housing upon finding that higher income levels are needed to address local housing market conditions. The higher income level for rental housing may not exceed eighty percent of the county area median family income. The higher income level for owner occupancy housing may not exceed one hundred percent of the county area median family income. These established higher income levels ((~~must be~~)) are considered "low-income" for the purposes of this section;

(c) The jurisdiction shall establish a maximum rent level or sales price for each low-income housing unit developed under the terms of a program and may adjust these levels or prices based on the average size of the household expected to occupy the unit. For renter-occupied housing units, the total housing costs, including basic utilities as determined by the jurisdiction, may not exceed thirty percent of the income limit for the low-income housing unit;

(d) Where a developer is utilizing a housing incentive program authorized under this section to develop market rate housing, and is developing low-income housing to satisfy the requirements of the housing incentive program, the low-income housing units shall be provided in a range of sizes comparable to those units that are available to other residents. To the extent practicable, the number of bedrooms in low-income units must be in the same proportion as the number of bedrooms in units within the entire ((~~building~~)) development. The low-income units shall generally be distributed throughout the ((~~building, except that units may be provided in an adjacent building. The low-income units shall~~))

development and have substantially the same functionality as the other units in the ((~~building or buildings~~)) development;

(e) Low-income housing units developed under an affordable housing incentive program shall be committed to continuing affordability for at least fifty years. A local government, however, may accept payments in lieu of continuing affordability. The program shall include measures to enforce continuing affordability and income standards applicable to low-income units constructed under this section that may include, but are not limited to, covenants, options, or other agreements to be executed and recorded by owners and developers;

(f) Programs authorized under subsection (1) of this section may apply to part or all of a jurisdiction and different standards may be applied to different areas within a jurisdiction or to different types of development. Programs authorized under this section may be modified to meet local needs and may include provisions not expressly provided in this section or RCW 82.02.020; ((~~and~~))

(g) Low-income housing units developed under an affordable housing incentive program are encouraged to be provided within ((~~market-rate housing~~)) developments for which a bonus or incentive is provided. However, programs may allow units to be provided in ((~~an adjacent~~)) a building ((~~and~~)) located in the general area of the development for which a bonus or incentive is provided; and

(h) Affordable housing incentive programs may allow a payment((~~s~~)) of money or property in lieu of low-income housing units if the ((~~payment equals~~)) jurisdiction determines that the payment achieves a result equal to or better than providing the affordable housing on-site, as long as the payment does not exceed the approximate cost of developing the same number and quality of housing units that would otherwise be developed. Any city or county shall use these funds or property to support the development of low-income housing, including support provided through loans or grants to public or private owners or developers of housing.

(3) Affordable housing incentive programs enacted or expanded under this section may be applied within the jurisdiction to address the need for increased residential development, consistent with local growth management and housing policies, as follows:

(a) The jurisdiction shall identify certain land use designations within a geographic area where increased residential development will assist in achieving local growth management and housing policies;

(b) The jurisdiction shall provide increased residential development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives;

(c) The jurisdiction shall determine that increased residential development capacity or other incentives can be achieved within the identified area, subject to consideration of other regulatory controls on development; and

(d) The jurisdiction may establish a minimum amount of affordable housing that must be provided by all residential developments being built under the revised regulations, consistent with the requirements of this section.

Passed by the House March 4, 2009.

Passed by the Senate April 2, 2009.

Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 81

[Substitute House Bill 1261]
UNIFORM ADULT GUARDIANSHIP AND
PROTECTIVE PROCEEDINGS JURISDICTION ACT

AN ACT Relating to adult guardianship and protective proceedings jurisdiction; adding a new chapter to Title 11 RCW; and providing an effective date.

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

ARTICLE 1
GENERAL PROVISIONS

NEW SECTION. **Sec. 1.** This chapter may be cited as the uniform adult guardianship and protective proceedings jurisdiction act.

NEW SECTION. **Sec. 2.** In this chapter:

(1) "Adult" means an individual who has attained eighteen years of age.

(2) "Guardian of the estate" means a person appointed by the court to administer the property of an adult, and includes a conservator appointed by the court in another state.

(3) "Guardian of the person" or "guardian" means a person appointed by the court to make decisions regarding the person of an adult.

(4) "Guardianship order" means an order appointing a guardian of the person or guardian of the estate.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian of the person or guardian of the estate is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian of the person or guardian of the estate has been appointed.

(7) "Party" means the respondent, petitioner, guardian of the person or guardian of the estate, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person," except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

(10) "Protective order" means an order appointing a guardian of the estate or other order related to management of an adult's property, including an order issued by a court in another state appointing a conservator.

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian of the person is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

NEW SECTION. **Sec. 3.** A court of this state may treat a foreign country as if it were a state for the purpose of applying this chapter.

NEW SECTION. **Sec. 4.** (1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

NEW SECTION. **Sec. 5.** (1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(a) Hold an evidentiary hearing;

(b) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(c) Order that an evaluation or assessment be made of the respondent;

(d) Order any appropriate investigation of a person involved in a proceeding;

(e) Forward to the court of this state a certified copy of the transcript or other record of a hearing under (a) of this subsection or any other proceeding, any evidence otherwise produced under (b) of this subsection, and any evaluation or assessment prepared in compliance with an order under (c) or (d) of this subsection;

(f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Sec. 164.504.

(2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

NEW SECTION. **Sec. 6.** (1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.

ARTICLE 2
JURISDICTION

NEW SECTION. **Sec. 7.** (1) In this chapter:

(a) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

(b) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(c) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(2) In determining under sections 9 and 16(5) of this act whether a respondent has a significant connection with a particular state, the court shall consider:

(a) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(b) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) The location of the respondent's property; and

(d) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

NEW SECTION. **Sec. 8.** This chapter provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult under chapters 11.88 and 11.92 RCW.

NEW SECTION. **Sec. 9.** A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent's home state;

(2) On the date the petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The court in this state concludes that it is an appropriate forum under the factors set forth in section 12 of this act;

(3) This state does not have jurisdiction under either subsection (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) The requirements for special jurisdiction under section 10 of this act are met.

NEW SECTION. **Sec. 10.** (1) A court of this state lacking jurisdiction under section 9 of this act has special jurisdiction to do any of the following:

(a) In an emergency, process a petition under RCW 11.88.090 for appointment of a guardian for a respondent who is physically present in this state, for a term not exceeding ninety days;

(b) Issue a protective order with respect to a respondent's real or tangible personal property located in this state if a petition for appointment of a guardian or a conservator for the respondent is pending or has been approved in another state;

(c) Appoint a guardian of the person or guardian of the estate for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 16 of this act.

(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

NEW SECTION. **Sec. 11.** Except as otherwise provided in section 10 of this act, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

NEW SECTION. **Sec. 12.** (1) A court of this state having jurisdiction under section 9 of this act to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1) of this section, it shall either dismiss or stay the proceeding. The

court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(a) Any expressed preference of the respondent;

(b) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(c) The length of time the respondent was physically present in or was a legal resident of this or another state;

(d) The distance of the respondent from the court in each state;

(e) The financial circumstances of the respondent's estate;

(f) The nature and location of the evidence;

(g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(h) The familiarity of the court of each state with the facts and issues in the proceeding; and

(i) If an appointment were made, the court's ability to monitor the conduct of the guardian of the person or guardian of the estate.

NEW SECTION. **Sec. 13.** (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(a) Decline to exercise jurisdiction;

(b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(c) Continue to exercise jurisdiction after considering:

(i) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in section 12(3) of this act; and

(iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 9 of this act.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorneys' fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this act.

NEW SECTION. **Sec. 14.** If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the

respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

NEW SECTION. **Sec. 15.** Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under section 10(1) (a) or (b) of this act, if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under section 9 of this act, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 9 of this act before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under section 9 of this act, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

ARTICLE 3
TRANSFER OF GUARDIANSHIP

NEW SECTION. **Sec. 16.** (1) A guardian of the person or guardian of the estate appointed in this state may petition the court to transfer the guardianship to another state.

(2) Notice of a petition under subsection (1) of this section must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian of the person or guardian of the estate.

(3) On the court's own motion or on request of the guardian of the person or guardian of the estate, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian of the person or guardian of the estate to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(a) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(c) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(5) The court shall issue a provisional order granting a petition to transfer a guardianship of the estate and shall direct the guardian of the estate to petition

for guardianship of the estate or conservatorship in the other state if the court is satisfied that the guardianship of the estate will be accepted by the court of the other state and the court finds that:

(a) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in section 7(2) of this act;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(c) Adequate arrangements will be made for management of the protected person's property.

(6) The court shall issue a final order confirming the transfer and terminating the guardianship of the person or guardianship of the estate upon its receipt of:

(a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 17 of this act; and

(b) The documents required to terminate a guardianship of the person or guardianship of the estate in this state.

NEW SECTION. **Sec. 17.** (1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to section 16 of this act, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under subsection (1) of this section must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition filed under subsection (1) of this section unless:

(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(b) The guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian of the person or guardian of the estate in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 16 of this act transferring the proceeding to this state.

(6) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship of the person or guardianship of the estate needs to be modified to conform to the law of this state.

(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or guardian of the estate in this state if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

ARTICLE 4
REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

NEW SECTION. **Sec. 18.** If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office.

NEW SECTION. **Sec. 19.** If a guardian of the estate or conservator has been appointed in another state and a petition for a protective order is not pending in this state, the guardian of the estate or conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

NEW SECTION. **Sec. 20.** (1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available under this act and other law of this state to enforce a registered order.

ARTICLE 5
MISCELLANEOUS PROVISIONS

NEW SECTION. **Sec. 21.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NEW SECTION. **Sec. 22.** This act modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

NEW SECTION. **Sec. 23.** (1) This act applies to guardianship and protective proceedings filed on or after the effective date of this act.

(2) Sections 1 through 6 and 16 through 22 apply to proceedings filed before the effective date of this act, regardless of whether a guardianship or protective order has been issued.

NEW SECTION. **Sec. 24.** This act takes effect January 1, 2010.

NEW SECTION. **Sec. 25.** Article headings used in this act are not any part of the law.

NEW SECTION. **Sec. 26.** Sections 1 through 25 of this act constitute a new chapter in Title 11 RCW.

Passed by the House February 27, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 82

[Substitute House Bill 1308]

ORGAN TRANSPLANT BENEFIT WAITING PERIODS

AN ACT Relating to reducing organ transplant benefit waiting periods based upon prior creditable coverage; adding a new section to chapter 48.43 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** It is the intent of the legislature to reduce organ transplant benefit waiting periods for covered persons who have had prior continuous coverage and have changed health carriers or health benefit plans.

NEW SECTION. **Sec. 2.** A new section is added to chapter 48.43 RCW to read as follows:

(1) For each health benefit plan that is issued or renewed on or after January 1, 2010, a health carrier shall reduce any organ transplant benefit waiting period by the amount of time a covered person had prior creditable coverage. Benefits provided are subject to all other terms and conditions of the health benefit plan, including but not limited to any applicable coinsurances, deductibles, and copayments.

(2) For purposes of this section, "creditable coverage" means the same as set forth in section 2701 of the federal health insurance portability and accountability act of 1996 (42 U.S.C. Sec. 300gg), as it existed on the effective date of this section, or on such subsequent date as may be provided by the commissioner by rule, consistent with the purposes of this section, and also includes coverage which terminated during the period beginning ninety days and ending sixty-four days before the date of application for the new plan if that coverage would otherwise have qualified as creditable coverage under that federal act.

Passed by the House March 3, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 83

[House Bill 1338]

DELINQUENT REPORTS AND PAYMENTS—
EMPLOYMENT SECURITY DEPARTMENT DUTIES

AN ACT Relating to expanding industries that qualify for good cause for late filing of reports, contributions, penalties, or interest; amending RCW 50.29.010; and creating a new section.

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

Sec. 1. RCW 50.29.010 and 2002 c 149 s 11 are each amended to read as follows:

As used in this chapter:

(1) "Computation date" means July 1st of any year;

(2) "Cut-off date" means September 30th next following the computation date;

(3) "Qualification date" means April 1st of the second year preceding the computation date;

(4) "Rate year" means the calendar year immediately following the computation date;

(5) "Payroll" means all wages (as defined for contribution purposes) paid by an employer to individuals in his or her employment;

(6) "Qualified employer" means any employer who (a) reported some employment in the twelve-month period beginning with the qualification date, (b) had no period of four or more consecutive calendar quarters for which he or she reported no employment in the two calendar years immediately preceding the computation date, and (c) has submitted by the cut-off date all reports, contributions, interest, and penalties required under this title for the period preceding the computation date. Unpaid contributions, interest, and penalties ((~~may~~)) must be disregarded for the purposes of this section if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding the computation date. Late reports, contributions, penalties, or interest ((~~from employment defined under RCW 50.04.160~~)) may be disregarded for the purposes of this section if showing is made to the satisfaction of the commissioner, as the commissioner may define by rule, that an otherwise qualified employer acted in good faith and that forfeiture of qualification for a reduced contribution rate because of such delinquency would be inequitable.

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.

Passed by the House February 23, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 84

[Engrossed Substitute House Bill 1794]

CALCULATION OF CHILD SUPPORT

AN ACT Relating to calculating child support; amending RCW 26.19.020, 26.19.065, 26.19.071, 26.19.075, and 26.19.080; and providing an effective date.

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

Sec. 1. RCW 26.19.020 and 1998 c 163 s 2 are each amended to read as follows:

ECONOMIC TABLE
MONTHLY BASIC SUPPORT OBLIGATION
PER CHILD
KEY: A= AGE 0-11 B= AGE 12-18

COMBINED MONTHLY NET INCOME	ONE CHILD FAMILY		TWO CHILDREN FAMILY	
	A	B	A	B
((~~0~~				
~~100~~				
~~200~~				
~~300~~	~~For income less than $600 the obligation is based upon the resources and living expenses of each household. Minimum support shall not be less than $25 per child per month except when allowed by RCW 26.19.065(2).~~			
~~400~~				
~~500~~				
~~600~~	~~133~~	~~164~~	~~103~~	~~127~~
~~700~~	~~155~~	~~191~~	~~120~~	~~148~~
~~800~~	~~177~~	~~218~~	~~137~~	~~170~~
~~900~~	~~199~~	~~246~~	~~154~~	~~191~~))
	For income less than $1000 the obligation is based upon the resources and living expenses of each household. Minimum support may not be less than $50 per child per month except when allowed by RCW 26.19.065(2).			
1000	220	272	171	211
1100	242	299	188	232
1200	264	326	205	253
1300	285	352	221	274
1400	307	379	238	294

1500	327	404	254	313
1600	347	428	269	333
1700	367	453	285	352
1800	387	478	300	371
1900	407	503	316	390
2000	427	527	331	409
2100	447	552	347	429
2200	467	577	362	448
2300	487	601	378	467
2400	506	626	393	486
2500	526	650	408	505
2600	534	661	416	513
2700	542	670	421	520
2800	549	679	427	527
2900	556	686	431	533
3000	561	693	436	538
3100	566	699	439	543
3200	569	704	442	546
3300	573	708	445	549
3400	574	710	446	551
3500	575	711	447	552
3600	577	712	448	553
3700	578	713	449	554
3800	581	719	452	558
3900	596	736	463	572
4000	609	753	473	584
4100	623	770	484	598
4200	638	788	495	611
4300	651	805	506	625
4400	664	821	516	637
4500	677	836	525	649
4600	689	851	535	661
4700	701	866	545	673
4800	713	882	554	685
4900	726	897	564	697
5000	738	912	574	708
5100	751	928	584	720
5200	763	943	593	732
5300	776	959	602	744
5400	788	974	612	756
5500	800	989	622	768
5600	812	1004	632	779
5700	825	1019	641	791
5800	837	1035	650	803
5900	850	1050	660	815
6000	862	1065	670	827

6100	875	1081	680	839
6200	887	1096	689	851
6300	899	1112	699	863
6400	911	1127	709	875
6500	924	1142	718	887
6600	936	1157	728	899
6700	949	1172	737	911
6800	961	1188	747	923
6900	974	1203	757	935
7000	986	1218	767	946
7100	998	1233	776	958
7200	1009	1248	785	971
7300	1021	1262	794	982
7400	1033	1276	803	993
7500	1044	1290	812	1004
7600	1055	1305	821	1015
7700	1067	1319	830	1026
7800	1078	1333	839	1037
7900	1089	1346	848	1048
8000	1100	1360	857	1059
8100	1112	1374	865	1069
8200	1123	1387	874	1080
8300	1134	1401	882	1091
8400	1144	1414	891	1101
8500	1155	1428	899	1112
8600	1166	1441	908	1122
8700	1177	1454	916	1133
8800	1187	1467	925	1143
8900	1198	1481	933	1153
9000	1208	1493	941	1163
9100	1219	1506	949	1173
9200	1229	1519	957	1183
9300	1239	1532	966	1193
9400	1250	1545	974	1203
9500	1260	1557	982	1213
9600	1270	1570	989	1223
9700	1280	1582	997	1233
9800	1290	1594	1005	1242
9900	1300	1606	1013	1252
10000	1310	1619	1021	1262
10100	1319	1631	1028	1271
10200	1329	1643	1036	1281
10300	1339	1655	1044	1290
10400	1348	1666	1051	1299
10500	1358	1678	1059	1308
10600	1367	1690	1066	1318

10700	1377	1701	1073	1327
10800	1386	1713	1081	1336
10900	1395	1724	1088	1345
11000	1404	1736	1095	1354
11100	1413	1747	1102	1363
11200	1422	1758	1110	1371
11300	1431	1769	1117	1380
11400	1440	1780	1124	1389
11500	1449	1791	1131	1398
11600	1458	1802	1138	1406
11700	1467	1813	1145	1415
11800	1475	1823	1151	1423
11900	1484	1834	1158	1431
12000	1492	1844	1165	1440

COMBINED MONTHLY NET INCOME	THREE CHILDREN FAMILY		FOUR CHILDREN FAMILY		FIVE CHILDREN FAMILY	
	A	B	A	B	A	B
((~~0~~						
~~100~~						
~~200~~						
~~300~~	~~For income less than $600 the obligation is based upon the resources and living expenses of each household. Minimum support shall not be less than $25 per child per month except when allowed by RCW 26.19.065(2).~~					
~~400~~						
~~500~~						
~~600~~	~~86~~	~~106~~	~~73~~	~~90~~	~~63~~	~~78~~
~~700~~	~~100~~	~~124~~	~~85~~	~~105~~	~~74~~	~~91~~
~~800~~	~~115~~	~~142~~	~~97~~	~~120~~	~~84~~	~~104~~
~~900~~	~~129~~	~~159~~	~~109~~	~~135~~	~~95~~	~~118~~))
	For income less than $1000 the obligation is based upon the resources and living expenses of each household. Minimum support may not be less than $50 per child per month except when allowed by RCW 26.19.065(2).					
1000	143	177	121	149	105	130
1100	157	194	133	164	116	143
1200	171	211	144	179	126	156
1300	185	228	156	193	136	168

1400	199	246	168	208	147	181
1500	212	262	179	221	156	193
1600	225	278	190	235	166	205
1700	238	294	201	248	175	217
1800	251	310	212	262	185	228
1900	264	326	223	275	194	240
2000	277	342	234	289	204	252
2100	289	358	245	303	213	264
2200	302	374	256	316	223	276
2300	315	390	267	330	233	288
2400	328	406	278	343	242	299
2500	341	421	288	356	251	311
2600	346	428	293	362	256	316
2700	351	435	298	368	259	321
2800	356	440	301	372	262	324
2900	360	445	305	376	266	328
3000	364	449	308	380	268	331
3100	367	453	310	383	270	334
3200	369	457	312	386	272	336
3300	371	459	314	388	273	339
3400	372	460	315	389	274	340
3500	373	461	316	390	275	341
3600	374	462	317	391	276	342
3700	375	463	318	392	277	343
3800	377	466	319	394	278	344
3900	386	477	326	404	284	352
4000	395	488	334	413	291	360
4100	404	500	341	422	298	368
4200	413	511	350	431	305	377
4300	422	522	357	441	311	385
4400	431	532	364	449	317	392
4500	438	542	371	458	323	400
4600	446	552	377	467	329	407
4700	455	562	384	475	335	414
4800	463	572	391	483	341	422
4900	470	581	398	491	347	429
5000	479	592	404	500	353	437

5100	487	602	411	509	359	443
5200	494	611	418	517	365	451
5300	503	621	425	525	371	458
5400	511	632	432	533	377	466
5500	518	641	439	542	383	473
5600	527	651	446	551	389	480
5700	535	661	452	559	395	488
5800	543	671	459	567	401	495
5900	551	681	466	575	407	502
6000	559	691	473	584	413	509
6100	567	701	479	593	418	517
6200	575	710	486	601	424	524
6300	583	721	493	609	430	532
6400	591	731	500	617	436	539
6500	599	740	506	626	442	546
6600	607	750	513	635	448	554
6700	615	761	520	643	454	561
6800	623	770	527	651	460	568
6900	631	780	533	659	466	575
7000	639	790	540	668	472	583
7100	647	800	547	677	478	591
7200	654	809	554	684	484	598
7300	662	818	560	693	490	605
7400	670	828	567	701	496	613
7500	677	837	574	709	502	620
7600	685	846	581	718	507	627
7700	692	855	587	726	513	634
7800	700	865	594	734	519	642
7900	707	874	601	742	525	649
8000	714	883	607	750	531	656
8100	722	892	614	759	536	663
8200	729	901	620	767	542	670
8300	736	910	627	775	548	677
8400	743	919	633	783	553	684
8500	750	928	640	791	559	691
8600	758	936	646	799	565	698
8700	765	945	653	807	570	705

8800	772	954	659	815	576	712
8900	779	962	665	822	582	719
9000	786	971	672	830	587	726
9100	792	980	678	838	593	732
9200	799	988	684	846	598	739
9300	806	996	691	854	604	746
9400	813	1005	697	861	609	753
9500	820	1013	703	869	614	759
9600	826	1021	709	877	620	766
9700	833	1030	716	884	625	773
9800	840	1038	722	892	631	779
9900	846	1046	728	900	636	786
10000	853	1054	734	907	641	793
10100	859	1062	740	915	647	799
10200	866	1070	746	922	652	806
10300	872	1078	752	930	657	812
10400	879	1086	758	937	662	819
10500	885	1094	764	944	668	825
10600	891	1102	770	952	673	832
10700	898	1109	776	959	678	838
10800	904	1117	782	966	683	844
10900	910	1125	788	974	688	851
11000	916	1132	794	981	693	857
11100	922	1140	799	988	698	863
11200	928	1147	805	995	703	869
11300	934	1155	811	1002	708	876
11400	940	1162	817	1009	714	882
11500	946	1170	822	1017	719	888
11600	952	1177	828	1024	723	894
11700	958	1184	834	1031	728	900
11800	964	1191	839	1038	733	906
11900	970	1199	845	1045	738	912
12000	975	1206	851	1051	743	919

The economic table is presumptive for combined monthly net incomes up to and including ((~~five~~)) twelve thousand dollars. ((~~When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below~~

~~that amount. The economic table is advisory but not presumptive for combined monthly net incomes that exceed five thousand dollars.~~)) When combined monthly net income exceeds ((~~seven~~)) twelve thousand dollars, the court may ((~~set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may~~)) exceed the ((~~advisory~~)) presumptive amount of support set for combined monthly net incomes of ((~~seven~~)) twelve thousand dollars upon written findings of fact.

Sec. 2. RCW 26.19.065 and 1998 c 163 s 1 are each amended to read as follows:

(1) **Limit at forty-five percent of a parent's net income.** Neither parent's ((~~total~~)) child support obligation owed for all his or her biological or legal children may exceed forty-five percent of net income except for good cause shown. ((~~Good cause includes but is not limited to possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.~~))

(a) Each child is entitled to a pro rata share of the income available for support, but the court only applies the pro rata share to the children in the case before the court.

(b) Before determining whether to apply the forty-five percent limitation, the court must consider whether it would be unjust to apply the limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances include, but are not limited to, leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and any involuntary limits on either parent's earning capacity including incarceration, disabilities, or incapacity.

(c) Good cause includes, but is not limited to, possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.

(2) **((~~Income below six hundred dollars~~)) Presumptive minimum support obligation.** (a) When ((~~combined~~)) a parent's monthly net income is ((~~less than six hundred dollars~~)) below one hundred twenty-five percent of the federal poverty guideline, a support order of not less than ((~~twenty-five~~)) fifty dollars per child per month shall be entered ((~~for each parent~~)) unless the obligor parent establishes that it would be unjust ((~~or inappropriate~~)) to do so in that particular case. The decision whether there is a sufficient basis to deviate below the presumptive minimum payment must take into consideration the best interests of the child and the circumstances of each parent. Such circumstances can include leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and earning capacity. ((~~A parent's~~))

(b) The basic support obligation of the parent making the transfer payment, excluding health care, day care, and special child-rearing expenses, shall not reduce his or her net income below ((~~the need standard for one person established pursuant to RCW 74.04.770~~)) the self-support reserve of one hundred twenty-five percent of the federal poverty level, except for the presumptive minimum payment of ((~~twenty-five~~)) fifty dollars per child per month or ((~~in cases where the court finds reasons for deviation~~)) when it would

be unjust to apply the self-support reserve limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances include, but are not limited to, leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and earning capacity. This section shall not be construed to require monthly substantiation of income.

(3) **Income above ((~~five thousand and seven~~)) twelve thousand dollars.** The economic table is presumptive for combined monthly net incomes up to and including ((~~five~~)) twelve thousand dollars. ((~~When combined monthly net income exceeds five thousand dollars, support shall not be set at an amount lower than the presumptive amount of support set for combined monthly net incomes of five thousand dollars unless the court finds a reason to deviate below that amount. The economic table is advisory but not presumptive for combined monthly net incomes that exceed five thousand dollars.~~)) When combined monthly net income exceeds ((~~seven~~)) twelve thousand dollars, the court may ((~~set support at an advisory amount of support set for combined monthly net incomes between five thousand and seven thousand dollars or the court may~~)) exceed the ((~~advisory~~)) presumptive amount of support set for combined monthly net incomes of ((~~seven~~)) twelve thousand dollars upon written findings of fact.

Sec. 3. RCW 26.19.071 and 2008 c 6 s 1038 are each amended to read as follows:

(1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

(a) Salaries;

(b) Wages;

(c) Commissions;

(d) Deferred compensation;

(e) Overtime, except as excluded for income in subsection (4)(h) of this section;

(f) Contract-related benefits;

(g) Income from second jobs, except as excluded for income in subsection (4)(h) of this section;

(h) Dividends;

(i) Interest;

(j) Trust income;

(k) Severance pay;

(l) Annuities;

(m) Capital gains;
(n) Pension retirement benefits;
(o) Workers' compensation;
(p) Unemployment benefits;
(q) Maintenance actually received;
(r) Bonuses;
(s) Social security benefits; ((~~and~~))
(t) Disability insurance benefits; and
(u) Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation.

(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:

(a) Income of a new spouse or new domestic partner or income of other adults in the household;
(b) Child support received from other relationships;
(c) Gifts and prizes;
(d) Temporary assistance for needy families;
(e) Supplemental security income;
(f) General assistance; ((~~and~~))
(g) Food stamps; and
(h) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, general assistance, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

(a) Federal and state income taxes;
(b) Federal insurance contributions act deductions;
(c) Mandatory pension plan payments;
(d) Mandatory union or professional dues;
(e) State industrial insurance premiums;
(f) Court-ordered maintenance to the extent actually paid;
(g) Up to ((~~two~~)) five thousand dollars per year in voluntary ((~~pension payments~~)) retirement contributions actually made if the contributions ((~~were made for the two tax years preceding the earlier of the (i) tax year in which the parties separated with intent to live separate and apart or (ii) tax year in which the parties filed for dissolution~~)) show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; and
(h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) **Imputation of income.** The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history, education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. ((~~In the absence of information to the contrary, a parent's imputed income shall be based on the median income of year-round full-time workers as derived from the United States bureau of census, current populations reports, or such replacement report as published by the bureau of census.~~)) In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

(a) Full-time earnings at the current rate of pay;

(b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, general assistance-unemployable, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;

(e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census.

Sec. 4. RCW 26.19.075 and 2008 c 6 s 1039 are each amended to read as follows:

(1) Reasons for deviation from the standard calculation include but are not limited to the following:

(a) **Sources of income and tax planning.** The court may deviate from the standard calculation after consideration of the following:

(i) Income of a new spouse or new domestic partner if the parent who is married to the new spouse or in a partnership with a new domestic partner is asking for a deviation based on any other reason. Income of a new spouse or new domestic partner is not, by itself, a sufficient reason for deviation;

(ii) Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;

(iii) Child support actually received from other relationships;

(iv) Gifts;

(v) Prizes;

(vi) Possession of wealth, including but not limited to savings, investments, real estate holdings and business interests, vehicles, boats, pensions, bank accounts, insurance plans, or other assets;

(vii) Extraordinary income of a child; ((~~or~~))

(viii) Tax planning considerations. A deviation for tax planning may be granted only if the child would not receive a lesser economic benefit due to the tax planning; or

(ix) Income that has been excluded under RCW 26.19.071(4)(h) if the person earning that income asks for a deviation for any other reason.

(b) **Nonrecurring income.** The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses, or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.

(c) **Debt and high expenses.** The court may deviate from the standard calculation after consideration of the following expenses:

(i) Extraordinary debt not voluntarily incurred;

(ii) A significant disparity in the living costs of the parents due to conditions beyond their control;

(iii) Special needs of disabled children;

(iv) Special medical, educational, or psychological needs of the children; or

(v) Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child.

(d) **Residential schedule.** The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

(e) **Children from other relationships.** The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.

(i) The child support schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.

(ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.

(iii) When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the

parent owes a duty of support. The court may consider court-ordered payments of child support for children from other relationships only to the extent that the support is actually paid.

(iv) When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.

(2) All income and resources of the parties before the court, new spouses or new domestic partners, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.

(3) The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.

(4) When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.

(5) Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation.

Sec. 5. RCW 26.19.080 and 1996 c 216 s 1 are each amended to read as follows:

(1) The basic child support obligation derived from the economic table shall be allocated between the parents based on each parent's share of the combined monthly net income.

(2) ((~~Ordinary~~)) Health care ((~~expenses~~)) costs are not included in the economic table. Monthly health care ((~~expenses that exceed five percent of the basic support obligation~~)) costs shall be ((~~considered extraordinary health care expenses. Extraordinary health care expenses shall be~~)) shared by the parents in the same proportion as the basic child support obligation. Health care costs shall include, but not be limited to, medical, dental, orthodontia, vision, chiropractic, mental health treatment, prescription medications, and other similar costs for care and treatment.

(3) Day care and special child rearing expenses, such as tuition and long-distance transportation costs to and from the parents for visitation purposes, are not included in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation. If an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment if the overpayment amounts to at least twenty percent of the obligor's annual day care or special child rearing expenses. The obligor may institute an action in the superior court or file an application for an adjudicative hearing with the department of social and health services for reimbursement of day care and special child rearing expense overpayments that amount to twenty percent or more of the obligor's annual day care and special child rearing expenses. Any ordered overpayment reimbursement shall be applied first as an

offset to child support arrearages of the obligor. If the obligor does not have child support arrearages, the reimbursement may be in the form of a direct reimbursement by the obligee or a credit against the obligor's future support payments. If the reimbursement is in the form of a credit against the obligor's future child support payments, the credit shall be spread equally over a twelve-month period. Absent agreement of the obligee, nothing in this section entitles an obligor to pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments.

(4) The court may exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation.

NEW SECTION. **Sec. 6.** This act takes effect October 1, 2009.

Passed by the House March 3, 2009.
Passed by the Senate April 2, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 85

[Substitute House Bill 2071]
PARENT EDUCATION—NEEDY FAMILIES

AN ACT Relating to increasing the earning potential of parents of needy families; amending RCW 74.08A.260; adding a new section to chapter 74.08A 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 nearly half of all recipients in the state's temporary assistance for needy families program return to the program more than once, seeking financial assistance. The legislature also finds that the inability of those recipients to attain a living wage job and to exit the program permanently remains a concern. The legislature finds that ample evidence demonstrates the connection between educational attainment and increased earnings over time. The legislature also finds that policies to encourage more recipients in the temporary assistance for needy families program to pursue the educational and training opportunities available to them can move more recipients into living wage jobs so they can exit public financial assistance programs permanently. Therefore, the legislature intends to direct the WorkFirst program to develop appropriate strategies to increase participation in educational and training programs available to recipients in order to promote higher rates of postprogram employment in living wage jobs and to reduce the rate of reentry into the program.*

***Sec. 1 was vetoed. See message at end of chapter.**

Sec. 2. RCW 74.08A.260 and 2006 c 107 s 3 are each amended to read as follows:

(1) Each recipient shall be assessed after determination of program eligibility and before referral to job search. Assessments shall be based upon factors that are critical to obtaining employment, including but not limited to education, availability of child care, history of family violence, history of

substance abuse, and other factors that affect the ability to obtain employment. Assessments may be performed by the department or by a contracted entity. The assessment shall be based on a uniform, consistent, transferable format that will be accepted by all agencies and organizations serving the recipient. Based on the assessment, an individual responsibility plan shall be prepared that: (a) Sets forth an employment goal and a plan for ((~~moving the recipient immediately into~~)) maximizing the recipient's success at meeting the employment goal; (b) considers WorkFirst educational and training programs from which the recipient could benefit; (c) contains the obligation of the recipient to ((~~become and remain employed~~)) participate in the program by complying with the plan; ((~~(c)~~)) (d) moves the recipient into ((~~whatever employment the recipient is capable of handling~~)) full-time WorkFirst activities as quickly as possible; and ((~~(d)~~)) (e) describes the services available to the recipient either during or after WorkFirst to enable the recipient to obtain and keep employment and to advance in the workplace and increase the recipient's wage earning potential over time.

(2) Recipients who are not engaged in work and work activities, and do not qualify for a good cause exemption under RCW 74.08A.270, shall engage in self-directed service as provided in RCW 74.08A.330.

(3) If a recipient refuses to engage in work and work activities required by the department, the family's grant shall be reduced by the recipient's share, and may, if the department determines it appropriate, be terminated.

(4) The department may waive the penalties required under subsection (3) of this section, subject to a finding that the recipient refused to engage in work for good cause provided in RCW 74.08A.270.

(5) In implementing this section, the department shall assign the highest priority to the most employable clients, including adults in two-parent families and parents in single-parent families that include older preschool or school-age children to be engaged in work activities.

(6) In consultation with the recipient, the department or contractor shall place the recipient into a work activity that is available in the local area where the recipient resides.

(7) Assessments conducted under this section shall include a consideration of the potential benefit to the recipient of engaging in financial literacy activities. The department shall consider the options for financial literacy activities available in the community, including information and resources available through the financial literacy public-private partnership created under RCW 28A.300.450. The department may authorize up to ten hours of financial literacy activities as a core activity or an optional activity under WorkFirst.

NEW SECTION. **Sec. 3.** A new section is added to chapter 74.08A RCW to read as follows:

The department shall continue to implement WorkFirst program improvements that are designed to achieve progress against outcome measures specified in RCW 74.08A.410. Outcome data regarding job retention and wage progression shall be reported quarterly to appropriate fiscal and policy committees of the legislature for families who leave assistance, measured after twelve months, twenty-four months, and thirty-six months. The department shall also report the percentage of families who have returned to temporary assistance for needy families after twelve months, twenty-four months, and

thirty-six months. The department shall make every effort to maximize vocational training, as allowed by federal and state requirements.

Passed by the House March 6, 2009.

Passed by the Senate April 2, 2009.

Approved by the Governor April 13, 2009, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 14, 2009.

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

"I am returning herewith, without my approval as to Section 1, Substitute House Bill 2071 entitled:

"AN ACT Relating to increasing the earning potential of parents of needy families."

I am vetoing the intent section, Section 1 of the bill, because it is broader than the substantive language in the bill. The substantive language of the bill was changed during the legislative process and the language of Section 1 reflects the content of the original bill, rather than the substitute. The intent section could cause unintended consequences and might result in increased liability for the state. Vetoing the intent section does not impede implementation of the bill.

For these reasons, I have vetoed Section 1 of Substitute House Bill 2071.

With the exception of Section 1, Substitute House Bill 2071 is approved."

CHAPTER 86

[Senate Bill 5102]

DISTRICT COURT JUDGES—BENTON COUNTY

AN ACT Relating to increasing the number of district court judges in Benton county; and amending RCW 3.34.010.

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

Sec. 1. RCW 3.34.010 and 2008 c 63 s 1 are each amended to read as follows:

The number of district judges to be elected in each county shall be: Adams, two; Asotin, one; Benton, ((~~three~~)) five; Chelan, two; Clallam, two; Clark, six; Columbia, one; Cowlitz, three; Douglas, one; Ferry, one; Franklin, one; Garfield, one; Grant, two; Grays Harbor, two; Island, one; Jefferson, one; King, twenty-one; Kitsap, four; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, one; Pierce, eleven; San Juan, one; Skagit, two; Skamania, one; Snohomish, eight; Spokane, ten; Stevens, one; Thurston, three; Wahkiakum, one; Walla Walla, two; Whatcom, two; Whitman, one; Yakima, four. This number may be increased only as provided in RCW 3.34.020.

Passed by the Senate January 28, 2009.

Passed by the House April 6, 2009.

Approved by the Governor April 13, 2009.

Filed in Office of Secretary of State April 14, 2009.

CHAPTER 87

[Senate Bill 5125]

WASHINGTON BRED OWNER'S BONUS FUND AND BREEDER AWARDS ACCOUNT

AN ACT Relating to the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account; amending RCW 67.16.102, 67.16.175, and 67.16.275; reenacting and amending RCW 43.79A.040; and providing an effective date.

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

Sec. 1. RCW 67.16.102 and 2004 c 246 s 6 are each amended to read as follows:

(1) Notwithstanding any other provision of chapter 67.16 RCW to the contrary, the licensee shall withhold and shall pay daily to the commission, in addition to the percentages authorized by RCW 67.16.105, one percent of the gross receipts of all parimutuel machines at each race meet which sums shall, at the end of each meet, be paid by the commission to the licensed owners of those Washington bred only horses finishing first, second, third, and fourth ((~~Washington-bred only~~)) at each meet from which the additional one percent is derived in accordance with an equitable distribution formula to be promulgated by the commission prior to the commencement of each race meet: PROVIDED, That nothing in this section shall apply to race meets which are nonprofit in nature, are of ten days or less, and have an average daily handle of less than one hundred twenty thousand dollars.

(2) The additional one percent specified in subsection (1) of this section shall be deposited by the commission in the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account created in RCW 67.16.275. The interest derived from this account shall be distributed annually on an equal basis to those race courses at which independent race meets are held which are nonprofit in nature and are of ten days or less. Prior to receiving a payment under this subsection, any new race course shall meet the qualifications set forth in this section for a period of two years. All funds distributed under this subsection shall be used for the purpose of maintaining and upgrading the respective racing courses and equine quartering areas of said nonprofit meets.

(3) The commission shall not permit the licensees to take into consideration the benefits derived from this section in establishing purses.

(4) The commission is authorized to pay at the end of the calendar year one-half of the one percent collected from a new licensee under subsection (1) of this section for reimbursement of capital construction of that new licensee's new race track for a period of fifteen years. This reimbursement does not include interest earned on that one-half of one percent and such interest shall continue to be collected and disbursed as provided in RCW 67.16.101 and subsection (1) of this section.

Sec. 2. RCW 67.16.175 and 2001 c 53 s 2 are each amended to read as follows:

(1) In addition to the amounts authorized to be retained in RCW 67.16.170, race meets may retain daily for each authorized day of racing an additional six percent of the daily gross receipts of all parimutuel machines from exotic wagers at each race meet.

(2) Except as provided in subsection (3) of this section, of the amounts retained in subsection (1) of this section, one-sixth shall be ((~~used~~)) paid to the commission at the end of the race meet for deposit in the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account created in RCW 67.16.275. Such amounts shall be used by the commission for Washington bred breeder awards, in accordance with the rules and qualifications adopted by the commission.

(3) Of the amounts retained for breeder awards under subsection (2) of this section, twenty-five percent shall be retained by a new licensee for reimbursement of capital construction of the new licensee's new race track for a period of fifteen years.

(4) As used in this section, "exotic wagers" means any multiple wager. Exotic wagers are subject to approval of the commission.

Sec. 3. RCW 67.16.275 and 2004 c 246 s 2 are each amended to read as follows:

The Washington horse racing commission Washington bred owners' bonus fund and breeder awards account is created in the custody of the state treasurer. All receipts collected by the commission under RCW 67.16.102(1) and 67.16.175(2) must be deposited into the account. Expenditures from the account may be used only as authorized in RCW 67.16.102 and 67.16.175. Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Sec. 4. RCW 43.79A.040 and 2008 c 239 s 9, 2008 c 208 s 9, 2008 c 128 s 20, and 2008 c 122 s 24 are each reenacted and amended to read as follows:

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

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

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

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the students with dependents grant account, the basic

health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the Washington international exchange scholarship endowment fund, 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 grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion 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 sulfur dioxide abatement account, 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, the reduced cigarette ignition propensity account, and the reading achievement account. However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

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

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

NEW SECTION. **Sec. 5.** Section 4 of this act takes effect August 1, 2009.

Passed by the Senate February 27, 2009.
Passed by the House April 6, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 88

[Senate Bill 5147]

CRIMINAL LIBEL—REPEAL

AN ACT Relating to criminal libel; amending RCW 43.06A.085; and repealing RCW 9.58.010, 9.58.020, 9.58.030, 9.58.040, 9.58.050, 9.58.060, 9.58.070, 9.58.080, 9.58.090, and 10.37.120.

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

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

(1) RCW 9.58.010 (Libel, what constitutes) and 1935 c 117 s 1, 1909 c 249 s 172, 1891 c 69 s 3, Code 1881 ss 1230, 1231, 1879 p 144 s 1, & 1869 p 383 ss 1, 2;

(2) RCW 9.58.020 (How justified or excused—Malice, when presumed) and 1909 c 249 s 173, Code 1881 s 1233, 1879 p 144 s 4, & 1869 p 384 s 3;

(3) RCW 9.58.030 (Publication defined) and 1909 c 249 s 174, Code 1881 s 1234, & 1869 p 384 s 5;

(4) RCW 9.58.040 (Liability of editors and others) and 1935 c 117 s 2, 1909 c 249 s 175, Code 1881 ss 1230, 1231, 1879 p 144 s 1, & 1869 p 383 ss 1, 2;

(5) RCW 9.58.050 (Report of proceedings privileged) and 1909 c 249 s 176;

(6) RCW 9.58.060 (Venue punishment restricted) and 1909 c 249 s 177;

(7) RCW 9.58.070 (Privileged communications) and 1909 c 249 s 178;

(8) RCW 9.58.080 (Furnishing libelous information) and 1909 c 249 s 179;

(9) RCW 9.58.090 (Threatening to publish libel) and 1909 c 249 s 180; and

(10) RCW 10.37.120 (Libel—Innuendos—Publication) and 1891 c 28 s 34, Code 1881 s 1019, 1873 p 227 s 202, & 1869 p 243 s 197.

Sec. 2. RCW 43.06A.085 and 1999 c 390 s 7 are each amended to read as follows:

(1) An employee of the office of the family and children's ombudsman is not liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against an employee of the department, an employee of a contracting agency of the department, a foster parent, or a recipient of family and children's services for any communication made, or information given or disclosed, to aid the office of the family and children's ombudsman in carrying out its responsibilities, unless the communication or information is made, given, or disclosed maliciously or without good faith. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(3) All communications by an ombudsman, if reasonably related to the requirements of that individual's responsibilities under this chapter and done in good faith, are privileged ((~~under RCW 9.58.070~~)) and that privilege shall serve as a defense in any action in libel or slander.

Passed by the Senate March 7, 2009.
Passed by the House April 6, 2009.
Approved by the Governor April 13, 2009.
Filed in Office of Secretary of State April 14, 2009.

CHAPTER 89

[Engrossed Substitute House Bill 1926]

HOSPICE AGENCIES—CERTIFICATE OF NEED REQUIREMENTS

AN ACT Relating to exempting from certificate of need requirements hospice agencies that serve the unique cultural or religious needs of religious groups or ethnic minorities; and amending RCW 70.38.111.

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

Sec. 1. RCW 70.38.111 and 1997 c 210 s 1 are each amended to read as follows:

(1) The department shall not require a certificate of need for the offering of an inpatient tertiary health service by:

(a) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination;

(b) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination; or

(c) A health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals and, on the date the application is submitted under subsection (2) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization;

if, with respect to such offering or obligation by a nursing home, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under subsection (1) of this section from obtaining a certificate of need before offering a tertiary health service unless:

(a) It has submitted at least thirty days prior to the offering of services reviewable under RCW 70.38.105(4)(d) an application for such exemption; and

(b) The application contains such information respecting the organization, combination, or facility and the proposed offering or obligation by a nursing home as the department may require to determine if the organization or combination meets the requirements of subsection (1) of this section or the facility meets or will meet such requirements; and

(c) The department approves such application. The department shall approve or disapprove an application for exemption within thirty days of receipt of a completed application. In the case of a proposed health care facility (or portion thereof) which has not begun to provide tertiary health services on the date an application is submitted under this subsection with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of subsection (1) of this section when the facility first provides such services. The department shall approve an application submitted under this subsection if it determines that the applicable requirements of subsection (1) of this section are met.

(3) A health care facility (or any part thereof) with respect to which an exemption was granted under subsection (1) of this section may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired and a health care facility described in (1)(c) which was granted an exemption under subsection (1) of this section may not be used by any person other than the lessee described in (1)(c) unless:

(a) The department issues a certificate of need approving the sale, lease, acquisition, or use; or

(b) The department determines, upon application, that (i) the entity to which the facility is proposed to be sold or leased, which intends to acquire the controlling interest, or which intends to use the facility is a health maintenance organization or a combination of health maintenance organizations which meets the requirements of (1)(a)(i), and (ii) with respect to such facility, meets the requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i) and (ii).

(4) In the case of a health maintenance organization, an ambulatory care facility, or a health care facility, which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, the department may under the program apply its certificate of need requirements only to the offering of inpatient tertiary health services and then only to the extent that such offering is not exempt under the provisions of this section.

(5)(a) The department shall not require a certificate of need for the construction, development, or other establishment of a nursing home, or the addition of beds to an existing nursing home, that is owned and operated by a continuing care retirement community that:

(i) Offers services only to contractual members;

(ii) Provides its members a contractually guaranteed range of services from independent living through skilled nursing, including some assistance with daily living activities;

(iii) Contractually assumes responsibility for the cost of services exceeding the member's financial responsibility under the contract, so that no third party, with the exception of insurance purchased by the retirement community or its members, but including the medicaid program, is liable for costs of care even if the member depletes his or her personal resources;

(iv) Has offered continuing care contracts and operated a nursing home continuously since January 1, 1988, or has obtained a certificate of need to establish a nursing home;

(v) Maintains a binding agreement with the state assuring that financial liability for services to members, including nursing home services, will not fall upon the state;

(vi) Does not operate, and has not undertaken a project that would result in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and

(vii) Has obtained a professional review of pricing and long-term solvency within the prior five years which was fully disclosed to members.

(b) A continuing care retirement community shall not be exempt under this subsection from obtaining a certificate of need unless:

(i) It has submitted an application for exemption at least thirty days prior to commencing construction of, is submitting an application for the licensure of, or is commencing operation of a nursing home, whichever comes first; and

(ii) The application documents to the department that the continuing care retirement community qualifies for exemption.

(c) The sale, lease, acquisition, or use of part or all of a continuing care retirement community nursing home that qualifies for exemption under this subsection shall require prior certificate of need approval to qualify for licensure as a nursing home unless the department determines such sale, lease, acquisition, or use is by a continuing care retirement community that meets the conditions of (a) of this subsection.

(6) A rural hospital, as defined by the department, reducing the number of licensed beds to become a rural primary care hospital under the provisions of Part A Title XVIII of the Social Security Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction of beds licensed under chapter 70.41 RCW, increase the number of licensed beds to no more than the previously licensed number without being subject to the provisions of this chapter.

(7) A rural health care facility licensed under RCW 70.175.100 formerly licensed as a hospital under chapter 70.41 RCW may, within three years of the effective date of the rural health care facility license, apply to the department for a hospital license and not be subject to the requirements of RCW 70.38.105(4)(a) as the construction, development, or other establishment of a new hospital, provided there is no increase in the number of beds previously licensed under chapter 70.41 RCW and there is no redistribution in the number of beds used for acute care or long-term care, the rural health care facility has been in continuous operation, and the rural health care facility has not been purchased or leased.

(8)(a) A nursing home that voluntarily reduces the number of its licensed beds to provide assisted living, licensed boarding home care, adult day care, adult day health, respite care, hospice, outpatient therapy services, congregate meals, home health, or senior wellness clinic, or to reduce to one or two the number of beds per room or to otherwise enhance the quality of life for residents in the nursing home, may convert the original facility or portion of the facility back, and thereby increase the number of nursing home beds to no more than the previously licensed number of nursing home beds without obtaining a certificate of need under this chapter, provided the facility has been in continuous operation and has not been purchased or leased. Any conversion to the original licensed bed capacity, or to any portion thereof, shall comply with the same life and

safety code requirements as existed at the time the nursing home voluntarily reduced its licensed beds; unless waivers from such requirements were issued, in which case the converted beds shall reflect the conditions or standards that then existed pursuant to the approved waivers.

(b) To convert beds back to nursing home beds under this subsection, the nursing home must:

(i) Give notice of its intent to preserve conversion options to the department of health no later than thirty days after the effective date of the license reduction; and

(ii) Give notice to the department of health and to the department of social and health services of the intent to convert beds back. If construction is required for the conversion of beds back, the notice of intent to convert beds back must be given, at a minimum, one year prior to the effective date of license modification reflecting the restored beds; otherwise, the notice must be given a minimum of ninety days prior to the effective date of license modification reflecting the restored beds. Prior to any license modification to convert beds back to nursing home beds under this section, the licensee must demonstrate that the nursing home meets the certificate of need exemption requirements of this section.

The term "construction," as used in (b)(ii) of this subsection, is limited to those projects that are expected to equal or exceed the expenditure minimum amount, as determined under this chapter.

(c) Conversion of beds back under this subsection must be completed no later than four years after the effective date of the license reduction. However, for good cause shown, the four-year period for conversion may be extended by the department of health for one additional four-year period.

(d) Nursing home beds that have been voluntarily reduced under this section shall be counted as available nursing home beds for the purpose of evaluating need under RCW 70.38.115(2) (a) and (k) so long as the facility retains the ability to convert them back to nursing home use under the terms of this section.

(e) When a building owner has secured an interest in the nursing home beds, which are intended to be voluntarily reduced by the licensee under (a) of this subsection, the applicant shall provide the department with a written statement indicating the building owner's approval of the bed reduction.

(9)(a) The department shall not require a certificate of need for a hospice agency if:

(i) The hospice agency is designed to serve the unique religious or cultural needs of a religious group or an ethnic minority and commits to furnishing hospice services in a manner specifically aimed at meeting the unique religious or cultural needs of the religious group or ethnic minority;

(ii) The hospice agency is operated by an organization that:

(A) Operates a facility, or group of facilities, that offers a comprehensive continuum of long-term care services, including, at a minimum, a licensed, medicare-certified nursing home, assisted living, independent living, day health, and various community-based support services, designed to meet the unique social, cultural, and religious needs of a specific cultural and ethnic minority group;

(B) Has operated the facility or group of facilities for at least ten continuous years prior to the establishment of the hospice agency;

(iii) The hospice agency commits to coordinating with existing hospice programs in its community when appropriate;

(iv) The hospice agency has a census of no more than forty patients;

(v) The hospice agency commits to obtaining and maintaining medicare certification;

(vi) The hospice agency only serves patients located in the same county as the majority of the long-term care services offered by the organization that operates the agency; and

(vii) The hospice agency is not sold or transferred to another agency.

(b) The department shall include the patient census for an agency exempted under this subsection (9) in its calculations for future certificate of need applications.

Passed by the House March 6, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 15, 2009.
Filed in Office of Secretary of State April 15, 2009.

CHAPTER 90

[House Bill 1366]

BOILERS AND UNFIRED PRESSURE VESSELS

AN ACT Relating to making technical changes to boiler and unfired pressure vessel statutes; amending RCW 70.79.060, 70.79.070, 70.79.080, 70.79.090, and 70.79.240; and repealing RCW 70.79.210.

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

Sec. 1. RCW 70.79.060 and 1984 c 93 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, no power boiler, low pressure boiler, or unfired pressure vessel which does not conform to the rules and regulations formulated by the board governing new construction and installation shall be installed and operated in this state after twelve months from the date upon which the first rules and regulations under this chapter pertaining to new construction and installation shall have become effective, unless the boiler or unfired pressure vessel is of special design or construction, and is not covered by the rules and regulations, nor is in any way inconsistent with such rules and regulations, in which case ((~~a special installation and operating permit~~)) an inspection certificate may at its discretion be granted by the board.

(2) ((~~A special permit~~)) An inspection certificate may also be granted for boilers and pressure vessels manufactured before 1951 which do not comply with the code requirements of the American Society of Mechanical Engineers adopted under this chapter, if the boiler or pressure vessel is operated exclusively for the purposes of public exhibition, and the board finds, upon inspection, that operation of the boiler or pressure vessel for such purposes is not unsafe.

Sec. 2. RCW 70.79.070 and 1995 c 41 s 1 are each amended to read as follows:

(1) All boilers and unfired pressure vessels which were in use, or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became

effective, or during the twelve months period immediately thereafter, shall be made to conform to the rules and regulations of the board governing existing installations, and the formulae prescribed therein shall be used in determining the maximum allowable working pressure for such boilers and unfired pressure vessels.

(2) This chapter shall not be construed as in any way preventing the use or sale of boilers or unfired vessels as referred to in subsection (1) of this section, provided they have been made to conform to the rules and regulations of the board governing existing installations, and provided, further, they have not been found upon inspection to be in an unsafe condition.

(3) ((~~A special permit~~)) An inspection certificate may also be granted for miniature hobby boilers that do not comply with the code requirements of the American society of mechanical engineers adopted under this chapter and do not exceed any of the following limits:

(a) Sixteen inches inside diameter of the shell;

(b) Twenty square feet of total heating surface;

(c) Five cubic feet of gross volume of vessel; and

(d) One hundred fifty p.s.i.g. maximum allowable working pressure, and if the boiler is to be operated exclusively not for commercial or industrial use and the department of labor and industries finds, upon inspection, that operation of the boiler for such purposes is not unsafe.

Sec. 3. RCW 70.79.080 and 2005 c 22 s 1 are each amended to read as follows:

This chapter shall not apply to the following boilers, unfired pressure vessels and domestic hot water tanks:

(1) Boilers and unfired pressure vessels under federal regulation or operated by any railroad subject to the provisions of the interstate commerce act;

(2) Unfired pressure vessels meeting the requirements of the interstate commerce commission for shipment of liquids or gases under pressure;

(3) Air tanks located on vehicles operating under the rules of other state authorities and used for carrying passengers, or freight;

(4) Air tanks installed on the right-of-way of railroads and used directly in the operation of trains;

(5) Unfired pressure vessels having a volume of five cubic feet or less when not located in places of public assembly;

(6) Unfired pressure vessels designed for a pressure not exceeding fifteen pounds per square inch gauge;

(7) Tanks used in connection with heating water for domestic and/or residential purposes;

(8) Boilers and unfired pressure vessels in cities having ordinances which are enforced and which have requirements equal to or higher than those provided for under this chapter, covering the installation, operation, maintenance and inspection of boilers and unfired pressure vessels;

(9) Tanks containing water with no air cushion and no direct source of energy that operate at ((~~a~~)) ambient temperature ((~~of one hundred thirty degrees Fahrenheit or less~~));

(10) Electric boilers:

(a) Having a tank volume of not more than one and one-half cubic feet;

(b) Having a maximum allowable working pressure of one hundred pounds per square inch or less, with a pressure relief system to prevent excess pressure; and

(c) If constructed after June 10, 1994, constructed to American society of mechanical engineers code, or approved or otherwise certified by a nationally recognized or recognized foreign testing laboratory or construction code, including but not limited to Underwriters Laboratories, Edison Testing Laboratory, or Instituto Superiore Per La Prevenzione E La Sicurezza Del Lavoro;

(11) Electrical switchgear and control apparatus that have no external source of energy to maintain pressure and are located in restricted access areas under the control of an electric utility;

(12) Regardless of location, unfired pressure vessels ((~~and hot water heaters~~)) less than one and one-half cubic feet (11.25 gallons) in volume ((~~with a safety valve setting of one hundred fifty pounds per square inch gauge (psig) or less,~~)) or less than six inches in diameter ((~~and less than five cubic feet (37.5 gallons) in volume with a safety valve set at any pressure, or less than fifteen psig containing substances other than steam, lethal substances, or liquids with low flash points~~)) with no limitation on the length of the vessel or pressure;

(13) Domestic hot water heaters less than one and one-half cubic feet (11.25 gallons) in volume with a safety valve setting of one hundred fifty pounds per square inch gauge or less.

Sec. 4. RCW 70.79.090 and 2005 c 22 s 2 are each amended to read as follows:

The following boilers and unfired pressure vessels shall be exempt from the requirements of RCW 70.79.220 and 70.79.240 through 70.79.330:

(1) Boilers or unfired pressure vessels located on farms and used solely for agricultural purposes;

(2) Unfired pressure vessels that are part of fertilizer applicator rigs designed and used exclusively for fertilization in the conduct of agricultural operations;

(3) Steam boilers used exclusively for heating purposes carrying a pressure of not more than fifteen pounds per square inch gauge and which are located in private residences or in apartment houses of less than six families;

(4) Hot water heating boilers carrying a pressure of not more than thirty pounds per square inch and which are located in private residences or in apartment houses of less than six families;

(5) Approved pressure vessels (hot water heaters, hot water storage tanks, hot water supply boilers, and hot water heating boilers listed by a nationally recognized testing agency), with approved safety devices including a pressure relief valve, with a nominal water containing capacity of one hundred twenty gallons or less having a heat input of two hundred thousand b.t.u.'s per hour or less, ((~~used for hot water supply~~)) at pressure of one hundred sixty pounds per square inch or less, and at temperatures of two hundred ten degrees Fahrenheit or less: PROVIDED, HOWEVER, That such pressure vessels are not installed in schools, child care centers, public and private hospitals, nursing and boarding homes, churches, public buildings owned or leased and maintained by the state or any political subdivision thereof, and assembly halls;

(6) Unfired pressure vessels containing only water under pressure for domestic supply purposes, including those containing air, the compression of which serves only as a cushion or airlift pumping systems, when located in private residences or in apartment houses of less than six families, or in public water systems as defined in RCW 70.119.020;

(7) Unfired pressure vessels containing liquified petroleum gases.

Sec. 5. RCW 70.79.240 and 1993 c 391 s 1 are each amended to read as follows:

Each boiler and unfired pressure vessel used or proposed to be used within this state, except boilers or unfired pressure vessels exempt in RCW 70.79.080 and 70.79.090, shall be thoroughly inspected as to their construction, installation, condition and operation, as follows:

(1) Power boilers shall be inspected annually both internally and externally while not under pressure, except that the board may provide for longer periods between inspections where the contents, history, or operation of the power boiler or the material of which it is constructed warrant special consideration. Power boilers shall also be inspected annually externally while under pressure if possible;

(2) Low pressure heating boilers shall be inspected both internally and externally biennially where construction will permit, except that the board may, in its discretion, provide for longer periods between internal inspections;

(3) Unfired pressure vessels subject to internal corrosion shall be inspected both internally and externally biennially where construction will permit, except that the board may, in its discretion, provide for longer periods between internal inspections;

(4) Unfired pressure vessels not subject to internal corrosion shall be inspected externally at intervals set by the board, but internal inspections shall not be required of unfired pressure vessels, the contents of which are known to be noncorrosive to the material of which the shell, head, or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, provided that such vessels are constructed in accordance with the rules and regulations of the board or in accordance with standards substantially equivalent to the rules and regulations of the board, in effect at the time of manufacture.

NEW SECTION. **Sec. 6.** RCW 70.79.210 (Inspectors—Performance bond required) and 1951 c 32 s 35 are each repealed.

Passed by the House February 23, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 15, 2009.
Filed in Office of Secretary of State April 15, 2009.

CHAPTER 91

[Substitute House Bill 1388]

PIPELINE SAFETY FEES—DATE TO SET AMOUNT

AN ACT Relating to changing the date for setting the amount of pipeline safety fees; and amending RCW 80.24.060 and 81.24.090.

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

Sec. 1. RCW 80.24.060 and 2001 c 238 s 2 are each amended to read as follows:

(1)(a) Every gas company and every interstate gas pipeline company subject to inspection or enforcement by the commission shall pay an annual pipeline safety fee to the commission. The pipeline safety fees received by the commission shall be deposited in the pipeline safety account created in RCW 81.88.050.

(b) The aggregate amount of fees set shall be sufficient to recover the reasonable costs of administering the pipeline safety program, taking into account federal funds used to offset the costs. The fees established under this section shall be designed to generate revenue not exceeding appropriated levels of funding for the current fiscal year. At a minimum, the fees established under this section shall be sufficient to adequately fund pipeline inspection personnel, the timely review of pipeline safety and integrity plans, the timely development of spill response plans, the timely development of accurate maps of pipeline locations, participation in federal pipeline safety efforts to the extent allowed by law, and the staffing of the citizens committee on pipeline safety.

(c) Increases in the aggregate amount of fees over the immediately preceding fiscal year are subject to the requirements of RCW 43.135.055.

(2) The commission shall by rule establish the methodology it will use to set the appropriate fee for each entity subject to this section. The methodology shall provide for an equitable distribution of program costs among all entities subject to the fee. The fee methodology shall provide for:

(a) Direct assignment of average costs associated with annual standard inspections, including the average number of inspection days per year. In establishing these directly assignable costs, the commission shall consider the requirements and guidelines of the federal government, state safety standards, and good engineering ((~~practice[s]~~)) practices; and

(b) A uniform and equitable means of estimating and allocating costs of other duties relating to inspecting pipelines for safety that are not directly assignable, including but not limited to design review and construction inspections, specialized inspections, incident investigations, geographic mapping system design and maintenance, and administrative support.

(3) The commission shall require reports from those entities subject to this section in the form and at such time as necessary to set the fees. After considering the reports supplied by the entities, the commission shall set the amount of the fee payable by each entity by general order entered before ((~~July 1st of each year~~)) a date established by rule.

(4) For companies subject to RCW 80.24.010, the commission shall collect the pipeline safety fee as part of the fee specified in RCW 80.24.010. The commission shall allocate the moneys collected under RCW 80.24.010 between the pipeline safety program and for other regulatory purposes. The commission shall adopt rules that assure that fee moneys related to the pipeline safety program are maintained separately from other moneys collected by the commission under this chapter.

(5) Any payment of the fee imposed by this section made after its due date must include a late fee of two percent of the amount due. Delinquent fees accrue interest at the rate of one percent per month.

(6) The commission shall keep accurate records of the costs incurred in administering its gas pipeline safety program, and the records are open to inspection by interested parties. The records and data upon which the commission's determination is made shall be prima facie correct in any proceeding to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses.

(7) If any entity seeks to contest the imposition of a fee imposed under this section, that entity shall pay the fee and request a refund within six months of the due date for the payment by filing a petition for a refund with the commission. The commission shall establish by rule procedures for handling refund petitions and may delegate the decisions on refund petitions to the secretary of the commission.

(8) After establishing the fee methodology by rule as required in subsection (2) of this section, the commission shall create a regulatory incentive program for pipeline safety programs in collaboration with the citizens committee on pipeline safety. The regulatory incentive program created by the commission shall not shift costs among companies paying pipeline safety fees and shall not decrease revenue to pipeline safety programs. ((~~The regulatory incentive program shall not be implemented until after the review conducted according to RCW 81.88.150.~~))

Sec. 2. RCW 81.24.090 and 2001 c 238 s 3 are each amended to read as follows:

(1)(a) Every hazardous liquid pipeline company as defined in RCW 81.88.010 shall pay an annual pipeline safety fee to the commission. The pipeline safety fees received by the commission shall be deposited in the pipeline safety account created in RCW 81.88.050.

(b) The aggregate amount of fees set shall be sufficient to recover the reasonable costs of administering the pipeline safety program, taking into account federal funds used to offset the costs. The fees established under this section shall be designed to generate revenue not exceeding appropriated levels of funding for the current fiscal year. At a minimum, the fees established under this section shall be sufficient to adequately fund pipeline inspection personnel, the timely review of pipeline safety and integrity plans, the timely development of spill response plans, the timely development of accurate maps of pipeline locations, participation in federal pipeline safety efforts to the extent allowed by law, and the staffing of the citizens committee on pipeline safety.

(c) Increases in the aggregate amount of fees over the immediately preceding fiscal year are subject to the requirements of RCW 43.135.055.

(2) The commission shall by rule establish the methodology it will use to set the appropriate fee for each entity subject to this section. The methodology shall provide for an equitable distribution of program costs among all entities subject to the fee. The fee methodology shall provide for:

(a) Direct assignment of average costs associated with annual standard inspections, including the average number of inspection days per year. In establishing these directly assignable costs, the commission shall consider the requirements and guidelines of the federal government, state safety standards, and good engineering ((~~practice[s]~~)) practices; and

(b) A uniform and equitable means of estimating and allocating costs of other duties relating to inspecting pipelines for safety that are not directly

assignable, including but not limited to design review and construction inspections, specialized inspections, incident investigations, geographic mapping system design and maintenance, and administrative support.

(3) The commission shall require reports from those entities subject to this section in the form and at such time as necessary to set the fees. After considering the reports supplied by the entities, the commission shall set the amount of the fee payable by each entity by general order entered before ((~~July 1st of each year~~)) a date established by rule.

(4) For companies subject to RCW 81.24.010, the commission shall collect the pipeline safety fee as part of the fee specified in RCW 81.24.010. The commission shall allocate the moneys collected under RCW 81.24.010 between the pipeline safety program and for other regulatory purposes. The commission shall adopt rules that assure that fee moneys related to the pipeline safety program are maintained separately from other moneys collected by the commission under this chapter.

(5) Any payment of the fee imposed by this section made after its due date must include a late fee of two percent of the amount due. Delinquent fees accrue interest at the rate of one percent per month.

(6) The commission shall keep accurate records of the costs incurred in administering its hazardous liquid pipeline safety program, and the records are open to inspection by interested parties. The records and data upon which the commission's determination is made shall be prima facie correct in any proceeding to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses.

(7) If any entity seeks to contest the imposition of a fee imposed under this section, that entity shall pay the fee and request a refund within six months of the due date for the payment by filing a petition for a refund with the commission. The commission shall establish by rule procedures for handling refund petitions and may delegate the decisions on refund petitions to the secretary of the commission.

(8) After establishing the fee methodology by rule as required in subsection (2) of this section, the commission shall create a regulatory incentive program for pipeline safety programs in collaboration with the citizens committee on pipeline safety. The regulatory incentive program created by the commission shall not shift costs among companies paying pipeline safety fees and shall not decrease revenue to pipeline safety programs. ((~~The regulatory incentive program shall not be implemented until after the review conducted according to RCW 81.88.150.~~))

Passed by the House February 23, 2009.

Passed by the Senate April 7, 2009.

Approved by the Governor April 15, 2009.

Filed in Office of Secretary of State April 15, 2009.

CHAPTER 92

[House Bill 1394]

WORKFORCE TRAINING AND EDUCATION—
STATE COMPREHENSIVE PLAN—TIMELINE

AN ACT Relating to changing the timeline for the state comprehensive plan for workforce training and education; and amending RCW 28C.18.080.

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

Sec. 1. RCW 28C.18.080 and 1997 c 369 s 5 are each amended to read as follows:

(1) ((~~The state comprehensive plan for workforce training and education shall be updated every two years and presented to the governor and the appropriate legislative policy committees.~~)) The board shall develop a state comprehensive plan for workforce training and education for a ten-year time period. The board shall submit the ten-year state comprehensive plan to the governor and the appropriate legislative policy committees. Every four years by December 1st, beginning December 1, 2012, the board shall submit an update of the ten-year state comprehensive plan for workforce training and education to the governor and the appropriate legislative policy committees. Following public hearings, the legislature shall, by concurrent resolution, approve or recommend changes to the initial plan and the updates. The plan shall then become the state's workforce training policy unless legislation is enacted to alter the policies set forth in the plan.

(2) The comprehensive plan shall include workforce training role and mission statements for the workforce development programs of operating agencies represented on the board and sufficient specificity regarding expected actions by the operating agencies to allow them to carry out actions consistent with the comprehensive plan.

(3) Operating agencies represented on the board shall have operating plans for their workforce development efforts that are consistent with the comprehensive plan and that provide detail on implementation steps they will take to carry out their responsibilities under the plan. Each operating agency represented on the board shall provide an annual progress report to the board.

(4) The comprehensive plan shall include recommendations to the legislature and the governor on the modification, consolidation, initiation, or elimination of workforce training and education programs in the state.

(5) The comprehensive plan shall address how the state's workforce development system will meet the needs of employers hiring for industrial projects of statewide significance.

(6) The board shall report to the appropriate legislative policy committees by December 1st of each year on its progress in implementing the comprehensive plan and on the progress of the operating agencies in meeting their obligations under the plan.

Passed by the House March 3, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 15, 2009.
Filed in Office of Secretary of State April 15, 2009.

CHAPTER 93

[House Bill 1475]

AGENCIES—RULE-MAKING WEB SITES

AN ACT Relating to state agency rule-making information; and adding a new section to chapter 34.05 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 34.05 RCW to read as follows:

Within existing resources, each state agency shall maintain a web site that contains the agency's rule-making information. A direct link to the agency's rule-making page must be displayed on the agency's homepage. The rule-making web site shall include the complete text of all proposed rules, emergency rules, and permanent rules proposed or adopted within the past twelve months, or include a direct link to the index page on the Washington State Register web site that contains links to the complete text of all proposed rules, emergency rules, and permanent rules proposed or adopted within the past twelve months by that state agency. For proposed rules, the time, date, and place for the rule-making hearing and the procedures and timelines for submitting written comments and supporting data must be posted on the web site.

Passed by the House February 23, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 15, 2009.
Filed in Office of Secretary of State April 15, 2009.

CHAPTER 94

[House Bill 1536]

HOUSEHOLD GOODS CARRIERS—ADVERTISING—PERMITS

AN ACT Relating to permits for and advertising by household goods carriers; amending RCW 81.80.010, 81.80.040, 81.80.070, 81.80.357, and 81.80.280; adding new sections to chapter 81.80 RCW; and prescribing penalties.

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

Sec. 1. RCW 81.80.010 and 2007 c 234 s 68 are each amended to read as follows:

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

(1) "Person" includes an individual, firm, copartnership, corporation, company, or association or their lessees, trustees, or receivers.

(2) "Motor vehicle" means any truck, trailer, semitrailer, tractor, dump truck which uses a hydraulic or mechanical device to dump or discharge its load, or any self-propelled or motor-driven vehicle used upon any public highway of this state for the purpose of transporting property, but not including baggage, mail, and express transported on the vehicles of auto transportation companies carrying passengers.

(3) "Public highway" means every street, road, or highway in this state.

(4) "Common carrier" means any person who undertakes to transport property for the general public by motor vehicle for compensation, whether over regular or irregular routes, or regular or irregular schedules, including motor

vehicle operations of other carriers by rail or water and of express or forwarding companies.

(5) "Contract carrier" includes all motor vehicle operators not included under the terms "common carrier" and "private carrier" as defined in this section, and further includes any person who under special and individual contracts or agreements transports property by motor vehicle for compensation.

(6) A "private carrier" is a person who transports by his or her own motor vehicle, with or without compensation, property which is owned or is being bought or sold by the person, or property where the person is the seller, purchaser, lessee, or bailee and the transportation is incidental to and in furtherance of some other primary business conducted by the person in good faith.

(7) "Motor carrier" includes "common carrier," "contract carrier," "private carrier," and "exempt carrier" as defined in this section.

(8) "Exempt carrier" means any person operating a vehicle exempted under RCW 81.80.040.

(9) "Vehicle" means every device capable of being moved upon a public highway and in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human or animal power or used exclusively upon stationary rail or tracks.

(10) "Common carrier" and "contract carrier" includes persons engaged in the business of providing, contracting for, or undertaking to provide transportation of property for compensation over the public highways of the state of Washington as brokers or forwarders.

(11) "Household goods carrier" means a person ((~~engaged in the business of transporting~~)) who transports for compensation, by motor vehicle within this state, or who advertises, solicits, offers, or enters into an agreement to transport household goods as defined by the commission.

Sec. 2. RCW 81.80.040 and 1993 c 121 s 4 are each amended to read as follows:

(1) The provisions of this chapter, except where specifically otherwise provided, and except the provisions providing for licenses, shall not apply to:

((~~(1)~~)) (a) Motor vehicles when operated in transportation exclusively within the corporate limits of any city or town of less than ten thousand population unless contiguous to a city or town of ten thousand population or over, nor between contiguous cities or towns both or all of which are less than ten thousand population;

((~~(2)~~)) (b) Motor vehicles when operated in transportation wholly within the corporate limits of cities or towns of ten thousand or more but less than thirty thousand population, or between such cities or towns when contiguous, as to which the commission, after investigation and the issuance of an order thereon, has determined that no substantial public interest exists which requires that such transportation be subject to regulation under this chapter;

((~~(3)~~)) (c) Motor vehicles when transporting exclusively the United States mail or in the transportation of newspapers or periodicals;

((~~(4)~~)) (d) Motor vehicles owned and operated by the United States, the state of Washington, or any county, city, town, or municipality therein, or by any department of them, or either of them;

(((~~(5)~~))) (e) Motor vehicles specially constructed for towing not more than two disabled, unauthorized, or repossessed motor vehicles, wrecking, or exchanging an operable vehicle for a disabled vehicle and not otherwise used in transporting goods for compensation. For the purposes of this subsection (1)(e), a vehicle is considered to be repossessed only from the time of its actual repossession through the end of its initial tow;

(((~~(6)~~))) (f) Motor vehicles normally owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes, from point of production to market, or in the infrequent or seasonal transportation by one farmer for another farmer, if their farms are located within twenty miles of each other, of products of the farm, orchard, or dairy, including livestock and plant or animal wastes, or of supplies or commodities to be used on the farm, orchard, or dairy;

(((~~(7)~~))) (g) Motor vehicles when transporting exclusively water in connection with construction projects only;

(((~~(8)~~))) (h) Motor vehicles of less than 8,000 pounds gross vehicle weight when transporting exclusively legal documents, pleadings, process, correspondence, depositions, briefs, medical records, photographs, books or papers, cash or checks, when moving shipments of the documents described at the direction of an attorney as part of providing legal services.

(2) The exemptions set forth in subsection (1)(a) and (b) of this section do not apply to household goods carriers.

Sec. 3. RCW 81.80.070 and 2007 c 234 s 72 are each amended to read as follows:

(1) A common carrier, contract carrier, or temporary carrier shall not operate for the transportation of property for compensation in this state without first obtaining from the commission a permit for such operation.

(((~~(a) For household goods:~~

~~(i) Permits issued to any carrier must be exercised by the carrier to the fullest extent to render reasonable service to the public. Applications for household goods carrier permits or permit extensions must be on file for a period of at least thirty days before issuance unless the commission finds that special conditions require earlier issuance.~~

~~(ii) A permit or permit extension must be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that: The applicant is fit, willing, and able to perform the services proposed and conform to this chapter and the requirements, rules, and regulations of the commission; the operations are consistent with the public interest; and, in the case of common carriers, they are required by the present or future public convenience and necessity; otherwise the application must be denied.~~

~~(b) For general commodities other than household goods:~~

~~(i)~~))) (2) The commission shall issue a common carrier permit to any qualified applicant if it is found the applicant is fit, willing, and able to perform the service and conform to the provisions of this chapter and the rules and regulations of the commission.

(((~~(ii)~~))) (3) Before a permit is issued, the commission shall require the applicant to establish safety fitness and proof of minimum financial responsibility as provided in this chapter.

(((~~(2) This chapter does not confer on any person or persons the exclusive right or privilege of transporting property for compensation over the public highways of the state.~~

~~(3) A common carrier, contract carrier, or temporary carrier operating without the permit required in subsection (1) of this section, or who violates a cease and desist order of the commission issued under RCW 81.04.510, is subject to a penalty, under the process set forth in RCW 81.04.405, of one thousand five hundred dollars.~~

~~(4) Notwithstanding RCW 81.04.510, the commission may, in conjunction with issuing the penalty set forth in subsection (3) of this section, issue cease and desist orders to carriers operating without the permit required in subsection (1) of this section, and to all persons involved in the carriers' operations.~~))

NEW SECTION. **Sec. 4.** A new section is added to chapter 81.80 RCW to read as follows:

(1) No person shall engage in business as a household goods carrier without first obtaining a household goods carrier permit from the commission.

(2) Permits issued to any household goods carrier must be exercised by the carrier to the fullest extent to render reasonable service to the public. Applications for household goods carrier permits or permit extensions must be on file for a period of at least thirty days before issuance unless the commission finds that special conditions require earlier issuance.

(3) The commission must issue a permit or permit extension to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that: The applicant is fit, willing, and able to perform the services proposed and conform to this chapter and the requirements, rules, and regulations of the commission; the operations are consistent with the public interest; and, in the case of common carriers, they are required by the present or future public convenience and necessity; otherwise, the application must be denied.

(4) Any person who engages in business as a household goods carrier in violation of subsection (1) of this section is subject to a penalty of up to five thousand dollars per violation.

(a) If the basis for the violation is advertising, each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.

(b) In deciding the amount of penalty to be imposed per violation, the commission shall consider the following factors:

(i) The carrier's willingness to comply with the requirements of RCW 81.80.070 and the commission's rules under this chapter; and

(ii) The carrier's history with respect to compliance with this section.

(5) Any person who engages in business as a household goods carrier in violation of a cease and desist order issued by the commission under RCW 81.04.510 is subject to a penalty of up to ten thousand dollars per violation.

NEW SECTION. **Sec. 5.** A new section is added to chapter 81.80 RCW to read as follows:

This chapter does not confer on any person or persons the exclusive right or privilege of transporting property for compensation over the public highways of the state.

Sec. 6. RCW 81.80.357 and 1994 c 168 s 1 are each amended to read as follows:

(1) No person in the business of transporting household goods as defined by the commission in intrastate commerce shall advertise without listing the carrier's Washington utilities and transportation commission permit number, physical address, and telephone number in the advertisement.

(2) ((~~As of June 9, 1994,~~)) All advertising, contracts, correspondence, cards, signs, posters, papers, and documents, including web sites or other online advertising, which show a household goods ((~~motor~~)) carrier name ((~~or address~~)) shall also show the carrier's Washington utilities and transportation commission permit number, physical address, and telephone number. The alphabetized listing of household ((~~good[s] motor~~)) goods carriers appearing in the advertising sections of telephone books or other directories and all advertising that shows the carrier's name or address shall show the carrier's current Washington utilities and transportation commission permit number.

(3) Radio or television advertising ((~~by electronic transmission~~)) need not contain the carrier's Washington utilities and transportation commission permit number if the carrier provides its permit number, physical address, and telephone number to the person selling the advertisement and it is recorded in the advertising contract.

(4) No person shall falsify a Washington utilities and transportation commission permit number or use a false or inaccurate Washington utilities and transportation commission permit number in connection with any solicitation or identification as an authorized household goods ((~~motor~~)) carrier.

(5) If, upon investigation, the commission determines that a ((~~motor~~)) household goods carrier or person acting in the capacity of a ((~~motor~~)) household goods carrier has violated this section, the commission may issue a penalty not to exceed five hundred dollars for every violation.

Sec. 7. RCW 81.80.280 and 2007 c 234 s 85 are each amended to read as follows:

(1) Permits may be canceled, suspended, altered, or amended by the commission upon complaint by any interested party, or upon the commission's own motion after notice and opportunity for hearing, when the permittee or permittee's agent has repeatedly violated this chapter, the rules and regulations of the commission, or the motor laws of this state or of the United States, or the household goods carrier has made unlawful rebates or has not conducted its operation in accordance with the permit. The commission may enjoin any person from any violation of this chapter, or any order, rule, or regulation made by the commission pursuant to the terms hereof. If the suit is instituted by the commission, a bond is not required as a condition to the issuance of the injunction.

(2) When the commission has canceled a household goods carrier permit, the carrier must, when directed by the commission, provide notice to every customer that its permit has been canceled, and provide proof of such notice to the commission.

Passed by the House March 4, 2009.

Passed by the Senate April 7, 2009.

Approved by the Governor April 15, 2009.
Filed in Office of Secretary of State April 15, 2009.

CHAPTER 95

[House Bill 1678]

LEOFF RETIREMENT SYSTEM PLAN 2—DISABLED MEMBERS

AN ACT Relating to members of the law enforcement officers' and firefighters' retirement system plan 2 who were disabled in the line of duty before January 1, 2001; and amending RCW 41.26.470.

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

Sec. 1. RCW 41.26.470 and 2006 c 39 s 1 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, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse, 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.

Passed by the House March 3, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 15, 2009.
Filed in Office of Secretary of State April 15, 2009.

CHAPTER 96

[House Bill 1682]

HORTICULTURE PEST AND DISEASE BOARDS—MEMBERSHIP

AN ACT Relating to horticultural pest and disease boards; and amending RCW 15.09.030.

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

Sec. 1. RCW 15.09.030 and 1988 c 254 s 7 are each amended to read as follows:

Each horticultural pest and disease board shall be comprised of five voting members, four of whom shall be appointed by the board of county commissioners and one of whom shall be appointed by the director. In addition, the chief county extension agent, or a county extension agent appointed by the chief agent, shall be a nonvoting member of the board.

Of the four members appointed by the board of county commissioners, one of such members shall have at least a practical knowledge of horticultural pests

and diseases, and the other members shall be residents of the county, shall own land within the county and shall be engaged in the primary and commercial production of a horticultural product or products. Such appointed members shall serve a term of two years and shall serve without salary. If no such qualified candidate resides in the county, a nonresident that owns property in the county and is engaged in the primary and commercial production of a horticultural product or products may be appointed as a member of the horticultural pest and disease board.

Passed by the House February 23, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 15, 2009.
Filed in Office of Secretary of State April 15, 2009.

CHAPTER 97

[Substitute House Bill 1730]

THE OFFICE OF REGULATORY ASSISTANCE

AN ACT Relating to the office of regulatory assistance; amending RCW 43.42.005, 43.42.020, 43.42.030, 43.42.050, 43.42.060, 43.42.070, 43.21A.690, 43.70.630, 43.300.080, and 70.94.085; reenacting and amending RCW 43.42.010 and 43.30.490; and adding a new section to chapter 43.42 RCW.

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

Sec. 1. RCW 43.42.005 and 2007 c 94 s 1 are each amended to read as follows:

(1) ((~~The legislature finds that the health and safety of its citizens, natural resources, and the environment are vital interests of the state that must be protected to preserve the state's quality of life. The legislature also finds that the state's economic well-being is a vital interest that depends upon the development of fair, accessible, and coordinated permitting and regulatory requirements that ensure that the state not only protects public health and safety and natural resources but also encourages appropriate activities that stimulate growth and development. The legislature further finds that Washington's permitting and regulatory programs have established strict standards to protect public health and safety and the environment.~~

~~(2) The legislature also finds that, as the number of environmental and land use laws and requirements have grown in Washington, so have the number of permits required of business and government. The increasing number of permits and permitting agencies has generated the potential for conflict, overlap, and duplication among state, local, and federal permitting and regulatory requirements.~~

~~(3) The legislature further finds that not all project proponents require the same type of assistance. Proponents with small projects may merely need information and assistance in starting the permitting and application process, while intermediate-sized projects may require more of a facilitated and periodically assisted permitting process, and large complex projects may need extensive and more continuous coordination among local, state, and federal agencies and tribal governments.~~

~~(4) The legislature further finds that persons doing business in Washington state should have access to clear and appropriate information regarding regulations, permit requirements, and agency rule-making processes.~~

~~(5) The legislature, therefore, finds that a range of assistance and coordination options should be available to project proponents from a state office independent of any local, state, or federal permit agency. The legislature finds that citizens, businesses, and project proponents should be provided with:~~

~~(a) A reliable and consolidated source of information concerning federal, state, and local environmental and land use laws and procedures that may apply to any given project;~~

~~(b) Facilitated interagency forums for discussion of significant issues related to the multiple permitting processes if needed for some project proponents; and~~

~~(c) Active coordination of all applicable regulatory and land use permitting procedures if needed for some project proponents.~~

~~(6) The legislature declares that the purpose of this chapter is to:~~

~~(a) Assure that citizens, businesses, and project proponents will continue to be provided with vital information regarding environmental and land use laws and with assistance in complying with environmental and land use laws to promote understanding of these laws and to protect public health and safety and the environment;~~

~~(b) Ensure that facilitation of project permit decisions by permit agencies promotes both process efficiency and environmental protection;~~

~~(c) Allow for coordination of permit processing for large projects upon project proponents' request and at project proponents' expense to promote efficiency, ensure certainty, and avoid conflicts among permit agencies; and~~

~~(d) Provide these services through an office independent of any permit agency to ensure that any potential or perceived conflicts of interest related to providing these services or making permit decisions can be avoided.~~

~~(7) The legislature also declares that the purpose of this chapter is to provide citizens of the state with access to information regarding state regulations, permit requirements, and agency rule-making processes in Washington state.~~

~~(8)~~)) The legislature finds that: The health and safety of its citizens and environment are of vital interest to the state's long-term quality of life; Washington state is a national leader in protecting its environment; and Washington state has a vibrant and diverse economy that is dependent on the state maintaining high environmental standards. Further, the legislature finds that a complex and confusing network of environmental and land use laws and business regulations can create obstacles to sustainable growth.

It is the intent of the legislature to promote accountability, timeliness, and predictability for citizens, business, and state, federal, and local permitting agencies, and to provide information and assistance on the regulatory process through the creation of the office of regulatory assistance in the governor's office.

(2) The office of regulatory assistance is created to work to continually improve the function of environmental and business regulatory processes by identifying conflicts and overlap in the state's rules, statutes, and operational practices; the office is to provide project proponents and business owners with active assistance for all permitting, licensing, and other regulatory procedures

required for completion of specific projects; and the office is to ensure that citizens, businesses, and local governments have access to, and clear information regarding, regulatory processes for permitting and business regulation, including state rules, permit and license requirements, and agency rule-making processes.

(3) The legislature declares that the purpose of this chapter is to provide direction and practical resources for improving the regulatory process and for assistance through regulatory processes on individual projects in furtherance of the state's goals of governmental transparency and accountability.

(4) The legislature intends that establishing an office of regulatory assistance will provide these services without abrogating or limiting the authority of any agency to make decisions on permits ((~~and~~)), licenses, regulatory requirements ((~~that it requires~~)), or ((~~any rule making~~)) agency ((~~to make decisions on regulations~~)) rule making. The legislature ((~~therefore declares~~)) further intends that the office of regulatory assistance shall have authority to provide ((~~these~~)) services but shall not have any authority to make decisions on permits.

Sec. 2. RCW 43.42.020 and 2007 c 94 s 3 are each amended to read as follows:

(1) Principles of accountability and transparency shall guide the office in its operations. The office shall ((~~operate on the principle that citizens of the state of Washington should receive~~)) provide the following information regarding permits to citizens and businesses:

(a) ((~~A date and time for a decision on a permit or regulatory requirement~~)) An agency's average turnaround time from the date of application to date of decision for the required permit, licenses, or other necessary regulatory decisions, or the most relevant information the agency can provide, for projects of a comparable size and complexity;

(b) The information required for an agency to make a decision on a permit or regulatory requirement, including the agency's best estimate of the number of times projects of a similar size and complexity have been asked to clarify, improve, or provide supplemental information before a decision, and the expected agency response time, recognizing that changes in the project or other circumstances may change the information required; and

(c) An estimate of the maximum amount of costs in fees((~~,~~)) to be paid to state agencies, the type of any studies an agency expects to need, ((~~or~~)) and the timing of any expected public processes ((~~that will be incurred by~~)) for the project ((~~proponent~~)).

(2) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020.

Sec. 3. RCW 43.42.030 and 2007 c 94 s 4 are each amended to read as follows:

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

(1) "Director" means the director of the office of regulatory assistance.

(2) "Fully coordinated permit process" means a comprehensive coordinated permitting assistance approach supported by a written agreement between the project proponent, the office of regulatory assistance, and the agencies participating in the fully coordinated permit process.

(3) "General coordination services" means services that bring interested parties together to explore opportunities for cooperation and to resolve conflicts. General coordination services may be provided as a stand-alone event or as an element of broader project assistance, nonproject-related interagency coordination, or policy and planning teamwork.

(4) "Office" means the office of regulatory assistance ((~~in the office of financial management~~)) established in RCW 43.42.010.

(((~~2~~))) (5) "Permit" means any permit, license, certificate, use authorization, or other form of governmental review or approval required in order to construct, expand, or operate a project in the state of Washington.

(((~~3~~))) (6) "Permit agency" means any state, local, or federal agency authorized by law to issue permits.

(((~~4~~))) (7) "Project" means any activity, the conduct of which requires a permit or permits from one or more permit agencies.

(((~~5~~))) (8) "Project proponent" means a citizen, business, or any entity applying for or seeking a permit or permits in the state of Washington.

(9) "Project scoping" means the identification of relevant issues and information needs of a project proponent and the permitting agencies, and reaching a common understanding regarding the process, timing, and sequencing for obtaining applicable permits.

Sec. 4. RCW 43.42.010 and 2007 c 231 s 5 and 2007 c 94 s 2 are each reenacted and amended to read as follows:

(1) The office of regulatory assistance is created in the office of financial management and shall be administered by the office of the governor to help improve the regulatory system and assist citizens, businesses, and project proponents.

(2) The governor shall appoint a director. The director may employ a deputy director and a confidential secretary and such staff as are necessary, or contract with another state agency pursuant to chapter 39.34 RCW for support in carrying out the purposes of this chapter.

(3) The office shall offer to:

(a) ((~~Maintain and furnish information as provided in RCW 43.42.040;~~

~~(b) Furnish facilitation as provided in RCW 43.42.050;~~

~~(c) Furnish coordination as provided in RCW 43.42.060;~~

~~(d) Coordinate cost reimbursement as provided in RCW 43.42.070;~~

~~(e) Work with governmental agencies to continue to develop a range of permitting and regulatory assistance options for project proponents;~~

~~(f) Help local jurisdictions comply with the requirements of RCW 36.70B.080 by:~~

~~(i) Providing information about best practices and compliance with the requirements of RCW 36.70B.080; and~~

~~(ii) Providing technical assistance in reducing the turnaround time between submittal of an application for a development permit and the issuance of the permit;~~

~~(g) Work to develop informal processes for dispute resolution between agencies and permit proponents;~~

~~(h) Conduct customer surveys to evaluate its effectiveness; and~~

~~(i)~~)) Act as the central point of contact for the project proponent in communicating about defined issues;

(b) Conduct project scoping as provided in RCW 43.42.050;

(c) Verify that the project proponent has all the information needed to correctly apply for all necessary permits;

(d) Provide general coordination services;

(e) Coordinate the efficient completion among participating agencies of administrative procedures, such as collecting fees or providing public notice;

(f) Maintain contact with the project proponent and the permit agencies to promote adherence to agreed schedules;

(g) Assist in resolving any conflict or inconsistency among permit requirements and conditions;

(h) Coordinate, to the extent practicable, with relevant federal permit agencies and tribal governments;

(i) Facilitate meetings;

(j) Manage a fully coordinated permit process, as provided in RCW 43.42.060;

(k) Help local jurisdictions comply with the requirements of chapter 36.70B RCW by providing information about best permitting practices methods to improve communication with, and solicit early involvement of, state agencies when needed; and

(l) Maintain and furnish information as provided in RCW 43.42.040.

(4) The office shall provide the following ((~~reports~~)) by ((~~June~~)) September 1, ((~~2008~~)) 2009, and biennially thereafter, to the governor and the appropriate committees of the legislature:

(((~~(i)~~))) (a) A performance report((~~, based on the customer surveys required in (h) of this subsection~~)) including:

(i) Information regarding use of the office's voluntary cost-reimbursement services as provided in RCW 43.42.070;

(ii) The number and type of projects where the office provided services and the resolution provided by the office on any conflicts that arose on such projects; and

(iii) The agencies involved on specific projects; and

(((~~(ii) A report on~~))) (b) Recommendations on system improvements including recommendations regarding:

(i) Measurement of overall system performance; and

(ii) Resolving any conflicts ((~~identified by the office in the course of its duties~~)) or inconsistencies arising from differing statutory or regulatory authorities, roles and missions of agencies, timing and sequencing of permitting and procedural requirements((~~, or otherwise, and how these were resolved; and~~

~~(iii) A report regarding negotiation and implementation of voluntary cost-reimbursement agreements and use of outside independent consultants under RCW 43.42.070, including the nature and amount of work performed and implementation of requirements relating to costs.~~

~~(3) The office shall ensure the equitable delivery and provision of assistance services, regardless of project type, scale, fund source, or assistance request~~)) as identified by the office in the course of its duties.

Sec. 5. RCW 43.42.050 and 2007 c 94 s 6 are each amended to read as follows:

((~~At the request of a project proponent, the office shall assist the project proponent in determining what regulatory requirements, processes, and permits apply to the project, as provided in this section.~~

~~(1) The office shall assign a project facilitator who shall discuss applicable regulatory requirements, permits, and processes with the project proponent and explain the available options for obtaining required permits and regulatory review.~~))

(1) Upon request of a project proponent, the office shall determine the level of project scoping needed by the project proponent, taking into consideration the complexity of the project and the experience of those expected to be involved in the project application and review process.

(2) ((~~If the project proponent and the project facilitator agree that the project would benefit from a project scoping, the project facilitator shall conduct a project scoping with the project proponent and the relevant permitting and regulatory agencies. The project facilitator shall invite the participation of the relevant federal agencies and tribal governments.~~

~~(a) The purpose of the project scoping is to identify the issues and information needs of the project proponent and the participating permit agencies regarding the project, share perspectives, and jointly develop a strategy for the processing of required permits by each participating permit agency.~~

~~(b) The scoping~~)) Project scoping shall consider the complexity, size, and needs for assistance of the project and shall address as appropriate:

((~~(i)~~)) (a) The permits that are required for the project;

((~~(ii)~~)) (b) The permit application forms and other application requirements of the participating permit agencies;

((~~(iii)~~)) (c) The specific information needs and issues of concern of each participant and their significance;

((~~(iv)~~)) (d) Any statutory or regulatory conflicts that might arise from the differing authorities and roles of the permit agencies;

((~~(v)~~)) (e) Any natural resources, including federal or state listed species, that might be adversely affected by the project and might cause an alteration of the project or require mitigation; and

((~~(vi)~~)) (f) The anticipated time required for permit decisions by each participating permit agency, including the estimated time required to determine if the permit application is complete, to conduct environmental review, and to review and process the application. In determining the estimated time required, full consideration must be given to achieving the greatest possible efficiencies through any concurrent studies and any consolidated applications, hearings, and comment periods.

((~~(c)~~)) (3) The outcome of the project scoping shall be documented in writing, furnished to the project proponent, and be made available to the public.

((~~(d)~~)) (4) The project scoping shall be completed ((~~within~~)) prior to the passage of sixty days of the project proponent's request for a project scoping unless the director finds that better results can be obtained by delaying the project scoping meeting or meetings to ensure full participation.

((~~(e)~~)) (5) Upon completion of the project scoping, the participating permit agencies shall proceed under their respective ((~~authority. The agencies are encouraged to remain~~)) authorities. The agencies may remain in communication

((~~for purposes of coordination until their final permit decisions are made~~)) with the office as needed.

(((~~(3)~~))) (6) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020.

Sec. 6. RCW 43.42.060 and 2007 c 94 s 7 are each amended to read as follows:

(((~~(1) The office may coordinate the processing by participating permit agencies of permits required for a project, at the request of the project proponent through a cost-reimbursement agreement as provided in subsection (3) of this section or with the agreement of the project proponent as provided in subsection (4) of this section.~~

~~(2) The office shall assign a project coordinator to perform any or all of the following functions, as specified by the terms of a cost-reimbursement agreement under subsection (3) of this section or an agreement under subsection (4) of this section:~~

~~(a) Serve as the main point of contact for the project proponent;~~

~~(b) Conduct a project scoping as provided in RCW 43.42.050(2);~~

~~(c) Verify that the project proponent has all the information needed to complete applications;~~

~~(d) Coordinate the permit processes of the permit agencies;~~

~~(e) Manage the applicable administrative procedures;~~

~~(f) Work to assure that timely permit decisions are made by the permit agencies and maintain contact with the project proponent and the permit agencies to ensure adherence to schedules;~~

~~(g) Assist in resolving any conflict or inconsistency among permit requirements and conditions; and~~

~~(h) Coordinate with relevant federal permit agencies and tribal governments to the extent possible.~~

~~(3) At the request of a project proponent and as provided in RCW 43.42.070, the project coordinator shall coordinate negotiations among the project proponent, the office, and participating permit agencies to enter into a cost-reimbursement agreement and shall coordinate implementation of the agreement, which shall govern coordination of permit processing by the participating permit agencies.~~

~~(4) For industrial projects of statewide significance or if the office determines that it is in the public interest to coordinate the processing of permits for certain projects that are complex in scope, require multiple permits, involve multiple jurisdictions, or involve a significant number of affected parties, the office shall, upon the proponent's request, enter into an agreement with the project proponent and the participating permit agencies to coordinate the processing of permits for the project. The office may limit the number of such agreements according to the resources available to the office and the permit agencies at the time.~~)) (1) A project proponent may submit a written request to the director of the office for participation in a fully coordinated permit process. Designation as a fully coordinated project requires that:

(a) The project proponent enters into a cost-reimbursement agreement pursuant to RCW 43.42.070;

(b) The project has a designation under chapter 43.157 RCW; or

(c) The director determine that (i)(A) the project raises complex coordination, permit processing, or substantive permit review issues; or (B) if completed, the project would provide substantial benefits to the state; and (ii) the office, as well as the participating permit review agencies, have sufficient capacity within existing resources to undertake the full coordination process without reimbursement and without seriously affecting other services.

(2) A project proponent who requests designation as a fully coordinated permit process project must provide the office with a full description of the project. The office may request any information from the project proponent that is necessary to make the designation under this section, and may convene a scoping meeting or a work plan meeting of the likely participating permit agencies.

(3) When a project is designated for the fully coordinated permit process, the office shall serve as the main point of contact for the project proponent and participating agencies with regard to the permit process for the project as a whole. The office shall keep an up-to-date project management log and schedule illustrating required procedural steps in the permitting process, and highlighting substantive issues as appropriate that must be resolved in order for the project to move forward. In carrying out these responsibilities, the office shall:

(a) Ensure that the project proponent has been informed of all the information needed to apply for the permits that are included in the coordinated permit process;

(b) Coordinate the timing of review for those permits by the respective participating permit agencies;

(c) Facilitate communication between project proponents, consultants, and agency staff to promote timely permit decisions;

(d) Assist in resolving any conflict or inconsistency among the permit requirements and conditions that are expected to be imposed by the participating permit agencies; and

(e) Make contact, at least once, with any local, tribal, or federal jurisdiction that is responsible for issuing a permit for the project and invite them to participate in the coordinated permit process or to receive periodic updates in the project.

(4) Within thirty days, or longer with agreement of the project proponent, of the date that the office designates a project for the fully coordinated permit process, it shall convene a work plan meeting with the project proponent and the participating permit agencies to develop a coordinated permit process schedule. The meeting agenda shall include at least the following:

(a) Review of the permits that are required for the project;

(b) A review of the permit application forms and other application requirements of the agencies that are participating in the coordinated permit process;

(c) An estimation of the timelines that will be used by each participating permit agency to make permit decisions, including the estimated time periods required to determine if the permit applications are complete and to review or respond to each application or submittal of new information.

(i) The estimation must also include the estimated number of revision cycles for the project, or the typical number of revision cycles for projects of similar size and complexity.

(ii) In the development of this timeline, full attention shall be given to achieving the maximum efficiencies possible through concurrent studies and consolidated applications, hearings, and comment periods.

(iii) Estimated action or response times for activities of the office that are required before or trigger further action by a participant must also be included;

(d) Available information regarding the timing of any public hearings that are required to issue permits for the project and a determination of the feasibility of coordinating or consolidating any of those required public hearings; and

(e) A discussion of fee arrangements for the coordinated permit process, including an estimate of the costs allowed by statute, any reimbursable agency costs, and billing schedules, if applicable.

(5) Each agency shall send at least one representative qualified to discuss the applicability and timelines associated with all permits administered by that agency or jurisdiction. At the request of the project proponent, the office shall notify any relevant local or federal agency or federally recognized Indian tribe of the date of the meeting and invite that agency's participation in the process.

(6) Any accelerated time period for the consideration of a permit application shall be consistent with any statute, rule, or regulation, or adopted state policy, standard, or guideline that requires the participation of other agencies, federally recognized Indian tribes, or interested persons in the application process.

(7) If a permit agency or the project proponent foresees, at any time, that it will be unable to meet the estimated timelines or other obligations under the agreement, it shall notify the office of the reasons for the problem and offer potential solutions or an amended timeline for resolving the problem. The office shall notify the participating permit agencies and the project proponent and, upon agreement of all parties, adjust the schedule, or, if necessary, schedule another work plan meeting.

(8) The project proponent may withdraw from the coordinated permit process by submitting to the office a written request that the process be terminated. Upon receipt of the request, the office shall notify each participating permit agency that a coordinated permit process is no longer applicable to the project.

Sec. 7. RCW 43.42.070 and 2007 c 94 s 8 are each amended to read as follows:

(1) The office may ((~~coordinate negotiation and implementation of a written agreement among the~~)) enter into cost-reimbursement agreements with a project proponent((~~, the office, and participating permit agencies~~)) to recover from the project proponent the reasonable costs incurred by the office in carrying out the provisions of RCW 43.42.050(((~~(2) and 43.42.060(2) and by participating~~)). The agreement shall include the permit agencies ((~~in~~)) that are participating in the cost-reimbursement project and carrying out permit processing tasks ((~~specified~~)) referenced in the agreement.

(2) ((~~The office may coordinate negotiation and implementation of a written agreement among the project proponent, the office, and participating permit agencies to recover from the project proponent the reasonable costs incurred by~~

~~outside independent consultants selected by the office and participating permit agencies to perform permit processing tasks.~~

~~(3) Outside independent consultants may only bill for the costs of performing those permit processing tasks that are specified in a cost-reimbursement agreement under this section. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments.~~

~~(4)~~)) The office shall ((~~adopt a policy to coordinate~~)) maintain policies or guidelines for coordinating cost-reimbursement agreements with participating agencies, project proponents, and outside independent consultants. ((~~Cost-reimbursement agreements coordinated~~)) Policies or guidelines must ensure that, in developing cost-reimbursement agreements, conflicts of interest are eliminated. Contracts with independent consultants hired by the office under this section must be based on competitive bids that are awarded for each agreement from a prequalified consultant roster.

(((~~(5) Independent consultants hired under a cost-reimbursement agreement shall report directly to the permit agency. The office shall assure that final decisions are made by the permit agency and not by the consultant.~~

~~(6) The office shall develop procedures for determining, collecting, and distributing cost reimbursement for carrying out the provisions of this chapter.~~

~~(7) For a cost reimbursement agreement, the office and participating permit agencies shall negotiate a work plan and schedule for reimbursement. Prior to distributing scheduled reimbursement to the agencies, the office shall verify that the agencies have met the obligations contained in their work plan.~~

~~(8) Prior to commencing negotiations with the project proponent for a cost-reimbursement agreement, the office shall request work load analyses from each participating permitting agency. These analyses shall be available to the public. The work load of a participating permit agency may only be modified with the concurrence of the agency and if there is both good cause to do so and no significant impact on environmental review.~~

~~(9) The office shall develop guidance to ensure that, in developing cost-reimbursement agreements, conflicts of interest are eliminated.~~

~~(10)~~)) (3) For ((~~project~~)) fully coordinated permit processes ((~~that it coordinates~~)), the office shall coordinate the negotiation of all cost-reimbursement agreements executed under RCW 43.21A.690, 43.30.490, 43.70.630, 43.300.080, and 70.94.085. The office, project proponent, and the permit agencies shall be signatories to the agreement or agreements. Each permit agency shall manage performance of its portion of the agreement. Independent consultants hired under a cost-reimbursement agreement shall report directly to the hiring office or permit agency. Any cost-reimbursement agreement must require that final decisions are made by the permit agency and not by a hired consultant.

(((~~(11)~~))) (4) For a fully coordinated project using cost reimbursement, the office and participating permit agencies shall include a cost-reimbursement work plan, including deliverables and schedules for invoicing and reimbursement in the fully coordinated project work plan described in RCW 43.42.060. Upon request, the office shall verify that the agencies have met the obligations contained in the cost-reimbursement work plan and agreement. The cost-reimbursement agreement shall identify the tasks of each agency and the

maximum costs for work conducted under the agreement. The agreement must include a schedule that states:

(a) The estimated number of weeks for initial review of the permit application for comparable projects;

(b) The anticipated number of revision cycles;

(c) The estimated number of weeks for review of subsequent revision submittals;

(d) The estimated number of billable hours of employee time;

(e) The rate per hour; and

(f) A process for revision of the agreement if necessary.

(5) If a permit agency or the project proponent foresees, at any time, that it will be unable to meet its obligations under the cost-reimbursement agreement and fully coordinated project work plan, it shall notify the office and state the reasons, along with proposals for resolving the problems and potentially amending the timelines. The office shall notify the participating permit agencies and the project proponent and, upon agreement of all parties, adjust the schedule, or, if necessary, coordinate revision of the cost-reimbursement agreement and fully coordinated project work plan.

Sec. 8. RCW 43.21A.690 and 2007 c 94 s 10 are each amended to read as follows:

(1) The department may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing.

(2) The cost-reimbursement agreement shall identify the ((~~specific~~)) tasks((~~,~~)) and costs((~~, and schedule~~)) for work to be conducted under the agreement. The agreement must include a schedule that states:

(a) The estimated number of weeks for initial review of the permit application;

(b) The estimated number of revision cycles;

(c) The estimated number of weeks for review of subsequent revision submittals;

(d) The estimated number of billable hours of employee time;

(e) The rate per hour; and

(f) A date for revision of the agreement if necessary.

((~~(2)~~)) (3) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to hire temporary employees, to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The

department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants or hire temporary employees to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. ((~~Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding.~~))

(4) The cost-reimbursement agreement must not negatively impact the processing of other permit applications. In order to maintain permit processing capacity, the agency may hire outside consultants, temporary employees, or make internal administrative changes. Consultants or temporary employees hired as part of a cost-reimbursement agreement or to maintain agency capacity are hired as agents of the state not of the permit applicant. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

Sec. 9. RCW 43.30.490 and 2007 c 188 s 1 and 2007 c 94 s 11 are each reenacted and amended to read as follows:

(1) The department may enter into a written cost-reimbursement agreement with a permit or lease applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, establishment of development units and approval or establishment of pooling agreements under chapter 78.52 RCW, including necessary technical studies, permit or lease processing, and monitoring for permit compliance.

(2) The cost-reimbursement agreement shall identify the ((~~specific~~)) tasks((~~,~~)) and costs((~~, and schedule~~)) for work to be conducted under the agreement. The agreement must include a schedule that states:

(a) The estimated number of weeks for initial review of the permit application;

(b) The estimated number of revision cycles;

(c) The estimated number of weeks for review of subsequent revision submittals;

(d) The estimated number of billable hours of employee time;

(e) The rate per hour; and

(f) A date for revision of the agreement if necessary.

((~~(2)~~)) (3) The written cost-reimbursement agreement shall be negotiated with the permit or lease applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant or proponent shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to hire temporary employees, to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the

permit or lease. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits or leases, and shall contract with consultants or hire temporary employees to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. ((~~Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits or leases not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding.~~))

(4) The cost-reimbursement agreement must not negatively impact the processing of other permit applications. In order to maintain permit processing capacity, the agency may hire outside consultants, temporary employees, or make internal administrative changes. Consultants or temporary employees hired as part of a cost-reimbursement agreement or to maintain agency capacity are hired as agents of the state not of the permit applicant. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

Sec. 10. RCW 43.70.630 and 2007 c 94 s 12 are each amended to read as follows:

(1) The department may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing.

(2) The cost-reimbursement agreement shall identify the ((~~specific~~)) tasks((~~,~~)) and costs((~~, and schedule~~)) for work to be conducted under the agreement. The agreement must include a schedule that states:

(a) The estimated number of weeks for initial review of the permit application;

(b) The estimated number of revision cycles;

(c) The estimated number of weeks for review of subsequent revision submittals;

(d) The estimated number of billable hours of employee time;

(e) The rate per hour; and

(f) A date for revision of the agreement if necessary.

((~~(2)~~)) (3) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant or proponent shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to hire temporary employees, to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that

involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants or hire temporary employees to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. ((~~Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding.~~))

(4) The cost-reimbursement agreement must not negatively impact the processing of other permit applications. In order to maintain permit processing capacity, the agency may hire outside consultants, temporary employees, or make internal administrative changes. Consultants or temporary employees hired as part of a cost-reimbursement agreement or to maintain agency capacity are hired as agents of the state not of the permit applicant. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

Sec. 11. RCW 43.300.080 and 2007 c 94 s 13 are each amended to read as follows:

(1) The department may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing.

(2) The cost-reimbursement agreement shall identify the ((~~specific~~)) tasks((~~,~~)) and costs((~~, and schedule~~)) for work to be conducted under the agreement. The agreement must include a schedule that states:

(a) The estimated number of weeks for initial review of the permit application;

(b) The estimated number of revision cycles;

(c) The estimated number of weeks for review of subsequent revision submittals;

(d) The estimated number of billable hours of employee time;

(e) The rate per hour; and

(f) A date for revision of the agreement if necessary.

((~~(2)~~)) (3) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to hire temporary employees, to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The

department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants or hire temporary employees to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. ((~~Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The department may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding.~~))

(4) The cost-reimbursement agreement must not negatively impact the processing of other permit applications. In order to maintain permit processing capacity, the agency may hire outside consultants, temporary employees, or make internal administrative changes. Consultants or temporary employees hired as part of a cost-reimbursement agreement or to maintain agency capacity are hired as agents of the state not of the permit applicant. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement.

Sec. 12. RCW 70.94.085 and 2007 c 94 s 14 are each amended to read as follows:

(1) An authority may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the authority in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing.

(2) The cost-reimbursement agreement shall identify the ((~~specific~~)) tasks((~~,~~)) and costs((~~, and schedule~~)) for work to be conducted under the agreement. The agreement must include a schedule that states:

(a) The estimated number of weeks for initial review of the permit application;

(b) The estimated number of revision cycles;

(c) The estimated number of weeks for review of subsequent revision submittals;

(d) The estimated number of billable hours of employee time;

(e) The rate per hour; and

(f) A date for revision of the agreement if necessary.

((~~(2)~~)) (3) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant or proponent shall be used by the air pollution control authority to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The air pollution control authority may also use funds provided under a cost-reimbursement agreement to hire temporary employees, to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The air pollution control authority shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The air pollution control authority shall

make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants or hire temporary employees to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. ((~~Use of cost-reimbursement agreements shall not reduce the current level of staff available to work on permits not covered by cost-reimbursement agreements. The air pollution control authority may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding.~~))

(4) The cost-reimbursement agreement must not negatively impact the processing of other permit applications. In order to maintain permit processing capacity, the agency may hire outside consultants, temporary employees, or make internal administrative changes. Consultants or temporary employees hired as part of a cost-reimbursement agreement or to maintain agency capacity are hired as agents of the state not of the permit applicant. The provisions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. Members of the air pollution control authority's board of directors shall be considered as state officers, and employees of the air pollution control authority shall be considered as state employees, for the sole purpose of applying the restrictions of chapter 42.52 RCW to this section.

NEW SECTION. **Sec. 13.** A new section is added to chapter 43.42 RCW to read as follows:

This chapter shall not be construed to limit or abridge the powers and duties granted to a participating permit agency under the law that authorizes or requires the agency to issue a permit for a project. Each participating permit agency shall retain its authority to make all decisions on all nonprocedural matters with regard to the respective component permit that is within its scope of its responsibility including, but not limited to, the determination of permit application completeness, permit approval or approval with conditions, or permit denial. The office may not substitute its judgment for that of a participating permit agency on any such nonprocedural matters.

Passed by the House February 27, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 15, 2009.
Filed in Office of Secretary of State April 15, 2009.

CHAPTER 98

[Substitute House Bill 1765]

IMPAIRED PHYSICIAN PROGRAM—LICENSE SURCHARGE

AN ACT Relating to the license surcharge for the impaired physician program; and amending RCW 18.71.310 and 18.71A.020.

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

Sec. 1. RCW 18.71.310 and 2001 c 109 s 1 are each amended to read as follows:

(1) The commission shall enter into a contract with the entity to implement an impaired physician program. The commission may enter into a contract with

the entity for up to six years in length. The impaired physician program may include any or all of the following:

(a) Entering into relationships supportive of the impaired physician program with professionals who provide either evaluation or treatment services, or both;

(b) Receiving and assessing reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment, or in cases where there is reasonable cause to suspect impairment;

(d) Upon reasonable cause, referring suspected or verified impaired physicians for evaluation or treatment;

(e) Monitoring the treatment and rehabilitation of impaired physicians including those ordered by the commission;

(f) Providing monitoring and continuing treatment and rehabilitative support of physicians;

(g) Performing such other activities as agreed upon by the commission and the entity; and

(h) Providing prevention and education services.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of ((~~not less than twenty-five and not more than thirty-five~~)) fifty dollars per year on each license renewal or issuance of a new license to be collected by the department of health from every physician and surgeon licensed under this chapter in addition to other license fees. These moneys shall be placed in the impaired physician account to be used solely for the implementation of the impaired physician program.

(3) All funds in the impaired physician account shall be paid to the contract entity within sixty days of deposit.

Sec. 2. RCW 18.71A.020 and 1999 c 127 s 1 are each amended to read as follows:

(1) The commission shall adopt rules fixing the qualifications and the educational and training requirements for licensure as a physician assistant or for those enrolled in any physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the commission and within one year successfully take and pass an examination approved by the commission, if the examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program. An interim permit may be granted by the department of health for one year provided the applicant meets all other requirements. Physician assistants licensed by the board of medical examiners, or the medical quality assurance commission as of July 1, 1999, shall continue to be licensed.

(2)(a) The commission shall adopt rules governing the extent to which:

(i) Physician assistant students may practice medicine during training; and

(ii) Physician assistants may practice after successful completion of a physician assistant training course.

(b) Such rules shall provide:

(i) That the practice of a physician assistant shall be limited to the performance of those services for which he or she is trained; and

(ii) That each physician assistant shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision

and control shall not be construed to necessarily require the personal presence of the supervising physician or physicians at the place where services are rendered.

(3) Applicants for licensure shall file an application with the commission on a form prepared by the secretary with the approval of the commission, detailing the education, training, and experience of the physician assistant and such other information as the commission may require. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. A surcharge of ((~~twenty-five~~)) fifty dollars per year shall be charged on each license renewal or issuance of a new license to be collected by the department and deposited into the impaired physician account for physician assistant participation in the impaired physician program. Each applicant shall furnish proof satisfactory to the commission of the following:

(a) That the applicant has completed an accredited physician assistant program approved by the commission and is eligible to take the examination approved by the commission;

(b) That the applicant is of good moral character; and

(c) That the applicant is physically and mentally capable of practicing medicine as a physician assistant with reasonable skill and safety. The commission may require an applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical or mental capability, or both, to safely practice as a physician assistant.

(4) The commission may approve, deny, or take other disciplinary action upon the application for license as provided in the Uniform Disciplinary Act, chapter 18.130 RCW. The license shall be renewed as determined under RCW 43.70.250 and 43.70.280. The commission may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW.

(5) All funds in the impaired physician account shall be paid to the contract entity within sixty days of deposit.

Passed by the House March 5, 2009.
Passed by the Senate April 3, 2009.
Approved by the Governor April 15, 2009.
Filed in Office of Secretary of State April 15, 2009.

CHAPTER 99

[House Bill 1997]

PUGET SOUND SCIENTIFIC RESEARCH ACCOUNT—SCIENCE PANEL

AN ACT Relating to Puget Sound scientific research; and amending RCW 90.71.110 and 90.71.280.

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

Sec. 1. RCW 90.71.110 and 2007 c 345 s 3 are each amended to read as follows:

The Puget Sound scientific research account is created in the state treasury. All gifts, grants, federal moneys, or appropriations made to the account must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for research programs and projects selected pursuant to ((~~section 2 of this act~~)) the process

developed and overseen by the Puget Sound science panel as provided in RCW 90.71.280(1)(c).

Sec. 2. RCW 90.71.280 and 2007 c 341 s 10 are each amended to read as follows:

(1) The panel shall:

(a) Assist the council, board, and executive director in carrying out the obligations of the partnership, including preparing and updating the action agenda;

(b) As provided in RCW 90.71.290, assist the partnership in developing an ecosystem level strategic science program that:

(i) Addresses monitoring, modeling, data management, and research; and

(ii) Identifies science gaps and recommends research priorities;

(c) Develop and provide oversight of a competitive peer-reviewed process for soliciting, strategically prioritizing, and funding research and modeling projects;

(d) Develop and implement an appropriate process for peer review of monitoring, research, and modeling conducted as part of the strategic science program;

(e) Provide input to the executive director in developing biennial implementation strategies; and

(((~~(e)~~))) (f) Offer an ecosystem-wide perspective on the science work being conducted in Puget Sound and by the partnership.

(2) The panel should collaborate with other scientific groups and consult other scientists in conducting its work. To the maximum extent possible, the panel should seek to integrate the state-sponsored Puget Sound science program with the Puget Sound science activities of federal agencies, including working toward an integrated research agenda and Puget Sound science work plan.

(3) By July 31, 2008, the panel shall identify environmental indicators measuring the health of Puget Sound, and recommend environmental benchmarks that need to be achieved to meet the goals of the action agenda. The council shall confer with the panel on incorporating the indicators and benchmarks into the action agenda.

Passed by the House March 5, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 15, 2009.
Filed in Office of Secretary of State April 15, 2009.

CHAPTER 100

[Substitute House Bill 2042]

MOTION PICTURE COMPETITIVENESS PROGRAM—FUNDING

AN ACT Relating to the incentive in the motion picture competitiveness programs; amending RCW 43.365.020; and declaring an emergency.

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

Sec. 1. RCW 43.365.020 and 2008 c 85 s 1 are each amended to read as follows:

(1) The department shall adopt criteria for an approved motion picture competitiveness program with the sole purpose of revitalizing the state's

economic, cultural, and educational standing in the national and international market of motion picture production. Rules adopted by the department shall allow the program, within the established criteria, to provide funding assistance only when it captures economic opportunities for Washington's communities and businesses and shall only be provided under a contractual arrangement with a private entity. In establishing the criteria, the department shall consider:

(a) The additional income and tax revenue to be retained in the state for general purposes;

(b) The creation and retention of family wage jobs which provide health insurance and payments into a retirement plan;

(c) The impact of motion picture projects to maximize in-state labor and the use of in-state film production and film postproduction companies;

(d) The impact upon the local economies and the state economy as a whole, including multiplier effects;

(e) The intangible impact on the state and local communities that comes with motion picture projects;

(f) The regional, national, and international competitiveness of the motion picture filming industry;

(g) The revitalization of the state as a premier venue for motion picture production and national television commercial campaigns;

(h) Partnerships with the private sector to bolster film production in the state and serve as an educational and cultural purpose for its citizens;

(i) The vitality of the state's motion picture industry as a necessary and critical factor in promoting the state as a premier tourist and cultural destination;

(j) Giving preference to additional seasons of television series that have previously qualified;

(k) Other factors the department may deem appropriate for the implementation of this chapter.

(2) The board of directors created under RCW 43.365.030 shall create and administer an account for carrying out the purposes of subsection (3) of this section.

(3) Money received by an approved motion picture competitiveness program shall be used only for: (a) Health insurance and payments into a retirement plan, and other costs associated with film production; (b) a tax credit marketer to market the tax credits authorized under RCW 82.04.4489; and (c) staff and related expenses to maintain the program's proper administration and operation.

(4) Maximum funding assistance from an approved motion picture competitiveness program is limited to an amount up to ((~~twenty~~)) thirty percent of the total actual investment in the state of at least:

(a) Five hundred thousand dollars for a single feature film produced in Washington state;

(b) Three hundred thousand dollars per television episode produced in Washington state; or

(c) One hundred fifty thousand dollars for an infomercial or television commercial associated with a national or regional advertisement campaign produced in Washington state.

(5) Funding assistance approval must be determined by the approved motion picture competitiveness program within a maximum of thirty calendar

days from when the application is received, if the application is submitted after August 15, 2006.

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

Passed by the House March 10, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 15, 2009.
Filed in Office of Secretary of State April 15, 2009.

CHAPTER 101

[Substitute House Bill 2095]

DRIVER TRAINING SCHOOLS

AN ACT Relating to clarifying the permitting, training, and licensing process for driver training schools; and amending RCW 46.82.280, 46.82.300, 46.82.310, 46.82.320, 46.82.325, 46.82.330, and 46.82.360.

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

Sec. 1. RCW 46.82.280 and 2006 c 219 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) "Behind-the-wheel instruction" means instruction in an approved driver training school instruction vehicle according to and inclusive of the minimum required curriculum. Behind-the-wheel instruction is characterized by driving experience.

(2) "Classroom" means a space dedicated to and used exclusively by a driver training instructor for the instruction of students. With prior department approval, a branch office classroom may be located within alternative facilities, such as a public or private library, school, community college, college or university, or a business training facility.

(3) "Classroom instruction" means that portion of a traffic safety education course that is characterized by classroom-based student instruction conducted by or under the direct supervision of a licensed instructor or licensed instructors.

(4) "Driver training school" means a commercial driver training school engaged in the business of giving instruction, for a fee, in the operation of automobiles.

(5) "Driver training education course" means a course of instruction in traffic safety education approved and licensed by the department of licensing that consists of classroom and behind-the-wheel instruction as documented by the minimum approved curriculum.

(6) "Director" means the director of the department of licensing of the state of Washington.

(7) "Advisory committee" means the driving instructors' advisory committee as created in this chapter.

(8) "Enrollment" means the collecting of a fee or the signing of a contract for a driver training education course. "Enrollment" does not include the

collecting of names and contact information for enrolling students once a driver training school is licensed to instruct.

(9) "Fraudulent practices" means any conduct or representation on the part of a driver training school owner or instructor including:

(a) Inducing anyone to believe, or to give the impression, that a license to operate a motor vehicle or any other license granted by the director may be obtained by any means other than those prescribed by law, or furnishing or obtaining the same by illegal or improper means, or requesting, accepting, or collecting money for such purposes;

(b) ((~~Operation of~~)) Operating a driver training school without a license, providing instruction without an instructor's license, verifying enrollment prior to being licensed, misleading or false statements on applications for a commercial driver training school license or instructor's license or on any required records or supporting documentation;

(c) Failing to fully document and maintain all required driver training school records of instruction, school operation, and instructor training;

(d) Issuing a driver training course certificate without requiring completion of the necessary behind-the-wheel and classroom instruction.

(((~~(9)~~))) (10) "Instructor" means any person employed by or otherwise associated with a driver training school to instruct persons in the operation of an automobile.

(((~~(10)~~))) (11) "Owner" means an individual, partnership, corporation, association, or other person or group that holds a substantial interest in a driver training school.

(((~~(11)~~))) (12) "Place of business" means a designated location at which the business of a driver training school is transacted ((~~and~~)) or its records are kept.

(((~~(12)~~))) (13) "Person" means any individual, firm, corporation, partnership, or association.

(((~~(13)~~))) (14) "Substantial interest holder" means a person who has actual or potential influence over the management or operation of any driver training school. Evidence of substantial interest includes, but is not limited to, one or more of the following:

(a) Directly or indirectly owning, operating, managing, or controlling a driver training school or any part of a driver training school;

(b) Directly or indirectly profiting from or assuming liability for debts of a driver training school;

(c) Is an officer or director of a driver training school;

(d) Owning ten percent or more of any class of stock in a privately or closely held corporate driver training school, or five percent or more of any class of stock in a publicly traded corporate driver training school;

(e) Furnishing ten percent or more of the capital, whether in cash, goods, or services, for the operation of a driver training school during any calendar year; or

(f) Directly or indirectly receiving a salary, commission, royalties, or other form of compensation from the activity in which a driver training school is or seeks to be engaged.

(((~~(14)~~))) (15) "Student" means any person enrolled in ((~~a~~)) an approved driver training course ((~~that pays a fee for instruction~~)).

Sec. 2. RCW 46.82.300 and 2006 c 219 s 3 are each amended to read as follows:

(1) The director shall be assisted in the duties and responsibilities of this chapter by the driver instructors' advisory committee, consisting of ((~~five~~)) seven members, two of which, when possible, must reside east of the crest of the Cascade mountains. Members of the advisory committee shall be appointed by the director for two-year terms and shall consist of ((~~a~~)) two representatives of the driver training schools, ((~~a~~)) two representatives of the driving instructors (who shall not be from the same school as the school member), a representative of the superintendent of public instruction, a representative of the department of licensing, and a representative from the Washington state traffic safety commission. ((~~Members shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. A member who is receiving a salary from the state shall not receive compensation other than travel expenses incurred in such service.~~))

(2) The advisory committee shall meet at least semiannually and shall have additional meetings as may be called by the director. The director or the director's representative shall attend all meetings of the advisory committee and shall serve as chairman.

(3) Duties of the advisory committee shall be to:

(a) Advise and confer on department proposed policy and rule with the director or the director's representative on matters pertaining to the establishment of rules necessary to carry out this chapter;

(b) Review and update when necessary a curriculum consisting of a list of items of knowledge and the processes of driving a motor vehicle specifying the minimum requirements adjudged necessary in teaching a proper and adequate course of driver education;

(c) Review and update instructor certification standards to be consistent with RCW 46.82.330 and take into consideration those standards required to be met by traffic safety education teachers under RCW 28A.220.020(3); and

(d) Prepare the examination for a driver instructor's certificate and review examination results at least once each calendar year for the purpose of updating and revising examination standards.

Sec. 3. RCW 46.82.310 and 2006 c 219 s 4 are each amended to read as follows:

(1) No person shall engage in the business of conducting a driver training school without a license issued by the director for that purpose. The school's license must be displayed before the school may:

(a) Schedule, enroll, or engage any students in a course of instruction;

(b) Issue a verification of enrollment to any student; or

(c) Begin any classroom or behind-the-wheel instruction.

(2) An application for a driver training school license shall be filed with the director, containing such information as prescribed by the director, including a uniform business identifier number, accompanied by an application fee as set by rule of the department, which shall in no event be refunded. Before an application for a driver training school license is approved, the business practices, facilities, records, vehicles, and insurance of the proposed school must be inspected and reviewed by authorized representatives of the director. If an

application is approved by the director, the applicant shall be granted a license valid for a period of one year from the date of issuance.

(3) A driver training school may apply for a license to establish a branch office or branch classroom by filing an application with the director, containing such information as prescribed by the director, accompanied by an application fee as set by rule of the department, which shall in no event be refunded. Before an application for a license to establish a branch office or branch classroom is approved, the business practices, facilities, records, vehicles, and insurance of the proposed branch location must be inspected and reviewed by authorized representatives of the director. If an application is approved by the director, the applicant shall be granted a license valid for a period of one year from the date of issuance.

(4) The annual fee for renewal of a school or branch location license shall be set by rule of the department. Subject to the department's inspection of the business, the director shall issue a license certificate to each licensee which shall be conspicuously displayed in the place of business of the licensee. If the director has not received a renewal application postmarked on or before the date a license expires the license will be marked late. If the renewal application and fee are not received within thirty days after expiration of the license, the license will be void requiring a new application as provided for in this chapter, including payment of all fees. Instruction may not be given beyond the thirty days from the expiration of the license.

(5) The person to whom a driver training school license has been issued must notify the director in writing within ten business days after any change is made in the officers, directors, or location of the place of business of the school.

(6) Except as otherwise permitted by rule of the department, a change involving the ownership of a driver training school requires a new license application, including payment of all fees.

(a) The owner relinquishing the business must notify the director in writing within ten business days.

(b) The new owner must submit an application and fee as prescribed by rule of the department for transfer of the school's license to the director within ten business days.

(c) Upon receipt of the required notification and the application and fees for license transfer, the director shall permit continuance of the business for a period not to exceed sixty days from the date of transfer pending approval of the new application for a school license.

(d) The transferred license shall remain subject to suspension, revocation, or denial in accordance with RCW 46.82.350 and 46.82.360.

(7) Evidence of liability insurance coverage for the instruction vehicles and the building premises of the driver training school must be filed with the director prior to the issuance or renewal of a school license, and shall meet the following standards:

(a) Coverage must be provided by a company authorized to do business in Washington state;

(b) Automobile liability coverage shall be in the amount of not less than one million dollars, and shall include property damage and uninsured motorists coverage;

(c) The required coverage shall be maintained in full force and effect for the term of the school license;

(d) Changes in insurance coverage due to cancellation or expiration require notification of the director and proof of continuing coverage within ten working days following any change; and

(e) Coverage shall be issued in the name of the school and identify the covered locations and vehicles.

(((~~(8) The increased insurance requirements of subsection (7) of this section must be in effect by no later than one year after July 1, 2006.~~)))

Sec. 4. RCW 46.82.320 and 2006 c 219 s 5 are each amended to read as follows:

(1) No person affiliated with a driver training school shall give instruction in the operation of an automobile for a fee without a license issued by the director for that purpose. An application for an original or renewal instructor's license shall be filed with the director, containing such information as prescribed by this chapter and by the director, accompanied by an application fee set by rule of the department, which shall in no event be refunded. An application for a renewal instructor's license must be accompanied by proof of the applicant's continuing professional development that meets the standards adopted by the director. If the applicant satisfactorily meets the application requirements and the examination requirements as prescribed in RCW 46.82.330, the applicant shall be granted a license valid for a period of ((~~one~~)) two years from the date of issuance. ((~~An instructor shall take a requalification examination every five years.~~))

(2) The director shall issue a license certificate to each qualified applicant.

(a) An employing driver training school must conspicuously display an instructor's license at its established place of business and display copies of the instructor's license at any branch office where the instructor provides instruction.

(b) Unless revoked, canceled, or denied by the director, the license shall remain the property of the licensee in the event of termination of employment or employment by another driver training school.

(c) If the director has not received a renewal application on or before the date a license expires, the license will be voided requiring a new application as provided for in this chapter, including examination and payment of all fees.

(d) If revoked, canceled, or denied by the director, the license must be surrendered to the department within ten days following the effective date of such action.

(3) Each licensee shall be provided with a wallet-size identification card by the director at the time the license is issued which shall be ((~~carried on~~)) in the instructor's ((~~person~~)) immediate possession at all times while engaged in instructing.

(4) The person to whom an instructor's license has been issued shall notify the director in writing within ten days of any change of employment or termination of employment, providing the name and address of the new driver training school by whom the instructor will be employed.

Sec. 5. RCW 46.82.325 and 2006 c 219 s 6 are each amended to read as follows:

(1) Instructors, owners, and other persons affiliated with a school who have regularly scheduled, unsupervised contact with students are required to have a

background check through the Washington state patrol criminal identification system and through the federal bureau of investigation. The background check shall also include a fingerprint check using a fingerprint card. Persons covered by this section must have their background rechecked under this subsection every five years.

(2) In addition to the background check required under subsection (1) of this section, persons covered by this section must have a background check through the Washington criminal identification system at the time of application for any renewal license.

(3) The cost of the background check shall be paid by the person.

Sec. 6. RCW 46.82.330 and 2006 c 219 s 7 are each amended to read as follows:

(1) The application for an instructor's license shall document the applicant's fitness, knowledge, skills, and abilities to teach the classroom and behind-the-wheel phases of a driver training education program in a commercial driver training school.

(2) An applicant shall be eligible to apply for an original instructor's certificate if the applicant possesses and meets the following qualifications and conditions:

(a) Has been licensed to drive for five or more years and possesses a current and valid Washington driver's license or is a resident of a jurisdiction immediately adjacent to Washington state and possesses a current and valid license issued by such jurisdiction, and does not have on his or her driving record any of the violations or penalties set forth in ((~~(2)~~))(a) (i), (ii), or (iii) of this ((~~section~~)) subsection. The director shall have the right to examine the driving record of the applicant from the department of licensing and from other jurisdictions and from these records determine if the applicant has had:

(i) Not more than one moving traffic violation within the preceding twelve months or more than two moving traffic violations in the preceding twenty-four months;

(ii) No drug or alcohol-related traffic violation or incident within the preceding ((~~seven~~)) three years. If there are two or more drug or alcohol-related traffic violations in the applicant's driving history, the applicant is no longer eligible to be a driving instructor; and

(iii) No driver's license suspension, cancellation, revocation, or denial within the preceding two years, or no more than two of these occurrences in the preceding five years;

(b) Is a high school graduate or the equivalent and at least twenty-one years of age;

(c) Has completed an acceptable application on a form prescribed by the director;

(d) Has satisfactorily completed a course of instruction in the training of drivers acceptable to the director that is no less than sixty hours in length and includes instruction in classroom and behind-the-wheel teaching methods and supervised practice behind-the-wheel teaching of driving techniques; and

(e) Has paid an examination fee as set by rule of the department and has successfully completed an instructor's examination as ((~~prepared~~)) approved by the advisory committee((~~, which shall consist of a knowledge test and an actual~~

~~driving test conducted in a vehicle provided by the applicant. The examination shall determine:~~

~~(i) The applicant's knowledge of driving laws and rules;~~

~~(ii) The applicant's ability to safely operate a motor vehicle; and~~

~~(iii) The applicant's ability to impart this knowledge and ability to others~~)).

Sec. 7. RCW 46.82.360 and 2006 c 219 s 10 are each amended to read as follows:

The license of any driver training school or instructor may be suspended, revoked, denied, or refused renewal, or such other disciplinary action authorized under RCW 18.235.110 may be imposed, for failure to comply with the business practices specified in this section.

(1) No place of business shall be established nor any business of a driver training school conducted or solicited within one thousand feet of an office or building owned or leased by the department of licensing in which examinations for drivers' licenses are conducted. The distance of one thousand feet shall be measured along the public streets by the nearest route from the place of business to such building.

(2) Any automobile used by a driver training school or an instructor for instruction purposes must be equipped with:

(a) Dual controls for foot brake and clutch, or foot brake only in a vehicle equipped with an automatic transmission;

(b) An instructor's rear view mirror; and

(c) A sign in legible, printed English letters displayed on the back or top, or both, of the vehicle that:

(i) Is not less than twenty inches in horizontal width or less than ten inches in vertical height;

(ii) Has the words "student driver," "instruction car," or "driving school" in letters at least two and one-half inches in height near the top;

(iii) Has the name and telephone number of the school in similarly legible letters not less than one inch in height placed somewhere below the aforementioned words;

(iv) Has lettering and background colors that make it clearly readable at one hundred feet in clear daylight;

(v) Is displayed at all times when instruction is being given.

(3) Instruction may not be given by an instructor to a student who is under the age of fifteen, and behind-the-wheel instruction may not be given by an instructor to a student in an automobile unless the student possesses a current and valid instruction permit issued pursuant to RCW 46.20.055 or a current and valid driver's license.

(4) No driver training school or instructor shall advertise or otherwise indicate that the issuance of a driver's license is guaranteed or assured as a result of the course of instruction offered.

(5) No driver training school or instructor shall utilize any types of advertising without using the full, legal name of the school and identifying itself as a driver training school. Instruction vehicles and equipment, classrooms, driving simulators, training materials and services advertised must be available in a manner as might be expected by the average person reading the advertisement.

(6) A driver training school shall have an established place of business owned, rented, or leased by the school and regularly occupied and used exclusively for the business of giving driver instruction. The established place of business of a driver training school shall be located in a district that is zoned for business or commercial purposes or zoned for conditional use permits for schools, trade schools, or colleges. However, the use of public or private schools does not alleviate the driver training school from securing and maintaining an established place of business or from using its own classroom on a regular basis as required under this chapter.

(a) The established place of business, branch office, or classroom or advertised address of any such driver training school shall not consist of or include a house trailer, residence, tent, temporary stand, temporary address, bus, telephone answering service if such service is the sole means of contacting the driver training school, a room or rooms in a hotel or rooming house or apartment house, or premises occupied by a single or multiple-unit dwelling house.

(b) A driver training school may lease classroom space within a public or private school that is recognized and regulated by the office of the superintendent of public instruction to conduct student instruction as approved by the director. However, such use of public or private classroom space does not alleviate the driver training school from securing and maintaining an established place of business nor from using its own classroom on a regular basis as required by this chapter.

(c) To classify as a branch office or classroom the facility must be within a thirty-five mile radius of the established place of business. The department may waive or extend the thirty-five mile restriction for driver training schools located in counties below the median population density.

(d) Nothing in this subsection may be construed as limiting the authority of local governments to grant conditional use permits or variances from zoning ordinances.

(7) No driver training school or instructor shall conduct any type of instruction or training on a course used by the department of licensing for testing applicants for a Washington driver's license.

(8) Each driver training school shall maintain its student, instructor, vehicle, insurance, and operating records at its established place of business.

(a) Student records must include the student's name, address, and telephone number, date of enrollment and all dates of instruction, the student's instruction permit or driver's license number, the type of training given, the total number of hours of instruction, and the name and signature of the instructor or instructors.

(b) ((~~Instructor records shall include the instructor's license number, the date of hire, the dates and duration of an instructor's training including initial certification as an instructor and continuing education, an abstract of the driving record for the instructor obtained within the past year, and a list of the locations where the instructor is providing student instruction.~~

~~(c)~~)) Vehicle records shall include the original insurance policies and copies of the vehicle registration for all instruction vehicles.

(((~~(d)~~))) (c) Student and instructor records shall be maintained for ((~~five~~)) three years following the completion of the instruction. Vehicle records shall be maintained for five years following their issuance. All records shall be made available for inspection upon the request of the department.

(((~~(e)~~))) (d) Upon a transfer or sale of school ownership the school records shall be transferred to and become the property and responsibility of the new owner.

(9) Each driver training school shall, at its established place of business, display, in a place where it can be seen by all clients, a copy of the required minimum curriculum furnished by the department and a copy of the school's own curriculum. Copies of the required minimum curriculum are to be provided to driver training schools and instructors by the director.

(10) Driver training schools and instructors shall submit to periodic inspections of their business practices, facilities, records, and insurance by authorized representatives of the director of the department of licensing.

Passed by the House March 9, 2009.
Passed by the Senate April 8, 2009.
Approved by the Governor April 15, 2009.
Filed in Office of Secretary of State April 15, 2009.

CHAPTER 102

[Engrossed Substitute House Bill 2126]

THE FUNERAL AND CEMETERY BOARD

AN ACT Relating to consolidating and modifying the duties of the cemetery board and the board of funeral directors and embalmers; amending RCW 18.39.010, 18.39.173, 18.39.175, 18.39.217, 18.235.020, 68.04.190, 68.05.020, 68.05.095, 68.05.100, 68.05.105, 68.05.175, 68.05.205, 68.24.090, 68.40.040, 68.44.115, 68.44.150, 68.46.010, 68.46.090, 68.46.130, 68.50.230, 68.60.030, 68.60.050, and 68.60.060; adding a new section to chapter 18.39 RCW; creating a new section; and repealing RCW 18.39.800, 68.05.040, 68.05.050, 68.05.060, 68.05.080, and 68.05.285.

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

Sec. 1. RCW 18.39.010 and 2005 c 365 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) "Funeral director" means a person engaged in the profession or business of providing for the care, shelter, transportation, and arrangements for the disposition of human remains that may include arranging and directing funeral, memorial, or other services.

(2) "Embalmer" means a person engaged in the profession or business of disinfecting and preserving human remains for transportation or final disposition.

(3) "Two-year college course" means the completion of sixty semester hours or ninety quarter hours of college credit, including the satisfactory completion of certain college courses, as set forth in this chapter.

(4) "Funeral establishment" means a place of business licensed in accordance with RCW 18.39.145, that provides for any aspect of the care, shelter, transportation, embalming, preparation, and arrangements for the disposition of human remains and includes all areas of such entity and all equipment, instruments, and supplies used in the care, shelter, transportation, preparation, and embalming of human remains.

(5) "Director" means the director of licensing.

(6) "Board" means the ((~~state~~)) funeral and cemetery board ((~~of funeral directors and embalmers~~)) created pursuant to RCW 18.39.173.

(7) "Prearrangement funeral service contract" means any contract under which, for a specified consideration, a funeral establishment promises, upon the death of the person named or implied in the contract, to furnish funeral merchandise or services.

(8) "Funeral merchandise or services" means those services normally performed and merchandise normally provided by funeral establishments, including the sale of burial supplies and equipment, but excluding the sale by a cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches, or vaults.

(9) "Public depositary" means a public depositary defined by RCW 39.58.010 or a state or federally chartered credit union.

(10) "Licensee" means any person or entity holding a license, registration, endorsement, or permit under this chapter issued by the director.

Words used in this chapter importing the singular may be applied to the plural of the person or thing, words importing the plural may be applied to the singular, and words importing the masculine gender may be applied to the female.

Sec. 2. RCW 18.39.173 and 2005 c 365 s 13 are each amended to read as follows:

((~~There is hereby established a state board of funeral directors and embalmers to be composed of five members, four professional and one public member, appointed by the governor in accordance with this section. Each professional member of the board shall be licensed in this state as a funeral director and embalmer and a resident of the state of Washington for a period of at least five years next preceding appointment, during which time such member shall have been continuously engaged in the profession~~)) (1) A funeral and cemetery board is created. The initial appointments to the board include all members from the existing funeral directors and embalmers board and existing cemetery board with their year of expiration of term remaining the same. Subsequent to the initial appointments the board will consist of seven members to be appointed by the governor in accordance with this section.

(2) Three members of the board must be persons who have had experience in the active administrative management of a cemetery authority or as a member of the board of directors of a cemetery authority for a period of five years preceding appointment. Three members of the board must each be licensed in this state as funeral directors and embalmers and must have been continuously engaged in the practice as funeral directors and embalmers for a period of five years preceding appointment. One member must represent the general public and may not have worked in or received any substantive financial benefit from the funeral or cemetery industry. Board members must be a resident of the state of Washington.

(3) All members of the board ((~~of funeral directors and embalmers~~)) shall be appointed to serve for a term of ((~~five~~)) four years, to expire on July 1st of the year of termination of their term, and until their successors have been appointed. In case of a vacancy occurring on the board, the governor shall appoint a qualified member for the remainder of the unexpired term of the vacant office.

Any member of the board ((~~of funeral directors and embalmers~~)) who fails to properly discharge the duties of a member may be removed by the governor.

(4) The board shall meet once annually to conduct its business and to elect a chair, vice-chair, and ((~~secretary and take official board action on pending matters by majority vote of all the members of the board of funeral directors and embalmers~~)) other officers as the board determines, and at other times when called by the director, the chair, or a majority of the members. A majority of the members of the board shall at all times constitute a quorum. A quorum of the board to consider any charges brought under this chapter must include two of the funeral director and embalmer members of the board. A quorum of the board to consider any charges brought under Title 68 RCW must include two of the members who have had experience in the active administrative management of a cemetery authority. If board members cannot serve due to a conflict of interest, a quorum constituting a majority of the members must preside over the hearing.

(5) Each member of the board must be compensated in accordance with RCW 43.03.240 and must receive travel expenses in accordance with RCW 43.03.050 and 43.03.060.

Sec. 3. RCW 18.39.175 and 2005 c 365 s 14 are each amended to read as follows:

((~~Each member of the board of funeral directors and embalmers shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in connection with board duties in accordance with RCW 43.03.050 and 43.03.060.~~))

The board shall have the following duties and responsibilities under this chapter:

(1) To be responsible for the preparation, conducting, and grading of examinations of applicants for funeral director and embalmer licenses;

(2) To certify to the director the results of examinations of applicants and certify the applicant as having "passed" or "failed";

(3) To make findings and recommendations to the director on any and all matters relating to the enforcement of this chapter;

(4) To adopt and enforce reasonable rules((~~. Rules regulating the cremation of human remains shall be adopted in consultation with the cemetery board~~));

(5) To examine or audit or to direct the examination and audit of prearrangement funeral service trust fund records for compliance with this chapter and rules adopted by the board; and

(6) To adopt rules establishing mandatory continuing education requirements to be met by persons applying for license renewal.

Sec. 4. RCW 18.39.217 and 2005 c 365 s 18 are each amended to read as follows:

(1) A license or endorsement issued by the board or under chapter 68.05 RCW is required in order to operate a crematory or conduct a cremation.

(2) Conducting a cremation without a license or endorsement is a misdemeanor. Each such cremation is a separate violation.

((~~(3) Crematories owned or operated by or located on property licensed as a funeral establishment shall be regulated by the board. Crematories not affiliated with a funeral establishment shall be regulated by the cemetery board.~~))

Sec. 5. RCW 18.235.020 and 2008 c 119 s 21 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) Security guards under chapter 18.170 RCW;

(xvii) Sellers of travel under chapter 19.138 RCW;

(xviii) Timeshares and timeshare salespersons under chapter 64.36 RCW;

(xix) Whitewater river outfitters under chapter 79A.60 RCW; and

(xx) Home inspectors under chapter 18.280 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 cemetery board established in chapter 68.05 RCW;~~

~~(iii)~~)) The Washington state collection agency board established in chapter 19.16 RCW;

(((~~(iv)~~))) (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;

(((~~(v)~~))) (iv) The ((~~state board of~~)) funeral ((~~directors and embalmers~~)) and cemetery board established in chapter 18.39 RCW governing licenses issued under chapters 18.39 and 68.05 RCW;

(((~~(vi)~~))) (v) The state board of registration for landscape architects established in chapter 18.96 RCW; and

(((~~(vii)~~))) (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. 6. RCW 68.04.190 and 2005 c 365 s 39 are each amended to read as follows:

"Cemetery authority" means an entity that has obtained a certificate of authority to operate a cemetery from the funeral and cemetery board, or any other entity that operates a cemetery that is not under the jurisdiction of the funeral and cemetery board.

Sec. 7. RCW 68.05.020 and 1953 c 290 s 27 are each amended to read as follows:

The term "board" used in this chapter means the funeral and cemetery board.

Sec. 8. RCW 68.05.095 and 1987 c 331 s 8 are each amended to read as follows:

((~~The board shall elect annually a chairman and vice chairman and such other officers as it shall determine from among its members.~~)) The director, in consultation with the board, may employ and prescribe the duties of the ((~~executive secretary~~)) program administrator or manager. The ((~~executive secretary shall~~)) program administrator or manager must have a minimum of five years' experience in either cemetery or funeral management, or both, unless this requirement is waived by the board.

Sec. 9. RCW 68.05.100 and 2005 c 365 s 52 are each amended to read as follows:

The board may establish necessary rules for the enforcement of this title and the laws subject to its jurisdiction. The board shall prescribe the application forms and reports provided for in this title. ((~~Rules regulating the cremation of human remains and establishing requirements shall be adopted in consultation with the state board of funeral directors and embalmers.~~))

Sec. 10. RCW 68.05.105 and 2005 c 365 s 53 are each amended to read as follows:

In addition to the authority in RCW 18.235.030, the board has the following authority under this chapter:

(1) To adopt, amend, and rescind rules necessary to carry out this title; and

(2) To adopt standards of professional conduct or practice.

Sec. 11. RCW 68.05.175 and 1987 c 331 s 13 are each amended to read as follows:

A permit or endorsement issued by the ((~~cemetery~~)) board or under chapter 18.39 RCW is required in order to operate a crematory or conduct a cremation. ((~~Crematories owned or operated by or located on property licensed as a funeral establishment shall be regulated by the board of funeral directors and~~

~~embalmers. Crematories not affiliated with a funeral establishment shall be regulated by the cemetery board.~~))

Sec. 12. RCW 68.05.205 and 1993 c 43 s 4 are each amended to read as follows:

The director with the consent of the ((~~cemetery~~)) board shall set all fees for chapters 68.05, 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, and 68.46 RCW in accordance with RCW 43.24.086, including fees for licenses, certificates, regulatory charges, permits, or endorsements, and the department shall collect the fees.

Sec. 13. RCW 68.24.090 and 2005 c 365 s 75 are each amended to read as follows:

Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the superior court of the county in which the property is situated, in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) That no placements of human remains were made in or that all placements of human remains have been removed from that portion of the property from which dedication is sought to be removed.

(2) That the portion of the property from which dedication is sought to be removed is not being used for placement of human remains.

(3) That notice of the proposed removal of dedication has been given in writing to both the funeral and cemetery board and the ((~~office~~)) department of archaeology and historic preservation. This notice must be given at least sixty days before filing the proceedings in superior court. The notice of the proposed removal of dedication shall be recorded with the auditor or recording officer of the county where the cemetery is located at least sixty days before filing the proceedings in superior court.

Sec. 14. RCW 68.40.040 and 1987 c 331 s 37 are each amended to read as follows:

A cemetery authority not exempt under this chapter shall file in its principal office for review by plot owners the previous seven fiscal years' endowment care reports as filed with the funeral and cemetery board in accordance with RCW 68.44.150.

Sec. 15. RCW 68.44.115 and 1987 c 331 s 44 are each amended to read as follows:

To be considered qualified as a trustee, each trustee of an endowment care fund appointed in accordance with this chapter shall file with the board a statement of acceptance of fiduciary responsibility, on a form approved by the board, before assuming the duties of trustee. The trustee shall remain in the trustee's fiduciary capacity until such time as the trustee advises the funeral and cemetery board in writing of the trustee's resignation of trusteeship.

Sec. 16. RCW 68.44.150 and 2005 c 365 s 123 are each amended to read as follows:

The cemetery authority or the trustees in whose names the funds are held shall, annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, file in its office and with the funeral and cemetery board endowment care trust fund, a report showing the actual financial condition

of the funds. The report must be signed by an officer of the cemetery authority or one or more of the trustees. The report must be maintained for a period of seven years.

Sec. 17. RCW 68.46.010 and 2005 c 365 s 125 are each amended to read as follows:

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

(1) "Prearrangement contract" means a contract for purchase of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves to be furnished at a future date for a specific consideration which is paid in advance by one or more payments in one sum or by installment payments.

(2) "Cemetery merchandise or services" and "merchandise or services" mean those services normally performed by cemetery authorities, including the sale of monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, interment services, or any one or more of them.

(3) "Prearrangement trust fund" means all funds required to be maintained in one or more funds for the benefit of beneficiaries by either this chapter or by the terms of a prearrangement contract, as herein defined.

(4) "Board" means the funeral and cemetery board established under ((~~chapter 68.05~~)) RCW 18.39.173 or its authorized representative.

(5) "Undeveloped grave" means any grave in an area which a cemetery authority has not landscaped, groomed, or developed to the extent customary in the cemetery industry.

Sec. 18. RCW 68.46.090 and 2005 c 365 s 135 are each amended to read as follows:

Any cemetery authority selling prearrangement merchandise or other prearrangement services shall file in its office and with the ((~~cemetery~~)) board a written report upon forms prepared by the ((~~cemetery~~)) board which shall state the amount of the principle of the prearrangement trust fund, the depository of such fund, and cash on hand which is or may be due to the fund as well as other information the board may deem appropriate. All information appearing on such written reports shall be revised at least annually. These reports shall be verified by the president, or the vice president, and one other officer of the cemetery authority, the accountant or auditor who prepared the report, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards.

Sec. 19. RCW 68.46.130 and 1979 c 21 s 43 are each amended to read as follows:

The ((~~cemetery~~)) board may grant an exemption from any or all of the requirements of this chapter relating to prearrangement contracts to any cemetery authority which:

(1) Sells less than twenty prearrangement contracts per year; and

(2) Deposits one hundred percent of all funds received into a trust fund under RCW 68.46.030, as now or hereafter amended.

Sec. 20. RCW 68.50.230 and 2005 c 365 s 146 are each amended to read as follows:

Whenever any human remains shall have been in the lawful possession of any person, firm, corporation, or association for a period of ninety days or more,

and the relatives of, or persons interested in, the deceased person shall fail, neglect, or refuse to direct the disposition, the human remains may be disposed of by the person, firm, corporation, or association having such lawful possession thereof, under and in accordance with rules adopted by the funeral and cemetery board ((~~and the board of funeral directors and embalmers~~)), not inconsistent with any statute of the state of Washington or rule adopted by the state board of health.

Sec. 21. RCW 68.60.030 and 2005 c 365 s 150 are each amended to read as follows:

(1)(a) The ((~~archaeological and historical division of the department of community, trade, and economic development~~)) department of archaeology and historic preservation may grant by nontransferable certificate authority to maintain and protect an abandoned cemetery upon application made by a preservation organization which has been incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery. Such authority shall be limited to the care, maintenance, restoration, protection, and historical preservation of the abandoned cemetery, and shall not include authority to make burials. In order to activate a historical cemetery for burials, an applicant must apply for a certificate of authority to operate a cemetery from the ((~~state~~)) funeral and cemetery board.

(b) Those preservation and maintenance corporations that are granted authority to maintain and protect an abandoned cemetery shall be entitled to hold and possess burial records, maps, and other historical documents as may exist. Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery shall not be liable to those claiming burial rights, ancestral ownership, or to any other person or organization alleging to have control by any form of conveyance not previously recorded at the county auditor's office within the county in which the abandoned cemetery exists. Such organizations shall not be liable for any reasonable alterations made during restoration work on memorials, roadways, walkways, features, plantings, or any other detail of the abandoned cemetery.

(c) Should the maintenance and preservation corporation be dissolved, the ((~~archaeological and historical division of the department of community, trade, and economic development~~)) department of archaeology and historic preservation shall revoke the certificate of authority.

(d) Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery may establish care funds.

(2) Except as provided in subsection (1) of this section, the department of ((~~community, trade, and economic development~~)) archaeology and historic preservation may, in its sole discretion, authorize any Washington nonprofit corporation that is not expressly incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery, to restore, maintain, and protect one or more abandoned cemeteries. The authorization may include the right of access to any burial records, maps, and other historical documents, but shall not include the right to be the permanent custodian of original records, maps, or documents. This authorization shall be granted by a nontransferable certificate of authority. Any nonprofit corporation authorized and acting under this subsection is immune from liability to the same extent as if it were a

preservation organization holding a certificate of authority under subsection (1) of this section.

(3) The department of ((~~community, trade, and economic development~~)) archaeology and historic preservation shall establish standards and guidelines for granting certificates of authority under subsections (1) and (2) of this section to assure that any restoration, maintenance, and protection activities authorized under this subsection are conducted and supervised in an appropriate manner.

Sec. 22. RCW 68.60.050 and 1999 c 67 s 1 are each amended to read as follows:

(1) Any person who knowingly removes, mutilates, defaces, injures, or destroys any historic grave shall be guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturbing historic graves through inadvertence, including disturbance through construction, shall reinter the human remains under the supervision of the ((~~office~~)) department of archaeology and historic preservation. Expenses to reinter such human remains are to be provided by the ((~~office~~)) department of archaeology and historic preservation to the extent that funds for this purpose are appropriated by the legislature.

(2) This section does not apply to actions taken in the performance of official law enforcement duties.

(3) It shall be a complete defense in a prosecution under subsection (1) of this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported.

Sec. 23. RCW 68.60.060 and 1990 c 92 s 5 are each amended to read as follows:

Any person who violates any provision of this chapter is liable in a civil action by and in the name of the ((~~state cemetery board~~)) department of archaeology and historic preservation to pay all damages occasioned by their unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed and to the care fund if one is established.

NEW SECTION. **Sec. 24.** A new section is added to chapter 18.39 RCW to read as follows:

The funeral and cemetery account is created in the custody of the state treasurer. All receipts from fines and fees collected under this chapter and chapter 68.05 RCW must be deposited in the account. Expenditures from the account may be used only to carry out the duties required for the operation and enforcement of this chapter and chapter 68.05 RCW. Only the director of licensing or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec. 25.** Any residual balance of funds remaining in the funeral directors and embalmers account and the cemetery account must be transferred to the funeral and cemetery account established in section 24 of this act. The treasurer shall make the transfer after being notified by the office of financial management that it has completed the financial statement for fiscal year 2009, and no later than December 31, 2009.

NEW SECTION. **Sec. 26.** The following acts or parts of acts are each repealed:

(1) RCW 18.39.800 (Funeral directors and embalmers account) and 2005 c 365 s 25, 1996 c 217 s 9, & 1993 c 43 s 2;

(2) RCW 68.05.040 (Cemetery board created—Appointments—Terms) and 2005 c 365 s 48, 1987 c 331 s 5, 1977 ex.s. c 351 s 1, & 1953 c 290 s 31;

(3) RCW 68.05.050 (Qualifications of members) and 2005 c 365 s 49, 1979 c 21 s 5, 1977 ex.s. c 351 s 2, & 1953 c 290 s 32;

(4) RCW 68.05.060 (Compensation and travel expenses) and 1984 c 287 s 102, 1975-'76 2nd ex.s. c 34 s 156, & 1953 c 290 s 33; and

(5) RCW 68.05.080 (Meetings) and 2005 c 365 s 50, 1987 c 331 s 6, & 1953 c 290 s 35; and

(6) RCW 68.05.285 ("Cemetery account.") and 2005 c 365 s 67 & 1953 c 290 s 29.

Passed by the House March 10, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 15, 2009.
Filed in Office of Secretary of State April 15, 2009.

CHAPTER 103

[Senate Bill 5017]
INACTIVE VOTERS

AN ACT Relating to inactive voters; and amending RCW 29A.48.010.

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

Sec. 1. RCW 29A.48.010 and 2005 c 241 s 1 are each amended to read as follows:

(1) With express authorization from the county legislative authority, the county auditor may conduct all primary, special, and general elections entirely by mail ballot. The county legislative authority must give the county auditor at least ninety days' notice before the first election to be conducted entirely by mail ballot. If the county legislative authority and the county auditor decide to return to a polling place election environment, the county legislative authority must give the county auditor at least one hundred eighty days' notice before the first election to be conducted using polling places. Authorization under this subsection must apply to all primary, special, and general elections conducted by the county auditor.

(2) The county auditor may designate any precinct having fewer than two hundred active registered voters at the time of closing of voter registration as provided in RCW 29A.08.140 as a mail ballot precinct. Authorization from the county legislative authority is not required to designate a precinct as a mail ballot precinct under this subsection. In determining the number of registered voters in a precinct for the purposes of this section, persons who are ongoing absentee voters under RCW 29A.40.040 shall not be counted. Nothing in this section may be construed as altering the vote tallying requirements of RCW 29A.60.230.

(3) The county auditor shall notify each registered voter by mail that for all future primaries and elections the voting will be by mail ballot only. The auditor

shall mail each active voter a ballot at least eighteen days before a primary, general election, or special election. ((~~The auditor shall send each inactive voter either a ballot or an application to receive a ballot at least eighteen days before a primary, general election, or special election. The auditor shall determine which of the two is to be sent. If the inactive voter returns a voted ballot, the ballot shall be counted and the voter's status restored to active. If the inactive voter completes and returns an application, a ballot shall be sent and the voter's status restored to active.~~)) The requirements regarding certification, reporting, and the mailing of overseas and military ballots in RCW 29A.40.070 apply to elections conducted by mail ballot.

(4) If the county legislative authority and county auditor determine under subsection (1) of this section, or if the county auditor determines under subsection (2) of this section, to return to a polling place election environment, the auditor shall notify each registered voter, by mail, of this and shall provide the address of the polling place to be used.

Passed by the Senate March 3, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 104

[Substitute Senate Bill 5195]

LIFE SETTLEMENTS ACT

AN ACT Relating to adopting the life settlements model act; reenacting and amending RCW 42.56.400; adding new sections to chapter 48.102 RCW; repealing RCW 48.102.005, 48.102.010, 48.102.015, 48.102.020, 48.102.025, 48.102.030, 48.102.035, 48.102.040, 48.102.045, 48.102.050, 48.102.055, 48.102.900, and 48.102.901; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** SHORT TITLE. This chapter may be cited as the "life settlements act."

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

(1) "Advertisement" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a policy or an interest in a policy pursuant to a life settlement contract.

(2) "Broker" means a person who, on behalf of an owner and for a fee, commission, or other valuable consideration, offers or attempts to negotiate life settlement contracts between an owner and providers. A broker represents only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions, and in the best interest of the owner, notwithstanding the manner in which the broker is compensated. A broker does not mean an attorney, certified public accountant, or financial planner retained in the type of practice

customarily performed in their professional capacity to represent the owner whose compensation is not paid directly or indirectly by the provider or any other person, except the owner.

(3) "Business of life settlements" means an activity involved in, but not limited to, offering to enter into, soliciting, negotiating, procuring, effectuating, monitoring, or tracking life settlement contracts.

(4) "Chronically ill" means:

(a) Being unable to perform at least two activities of daily living, i.e., eating, toileting, transferring, bathing, dressing, or continence;

(b) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(c) Having a level of disability substantially similar to that described in (a) of this subsection made in a written determination, as existing on the effective date of this section, by the United States secretary of health and human services.

(5) "Commissioner" means the insurance commissioner.

(6)(a) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a provider, credit enhancer, or any entity that has a direct ownership in a policy that is the subject of a life settlement contract, but:

(i) Whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one or more policies; and

(ii) Who has an agreement in writing with one or more providers to finance the acquisition of life settlement contracts.

(b) "Financing entity" does not mean a nonaccredited investor or purchaser.

(7) "Financing transaction" means a transaction in which a licensed provider obtains financing from a financing entity including, without limitation, any secured or unsecured financing, any securitization transaction, or any securities offering which either is registered or exempt from registration under federal and state securities law.

(8) "Fraudulent life settlement act" includes:

(a) Acts or omissions committed by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including, but not limited to:

(i) Presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a provider, premium finance lender, broker, insurer, insurance producer, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(A) An application for the issuance of a life settlement contract or policy;

(B) The underwriting of a life settlement contract or policy;

(C) A claim for payment or benefit pursuant to a life settlement contract or policy;

(D) Premiums paid on a policy;

(E) Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or policy;

(F) The reinstatement or conversion of a policy;

(G) In the solicitation, offer to enter into, or effectuation of a life settlement contract, or policy;

(H) The issuance of written evidence of life settlement contracts or insurance; or

(I) Any application for, or the existence of or any payments related to, a loan secured directly or indirectly by any interest in a policy;

(ii) Entering into any act, practice, or arrangement that involves stranger-originated life insurance;

(iii) Failing to disclose to the insurer where the request for such disclosure has been asked for by the insurer that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the issuance of the policy;

(iv) Employing any device, scheme, or artifice to defraud in the business of life settlements; or

(v) In the solicitation, application, or issuance of a policy, employing any device, scheme, or artifice in violation of state insurable interest laws.

(b) In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:

(i) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of either a broker or provider, or both or other person engaged in the business of life settlements;

(ii) Misrepresent or conceal the financial condition of either a broker or provider, or both, financing entity, insurer, or other person;

(iii) Transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements;

(iv) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner;

(v) Engage in embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a provider, insured, owner, or any other person engaged in the business of life settlements;

(vi) Knowingly and with intent to defraud, enter into, broker, or otherwise deal in a life settlement contract, the subject of which is a policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the owner or the owner's agent intended to defraud the policy's issuer;

(vii) Attempt to commit, assist, aid, or abet in the commission of, or conspiracy to commit, the acts or omissions specified in this subsection; or

(viii) Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this chapter for the purpose of evading or avoiding the provisions of this chapter.

(9) "Insured" means the person covered under the policy being considered for sale in a life settlement contract.

(10) "Life expectancy" means the arithmetic mean of the number of months the insured under the policy to be settled can be expected to live considering medical records and appropriate experiential data.

(11) "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or

authority for life insurance coverage or a life line of coverage pursuant to RCW 48.17.170.

(12)(a) "Life settlement contract" means a written agreement entered into between a provider and an owner, establishing the terms under which compensation or any thing of value will be paid, which compensation or thing of value is less than the expected death benefit of the policy, in return for the owner's assignment, transfer, sale, devise, or bequest of the death benefit or any portion of a policy for compensation, provided, however, that the minimum value for a life settlement contract shall be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract.

(b) "Life settlement contract" also means the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this state.

(c) "Life settlement contract" also means a written agreement for a loan or other lending transaction, secured primarily by a policy or a premium finance loan made for a policy on or before the date of issuance of the policy where:

(i) The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;

(ii) The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or

(iii) The owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(d) "Life settlement contract" does not mean:

(i) A policy loan by a life insurance company pursuant to the terms of the policy or accelerated death provisions contained in the policy, whether issued with the original policy or as a rider;

(ii) A premium finance loan or any loan made by a bank or other licensed financial institution, provided that neither the default on the loan nor the transfer of the policy in connection with such a default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;

(iii) A collateral assignment of a policy by an owner;

(iv) A loan made by a lender that does not violate any provision of this title, provided the loan is not described in (a) of this subsection, and is not otherwise within the definition of life settlement contract;

(v) An agreement where all the parties (A) are closely related to the insured by blood or law, or (B) have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of those parties;

(vi) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(vii) A bona fide business succession planning arrangement:

(A) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(B) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(C) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

(viii) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

(ix) Any other contract, transaction, or arrangement from the definition of life settlement contract that the commissioner determines is not of the type intended to be regulated by this chapter.

(13) "Net death benefit" means the amount of the policy to be settled less any outstanding debts or liens.

(14)(a) "Owner" means the owner of a policy, with or without a terminal illness, who enters or seeks to enter into a life settlement contract. For the purposes of this chapter, an owner shall not be limited to an owner of a policy that insures the life of an individual with a terminal or chronic illness or condition except where specifically addressed.

(b) "Owner" does not mean:

(i) Any provider or other licensee under this chapter;

(ii) A qualified institutional buyer as defined, as of the effective date of this section, in rule 144A of the federal securities act of 1933, as amended;

(iii) A financing entity;

(iv) A special purpose entity; or

(v) A related provider trust.

(15) "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

(16) "Policy" means an individual or group life insurance policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

(17) "Premium finance loan" means a loan made primarily for the purposes of making premium payments on a policy, which loan is secured by an interest in the policy.

(18) "Person" means any natural person or legal entity, including but not limited to, a partnership, limited liability company, association, trust, or corporation.

(19)(a) "Provider" means a person, other than an owner, who enters into or effectuates a life settlement contract with an owner.

(b) "Provider" does not mean:

(i) Any bank, savings bank, savings and loan association, or credit union;

(ii) A licensed lending institution or creditor or secured party pursuant to a premium finance loan agreement which takes an assignment of a policy as collateral for a loan;

(iii) The insurer of a policy or rider to the extent of providing accelerated death benefits or riders under an approved policy form or cash surrender value;

(iv) Any natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of a policy, for compensation or anything of value less than the expected death benefit payable under the policy;

(v) A purchaser;

(vi) Any authorized or eligible insurer that provides financial guaranty insurance to a provider, purchaser, financing entity, special purpose entity, or related provider trust;

(vii) A financing entity;

(viii) A special purpose entity;

(ix) A related provider trust;

(x) A broker; or

(xi) An accredited investor or qualified institutional buyer as defined, respectively, in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as amended, who purchases a policy from a provider.

(20) "Purchased policy" means a policy that has been acquired by a provider pursuant to a life settlement contract.

(21) "Purchaser" means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a policy which has been the subject of a life settlement contract.

(22) "Related provider trust" means a titling trust or other trust established by a licensed provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. In order to qualify as a related provider trust, the trust must have a written agreement with the licensed provider under which the licensed provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files relating to life settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed provider.

(23) "Settled policy" means a policy that has been acquired by a provider pursuant to a life settlement contract.

(24) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other legal entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or provider:

(a) In connection with a transaction in which the securities in the special purpose entity are acquired by the owner or by a "qualified institutional buyer" as defined in rule 144 promulgated under the federal securities act of 1933, as amended; or

(b) When the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

(25) "Stranger-originated life insurance" means an act, practice, or arrangement to initiate a policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured under

chapter 48.18 RCW. Stranger-originated life insurance practices include, but are not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy and where, at the time of inception, there is an arrangement or agreement to directly or indirectly transfer the ownership of the policy or the policy benefits, or both, to a third party. Any trust that is created to give the appearance of insurable interest, and is used to initiate one or more policies for investors, violates chapter 48.18 RCW and the prohibition against wagering on human life. Stranger-originated life insurance arrangements do not include those practices set forth in subsection (12)(d) of this section.

(26) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less.

NEW SECTION. **Sec. 3.** LICENSING REQUIREMENTS FOR PROVIDERS. (1) A person, wherever located, shall not act as a provider with an owner who is a resident of this state or if there is more than one owner on a single policy and one of the owners is a resident of this state, without first having obtained a license from the commissioner.

(2) An application for a provider license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by a licensing fee in the amount of two hundred fifty dollars, which shall be deposited to the insurance commissioner's regulatory account under RCW 48.02.190.

(3) All provider licenses shall continue in force until suspended, revoked, or not renewed. A license shall be subject to renewal annually on the first day of July upon application of the provider and payment of a renewal fee of two hundred fifty dollars, which shall be deposited to the insurance commissioner's regulatory account under RCW 48.02.190. If not so renewed, the license shall automatically expire on the renewal date.

(a) If the renewal fee is not received by the commissioner prior to the expiration date, the provider shall pay to the commissioner in addition to the renewal fee, a surcharge as follows:

(i) For the first thirty days or part thereof delinquency the surcharge is fifty percent of the renewal fee;

(ii) For the next thirty days or part thereof delinquency the surcharge is one hundred percent of the renewal fee;

(b) If the renewal fee is not received by the commissioner after sixty days but prior to twelve months after the expiration date the payment of the renewal fee shall be for reinstatement of the license and the provider shall pay to the commissioner the renewal fee and a surcharge of two hundred percent.

(4) Subsection (3)(a) and (b) of this section does not exempt any person from any penalty provided by law for transacting a life settlement business without a valid and subsisting license.

(5) The applicant shall provide such information as the commissioner may require on forms prescribed by the commissioner. The commissioner has the authority, at any time, to require such an applicant to fully disclose the identity of its stockholders, partners, officers, and employees, and the commissioner may, in the exercise of the commissioner's sole discretion, refuse to issue such a license in the name of any person if not satisfied that any officer, employee,

stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this chapter.

(6) A license issued to a partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as a licensee under the license, if those persons are named in the application and any supplements to the application.

(7) Upon the filing of an application for a provider's license and the payment of the license fee, the commissioner shall make an investigation of each applicant and may issue a license if the commissioner finds that the applicant:

(a) Has provided a detailed plan of operation;

(b) Is competent and trustworthy and intends to transact its business in good faith;

(c) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied;

(d)(i) Has demonstrated evidence of financial responsibility in a form and in an amount prescribed by the commissioner by rule.

(ii) The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary;

(e) If the applicant is a legal entity, is formed or organized pursuant to the laws of this state, is a foreign legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of its domicile; and

(f) Has provided to the commissioner an antifraud plan that meets the requirements of section 17 of this act and includes:

(i) A description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(ii) A description of the procedures for reporting fraudulent insurance acts to the commissioner;

(iii) A description of the plan for antifraud education and training of its underwriters and other personnel; and

(iv) A written description or chart outlining the arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(8)(a) A nonresident provider shall appoint the commissioner as its attorney to receive service of, and upon whom shall be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute service upon the provider. Service of legal process against the provider can be had only by service upon the commissioner.

(b) With the appointment the provider shall designate the person to whom the commissioner shall forward legal process so served upon him or her. The provider may change the person by filing a new designation.

(c) The appointment of the commissioner as attorney shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the provider, and shall remain in effect as long as there is in this state any contract made by the provider or liabilities or duties arising therefrom.

(d) Duplicate copies of legal process against a provider for whom the commissioner is attorney shall be served upon him or her either by a person

competent to serve summons, or by registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(e) The commissioner shall immediately send one of the copies of the process, by registered mail with return receipt requested, to the person designated for the purpose by the provider in its most recent designation filed with the commissioner.

(f) The commissioner shall keep a record of the day and hour of service upon him or her of all legal process. Proceedings shall not be had against the provider, and the provider shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner.

(9) A provider may not use any person to perform the functions of a broker unless the person is authorized to act as a broker under this chapter.

(10) A provider shall provide to the commissioner new or revised information about officers, stockholders, partners, directors, members, or designated employees within thirty days of the change.

NEW SECTION. **Sec. 4.** LICENSING REQUIREMENTS FOR BROKERS. (1) Only a life insurance producer who has been duly licensed as a resident insurance producer with a lifeline of authority in this state or his or her home state for at least one year and is licensed as a nonresident producer in this state is permitted to operate as a broker.

(2) Not later than thirty days from the first day of operating as a broker, the life insurance producer shall notify the commissioner that he or she intends acting as a broker on a form prescribed by the commissioner, pay a fee of one hundred dollars, and if a nonresident producer appoint the commissioner as attorney for service of process under subsection (6) of this section. Notification shall include an acknowledgement by the life insurance producer that he or she will operate as a broker in accordance with this chapter.

(3) A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner, whose compensation is not paid directly or indirectly by the provider or purchaser, may negotiate life settlement contracts on behalf of the owner without having to obtain a license as a broker.

(4) The authority to act as a broker shall continue in force until suspended, revoked, or not renewed. The authority to act as a broker shall automatically expire if not timely renewed. The authority to act as a broker shall be valid for a time period coincident with the expiration date of the broker's insurance producer license. The authority to act as a broker is renewable at that time, upon payment of a renewal fee in the amount of one hundred dollars and if the payment is received by the commissioner prior to the expiration date, the broker's authority to act as a broker continues in effect.

(a) If the renewal fee is not received by the commissioner prior to the expiration date, the broker shall pay to the commissioner in addition to the renewal fee, a surcharge as follows:

(i) For the first thirty days or part thereof of delinquency the surcharge is fifty percent of the renewal fee;

(ii) For the next thirty days or part thereof delinquency the surcharge is one hundred percent of the renewal fee;

(b) If the payment of the renewal fee is not received by the commissioner after sixty days the surcharge is two hundred percent of the renewal fee.

(5) Subsection (4)(a) of this section does not exempt any person from any penalty provided by law for transacting life settlement business without the valid authority to act as a broker.

(6)(a) A nonresident broker shall appoint the commissioner as its attorney to receive service of, and upon whom shall be served, all legal process issued against it in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute service upon the broker. Service of legal process against the broker can be had only by service upon the commissioner.

(b) With the appointment the broker shall designate the person to whom the commissioner shall forward legal process so served upon him or her. The broker may change the person by filing a new designation.

(c) The appointment of the commissioner as attorney shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the broker, and shall remain in effect as long as there is in this state any contract made by the broker or liabilities or duties arising therefrom.

(d) Duplicate copies of legal process against a broker for whom the commissioner is attorney shall be served upon him or her either by a person competent to serve summons, or by registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(e) The commissioner shall immediately send one of the copies of the process, by registered mail with return receipt requested, to the person designated for the purpose by the broker in its most recent designation filed with the commissioner.

(f) The commissioner shall keep a record of the day and hour of service upon him or her of all legal process. Proceedings shall not be had against the broker, and the broker shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner.

(7) A broker may not use any person to perform the functions of a provider unless such a person holds a current, valid license as a provider, and as provided in this chapter.

NEW SECTION. **Sec. 5.** LICENSE SUSPENSION, REVOCATION, OR REFUSAL TO RENEW—FINES. (1) If the commissioner finds that a broker:

(a) Committed a fraudulent life settlement act;

(b) Or any officer, partner, member, or director has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a licensee;

(c) Or any officer, partner, member, or director has been convicted of a felony, or of any misdemeanor of which criminal fraud is an element; or the licensee has pleaded guilty or nolo contendere with respect to any felony or any misdemeanor of which criminal fraud or moral turpitude is an element, regardless whether a judgment of conviction has been entered by the court; or

(d) Has violated any of the provisions of this chapter or fails to comply with any proper order or regulation of the commissioner;

then such action shall be an additional cause under RCW 48.17.530 to place on probation, suspend, revoke, or refuse to renew the insurance producer's license of the broker.

The procedure to suspend, revoke, or nonrenew the broker's insurance producer license shall be governed by RCW 48.17.540. The suspension,

revocation, or nonrenewal of the broker's insurance producer license shall terminate the insurance producer's authority to act as a broker under this chapter.

(2) The commissioner may refuse, suspend, revoke, or refuse to renew a provider's license if the commissioner finds that:

(a) The provider committed a fraudulent life settlement act;

(b) There was any material misrepresentation in the provider's application for its license;

(c) The provider or any officer, partner, member, or director has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a licensee;

(d) The provider demonstrates a pattern of unreasonably withholding payments to policy owners;

(e) The provider no longer meets the requirements for initial licensure or authority to act as a provider;

(f) The provider or any officer, partner, member, or director has been convicted of a felony, or of any misdemeanor of which criminal fraud is an element; or the provider has pleaded guilty or nolo contendere with respect to any felony or any misdemeanor of which criminal fraud or moral turpitude is an element, regardless whether a judgment of conviction has been entered by the court;

(g) The provider has entered into any life settlement contract that has not been approved under this chapter;

(h) The provider has failed to honor contractual obligations set out in a life settlement contract;

(i) The provider has assigned, transferred, or pledged a settled policy to a person other than a provider licensed in this state, a purchaser, an accredited investor or qualified institutional buyer as defined, respectively, in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as amended, a financing entity, a special purpose entity, or a related provider trust; or

(j) The provider or any officer, partner, member, or key management personnel has violated any of the provisions of this chapter or fails to comply with any proper order or regulation of the commissioner.

(3) The commissioner shall give the provider notice of his or her intention to suspend, revoke, or not renew its license not less than ten days before the order of suspension, revocation, or nonrenewal is to become effective. The commissioner shall not suspend a provider's license for a period in excess of one year, and the commissioner shall state in the order of suspension the period during which it shall be effective.

(4) After hearing or with the consent of the provider or broker and in addition to or in lieu of the suspension, revocation, or refusal to renew any license, the commissioner may levy a fine upon the provider or broker or its employees in an amount not less than two hundred fifty dollars and not more than ten thousand dollars. The order levying the fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of the order. Upon failure to pay the fine when due the commissioner shall revoke the license of the provider or the insurance producer license of the broker if not already revoked, and the fine shall be recovered in a civil action brought on behalf of the commissioner by the

attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund.

NEW SECTION. **Sec. 6.** CONTRACT REQUIREMENTS. (1) A person may not use any form of life settlement contract in this state unless it has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and any time restrictions or deeming provisions, if any, for life insurance forms, policies, and contracts.

(2) An insurer may not, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the commissioner for use in connection with life settlement contracts in this state.

(3) A person shall not use a life settlement contract form or provide to an owner a disclosure statement form in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a life settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of sections 10, 11, 14, and 18 of this act or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner. At the commissioner's discretion, the commissioner may require the submission of advertising material.

NEW SECTION. **Sec. 7.** REPORTING REQUIREMENTS AND RECORD RETENTION. (1) Each provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by rule. In addition to any other requirements, for any policy settled within five years of policy issuance, the annual statement shall specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year.

(2) Every provider that fails to file an annual statement as required in this section, or fails to reply within thirty calendar days to a written inquiry by the commissioner in connection therewith, shall, in addition to other penalties provided by this chapter, be subject, upon due notice and opportunity to be heard, to a penalty of up to fifty dollars per day of delay, not to exceed twenty-five thousand dollars in the aggregate, for each such failure.

(3) Records of all consummated transactions and life settlement contracts shall be maintained by the provider for three years after the death of the insured and shall be available to the commissioner for inspection during reasonable business hours.

NEW SECTION. **Sec. 8.** PRIVACY. (1) Except as otherwise allowed or required by law, a provider, broker, purchaser, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose the identity of an insured or information that there is a reasonable basis to believe could be used to identify the insured or the insured's financial or medical information to any other person unless the disclosure:

(a) Is necessary to effect a life settlement contract between the owner and a provider and the owner and insured have provided prior written consent to the disclosure;

(b) Is necessary to effectuate the sale of life settlement contracts, or interests therein, as investments, provided (i) the sale is conducted in accordance with applicable state and federal securities law, and (ii) the owner and the insured have both provided prior written consent to the disclosure;

(c) Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of sections 9, 17, and 18 of this act;

(d) Is a term or condition to the transfer of a policy by one provider to another provider, in which case the receiving provider shall be required to comply with the confidentiality requirements of this subsection;

(e) Is necessary to allow the provider or broker or their authorized representatives to make contacts for the purpose of determining health status.

(i) For the purposes of this section, the "authorized representative" does not include any person who has or may have any financial interest in the settlement contract other than a provider, licensed broker, financing entity, related provider trust, or special purpose entity.

(ii) A provider or broker shall require its authorized representative to agree in writing to adhere to the privacy provisions of this chapter; or

(f) Is required to purchase stop loss coverage.

(2) Nonpublic personal information solicited or obtained in connection with a proposed or actual life settlement contract shall be subject to the provisions applicable to financial institutions under the federal Gramm Leach Bliley act, P.L. 106-102 (1999).

(3) Names and individual identification data for all owners and insureds shall be considered private and confidential information and shall not be disclosed by the commissioner unless required by law.

NEW SECTION. **Sec. 9.** EXAMINATION. (1) Any life settlement provider, broker, or person licensed or regulated by this chapter shall be subject to the provisions of chapters 48.03 and 48.37 RCW, except as otherwise explicitly exempted or modified in this chapter.

(2) For the purpose of ascertaining its condition, or compliance with this title, the commissioner may as often as the commissioner finds advisable examine the accounts, records, documents, and transactions of:

(a) Any life settlement provider, broker, or person licensed or regulated under this chapter;

(b) Any person having a contract under which he or she enjoys in fact the exclusive or dominant right to manage or control a provider or broker; and

(c) Any person holding the shares of capital stock of a provider or broker for the purpose of control of its management either as voting trustee or otherwise.

(3) In lieu of an examination or market conduct oversight activity under this chapter of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report or market conduct oversight action on the provider or broker as prepared by the commissioner for the provider's or broker's state of domicile or port-of-entry state.

(4)(a) Every examination, whatsoever, or any part of the examination of any person licensed or regulated under this chapter shall be at the expense of the person examined. RCW 48.03.060 (1) and (2) are not applicable to persons licensed or regulated under this chapter.

(b) When making an examination under this section, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which shall be borne by the person who is the subject of the examination.

(c) The person examined and liable therefore shall reimburse the state upon presentation of an itemized statement thereof, for the actual travel expenses of the commissioner's examiners, their reasonable living expense allowance, and their per diem compensation, including salary and the employer's cost of employee benefits, at a reasonable rate approved by the commissioner, incurred on account of the examination. Per diem salary and expenses for employees shall be established by the commissioner on the basis of the national association of insurance commissioner's recommended salary and expense schedule for zone examiners, or the salary schedule established by the Washington personnel resources board and the expense schedule established by the office of financial management, whichever is higher.

(d) The commissioner or the commissioner's examiners shall not receive or accept any additional emolument on account of any examination.

(5) Nothing contained in this section limits the commissioner's authority to terminate or suspend any examination or market conduct oversight activities in order to pursue other legal or regulatory action under the insurance laws of this state. Findings of fact and conclusions made pursuant to any order adopting an examination report are prima facie evidence in any legal or regulatory action.

NEW SECTION. **Sec. 10.** ADVERTISING. (1) A broker, or provider licensed pursuant to this chapter, may conduct or participate in advertisements within this state. These advertisements shall comply with all advertising and marketing laws or rules adopted by the commissioner that are applicable to life insurers or to brokers, and providers licensed pursuant to this chapter.

(2) Advertisements shall be accurate, truthful, and not misleading in fact or by implication.

(3) A person or trust shall not:

(a) Directly or indirectly, market, advertise, solicit, or otherwise promote the purchase of a policy, not previously issued, for the sole purpose of, or with the primary emphasis on, settling the policy; or

(b) Use the words "free," "no cost," or words of similar import in the marketing, advertising, soliciting or otherwise promoting of the purchase of a policy.

NEW SECTION. **Sec. 11.** DISCLOSURES TO OWNERS. (1) The provider or broker shall provide in writing, or require the broker to provide, in a separate document that is signed by the owner and provider or broker, the following information to the owner no later than the date of application for a life settlement contract:

(a) The fact that possible alternatives to life settlement contracts exist, including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;

(b) The fact that some or all of the proceeds of a life settlement contract may be taxable and that assistance should be sought from a professional tax advisor;

(c) The fact that the proceeds from a life settlement contract could be subject to the claims of creditors;

(d) The fact that receipt of proceeds from a life settlement contract may adversely affect the recipients' eligibility for public assistance or other government benefits or entitlements and that advice should be obtained from the appropriate agencies;

(e) The fact that the owner has a right to terminate a life settlement contract within fifteen days of the date it is executed by all parties and the owner has received the disclosures required by this section. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider;

(f) The fact that proceeds will be sent to the owner within three business days after the provider has received the insurer or group administrator's acknowledgement that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the life settlement contract;

(g) The fact that entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy to be forfeited by the owner and that assistance should be sought from a professional financial advisor;

(h) The date by which the funds will be available to the owner and the transmitter of the funds;

(i) The fact that the commissioner may require delivery of a buyer's guide or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process;

(j) The disclosure document shall contain the following language:

"All medical, financial, or personal information solicited or obtained by a provider or broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.";

(k) A separate signed fraud warning as follows:

"Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.";

(l) The fact that the insured may be contacted by either the provider or broker or its authorized representative for the purpose of determining the insured's health status or to verify the insured's address. This contact is limited to once every three months if the insured has a life expectancy of more than one

year, and no more than once per month if the insured has a life expectancy of one year or less;

(m) The affiliation, if any, between the provider and the issuer of the insurance policy to be settled;

(n) That a broker represents exclusively the owner, and not the insurer or the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner;

(o) The document shall include the name, address, and telephone number of the provider;

(p) The name, business address, and telephone number of the independent third-party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents; and

(q) The fact that a change of ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life.

(2) The written disclosures shall be conspicuously displayed in any life settlement contract furnished to the owner by a provider including any affiliations or contractual arrangements between the provider and the broker.

(3) A broker shall provide the owner and the provider with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and provide the following information:

(a) The name, business address, and telephone number of the broker;

(b) A full, complete, and accurate description of all the offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract;

(c) A written disclosure of any affiliations or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contracts;

(d) The name of each broker who receives compensation and the amount of compensation received by that broker, which compensation includes anything of value paid or given to the broker in connection with the life settlement contract;

(e) A complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner. For the purpose of this section, gross offer or bid means the total amount or value offered by the provider for the purchase of one or more life insurance policies, inclusive of commissions and fees; and

(f) The failure to provide the disclosures or rights described in this section is an unfair trade practice pursuant to section 21 of this act.

NEW SECTION. **Sec. 12.** DISCLOSURE BY INSURER. In addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(1) If, as described in section 2 of this act, the loan provides funds which can be used for a purpose other than paying for the premiums, costs, and expenses

associated with obtaining and maintaining the life insurance policy and loan, the application shall be rejected as a violation of the prohibited practices in section 16 of this act.

(2) If the financing does not violate section 16 of this act in this manner, the insurance carrier:

(a) May make disclosures, including but not limited to the applicant and the insured, either on the application or an amendment to the application to be completed no later than the delivery of the policy:

"If you have entered into a loan arrangement where the policy is used as collateral, and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true:

(i) A change of ownership could lead to a stranger owning an interest in the insured's life;

(ii) A change of ownership could in the future limit your ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life;

(iii) Should there be a change of ownership and you wish to obtain more insurance coverage on the insured's life in the future, the insured's higher issue age, a change in health status, and/or other factors may reduce the ability to obtain coverage and/or may result in significantly higher premiums;

(iv) You should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan"; and

(b) May require certifications, such as the following, from the applicant and/or the insured:

"(i) I have not entered into any agreement or arrangement providing for the future sale of this life insurance policy;

(ii) My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy; and

(iii) The borrower has an insurable interest in the insured."

NEW SECTION. **Sec. 13.** (1) With respect to each policy issued by an insurance company, the insurance company shall notify the owner of an individual life insurance policy when the insured person under such a policy is age sixty or older, or is known to be terminally ill or chronically ill, that there may be alternative transactions available to that owner at the time of each of the following:

(a) When a life insurance company receives from such an owner a request to surrender, in whole or in part, an individual policy;

(b) When a life insurance company receives from such an owner a request to receive an accelerated death benefit under an individual policy;

(c) When a life insurance company sends to such an owner all notices of lapse of an individual policy; or

(d) At any other time that the commissioner may require by rule.

(2)(a) The commissioner shall approve a document calculated to appraise the consumer of his or her rights as an owner of a life insurance policy. The

document shall be made available at no cost to all insurance companies and life insurance producers and written in lay terms.

(b) The document shall advise the consumer:

(i) That life insurance is a critical part of a broader financial plan, and that the consumer is encouraged, and has a right, to seek additional financial advice and opinions;

(ii) That possible alternatives to lapse exist; and

(iii) Of the definitions of common industry terms.

(c) In addition to the information described in (a) and (b) of this subsection, the document must contain the following statement in large, bold, or otherwise conspicuous typeface calculated to draw the eye: "Life insurance is a critical part of a broader financial plan. There are many options available, and you have the right to shop around and seek advice from different financial advisers in order to find the option best suited to your needs."

(d) The document may include brief descriptions of common products available from providers. These products must be discussed in general terms for informative purposes only, and not identifiable to any specific provider.

(e) The document will be considered part of the notice required in subsection (1) of this section.

NEW SECTION. **Sec. 14.** GENERAL RULES. (1) A provider entering into a life settlement contract with any owner of a policy, wherein the insured is terminally or chronically ill, shall first obtain:

(a) If the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter into a settlement contract; and

(b) A document in which the insured consents to the release of his or her medical records to a provider, settlement broker, or insurance producer and, if the policy was issued less than two years from the date of application for a settlement contract, to the insurance company that issued the policy.

(2) The insurer shall respond to a request for verification of coverage submitted by a provider, settlement broker, or life insurance producer not later than thirty calendar days of the date the request is received. The request for verification of coverage must be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.

(3) Before or at the time of execution of the settlement contract, the provider shall obtain a witnessed document in which the owner consents to the settlement contract, represents that the owner has a full and complete understanding of the settlement contract, that the owner has a full and complete understanding of the benefits of the policy and acknowledges that the owner is entering into the settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the policy was issued.

(4) The insurer shall not unreasonably delay effecting change of ownership or beneficiary with any life settlement contract lawfully entered into in this state or with a resident of this state.

(5) If a settlement broker or life insurance producer performs any of these activities required of the provider, the provider is deemed to have fulfilled the requirements of this section.

(6) If a broker performs the verification of coverage activities required of the provider, the provider has fulfilled the requirements of section 11(1) of this act.

(7) Within twenty days after an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued that insurance policy that the policy has become subject to a life settlement contract. The notice shall be accompanied by the documents required by section 12(2) of this act.

(8) All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information, if not otherwise provided in this chapter.

(9) All life settlement contracts entered into in this state shall provide that the owner may rescind the contract on or before fifteen days after the date it is executed by all parties thereto. Rescission, if exercised by the owner, is effective only if both notice of the rescission is given, and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. If the insured dies during the rescission period, the contract is considered rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.

(10) Within three business days after receipt from the owner of documents to effect the transfer of the insurance policy, the provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgement of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the owner within three business days of acknowledgement of the transfer from the insurer.

(11) Failure to tender the life settlement contract proceeds to the owner by the date disclosed to the owner renders the contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner. A failure to give written notice of the right of rescission under this section tolls the right of rescission until thirty days after the written notice of the right of rescission has been given.

(12) Any fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a life settlement contract shall be computed as a percentage of the offer obtained, not the face value of the policy. This section does not prohibit a broker from reducing the broker's fee below this percentage if the broker so chooses.

(13) The broker shall disclose to the owner anything of value paid or given to a broker, which relate to a life settlement contract.

(14) A person at any time prior to, or at the time of, the application for, or issuance of, a policy, or during a two-year period commencing with the date of issuance of the policy, shall not enter into a life settlement regardless of the date

the compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest, or surrender of the policy is to occur. This prohibition shall not apply if the owner certifies to the provider that:

(a) The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four months. The time covered under a group policy must be calculated without regard to a change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship; or

(b) The owner submits independent evidence to the provider that one or more of the following conditions have been met within the two-year period:

(i) The owner or insured is terminally or chronically ill;

(ii) The owner or insured disposes of his or her ownership interests in a closely held corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued;

(iii) The owner's spouse dies;

(iv) The owner divorces his or her spouse;

(v) The owner retires from full-time employment;

(vi) The owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment; or

(vii) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets;

(c) Copies of the independent evidence required by (b) of this subsection shall be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider. This section does not prohibit an insurer from exercising its right to contest the validity of any policy;

(d) If the provider submits to the insurer a copy of independent evidence provided for in (b)(i) of this subsection when the provider submits a request to the insurer to effect the transfer of the policy to the provider, the copy is deemed to establish that the settlement contract satisfies the requirements of this section.

NEW SECTION. **Sec. 15.** CONFLICT OF LAWS. (1) If there is more than one owner on a single policy, and the owners are residents of different states, the life settlement contract shall be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured shall govern in the event that equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

(2) A provider from this state who enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted regulations governing life settlement contracts, shall be governed in the effectuation of that life settlement contract by the statutes and regulations of the owner's state of residence. If the state in which the owner is a resident has not

enacted statutes or regulations governing life settlement contracts, the provider shall give the owner notice that neither state regulates the transaction upon which he or she is entering. For transactions in those states, however, the provider is to maintain all records required if the transactions were executed in the state of residence. The forms used in those states need not be approved by the commissioner.

(3) If there is a conflict in the laws that apply to an owner and a purchaser in any individual transaction, the laws of the state that apply to the owner shall take precedence and the provider shall comply with those laws.

NEW SECTION. **Sec. 16.** PROHIBITED PRACTICES. (1) It is unlawful for any person to:

(a) Enter into a life settlement contract if such person knows or reasonably should have known that the life insurance policy was obtained by means of a false, deceptive or misleading application for such policy;

(b) Engage in any transaction, practice, or course of business if such person knows or reasonably should have known that the intent was to avoid the notice requirements of this chapter;

(c) Engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an owner who is a resident of this state;

(d) Issue, solicit, market, or otherwise promote the purchase of an insurance policy, not previously issued, for the sole purpose of, or with the primary emphasis on, settling the policy;

(e) If providing premium financing, receive any proceeds, fees, or other consideration from the policy or owner of the policy that are in addition to the amounts required to pay principal, interest, and any costs or expenses incurred by the lender or borrower in connection with the premium finance agreement, except for the event of a default, unless either the default on such a loan or transfer of the policy occurs pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter. Any payments, charges, fees, or other amounts received by a person providing premium financing in violation of this subsection shall be remitted to the original owner of the policy or to the original owner's estate if the original owner is not living at the time of the determination of overpayment;

(f) With respect to any settlement contract or insurance policy and a broker, knowingly solicit an offer from, effectuate a life settlement contract with, or make a sale to any provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with such broker unless this relationship is disclosed to the owner;

(g) With respect to any life settlement contract or insurance policy and a provider, knowingly enter into a life settlement contract with an owner, if, in connection with such life settlement contract, anything of value will be paid to a broker that is controlling, controlled by, or under common control with such provider or the financing entity or related provider trust that is involved in such settlement contract, unless this relationship is disclosed to the owner;

(h) With respect to a provider, enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by rule, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is "free" for any

period of time. The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time is a violation of this chapter;

(i) With respect to any life insurance producer, insurance company, broker, or provider make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy; or

(j) With respect to an insurer, engage in any transaction, act, practice, or course of business or dealing which restricts, limits, or impairs in any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy.

(2) A violation of this section constitutes a fraudulent life settlement act.

NEW SECTION. **Sec. 17.** FRAUD PREVENTION AND CONTROL. (1)(a) A person shall not commit a fraudulent life settlement act.

(b) A person shall not knowingly and intentionally interfere with the enforcement of this chapter or investigations of suspected or actual violations of this chapter.

(c) A person in the business of life settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.

(2)(a) Life settlement contracts and applications for life settlement contracts, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

(b) The lack of a statement as required in (a) of this subsection does not constitute a defense in any prosecution for a fraudulent life settlement act.

(3)(a) Any person engaged in the business of life settlements having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(b) Any other person having knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(4)(a) Civil liability shall not be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

(i) The commissioner or the commissioner's employees, agents, or representatives;

(ii) Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

(iii) A person involved in the prevention and detection of fraudulent life settlement acts or that person's agents, employees, or representatives;

(iv) Any regulatory body or their employees, agents, or representatives, overseeing life insurance, life settlements, securities, or investment fraud;

(v) The life insurer that issued the life insurance policy covering the life of the insured; or

(vi) Either a broker or provider, or both and any agents, employees, or representatives.

(b) Subsection (4)(a) of this section shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that (a) of this subsection does not apply because the person filing the report or furnishing the information did so with actual malice.

(c) A person identified in (a) of this subsection shall be entitled to an award of attorneys' fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(d) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in (a) of this subsection.

(5)(a) The documents and evidence provided pursuant to subsection (4) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(b) Subsection (5)(a) of this section does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:

(i) In administrative or judicial proceedings to enforce laws administered by the commissioner;

(ii) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent life settlement acts, or to the national association of insurance commissioners; or

(iii) At the discretion of the commissioner, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.

(c) Release of documents and evidence under (b) of this subsection does not abrogate or modify the privilege granted in (a) of this subsection.

(6) This chapter does not:

(a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

(b) Preempt, supersede, or limit any provision of chapter 21.20 RCW or any rule, order, or notice issued thereunder;

(c) Prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the commissioner; or

(d) Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(7)(a) Providers and brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. At the discretion of the commissioner, the commissioner may order, or either a broker or provider, or both may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives shall include:

(i) Fraud investigators, who may be provider or broker employees or independent contractors; and

(ii) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:

(A) A description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) A description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;

(C) A description of the plan for antifraud education and training of underwriters and other personnel; and

(D) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(b) Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

NEW SECTION. **Sec. 18.** ENFORCEMENT. (1) The commissioner may conduct investigations to determine whether any person has violated any provision of this chapter.

(2) If the commissioner has cause to believe that any person is violating or is about to violate any provision of this title or any regulation or order of the commissioner, the commissioner may:

(a) Issue a cease and desist order; and/or

(b) Bring an action in any court of competent jurisdiction to enjoin the person from continuing the violation or doing any action in furtherance thereof.

NEW SECTION. **Sec. 19.** PENALTIES. (1) For the purpose of this section, an act is committed in this state if it is committed, in whole or in part, in the state of Washington, or affects persons or property within this state and relates to or involves a life settlement contract.

(2) It is a violation of this chapter for any person, provider, broker, or any other party related to the business of life settlements, to commit a fraudulent life settlement act.

(3) For criminal liability purposes, a person that knowingly commits a fraudulent life settlement act is guilty of a class B felony punishable under chapter 9A.20 RCW.

(4) Any person who knowingly acts as a life settlement provider without being licensed by the commissioner is guilty of a class B felony punishable under chapter 9A.20 RCW.

(5) Any person who knowingly acts as a life settlement broker without the proper authorization under this chapter is guilty of a class B felony punishable under chapter 9A.20 RCW.

(6) Any criminal penalty imposed under this section is in addition to, and not in lieu of, any other civil or administrative penalty or sanction otherwise authorized under state law.

(7) If the commissioner has cause to believe that any person has:

(a) Knowingly acted as a life settlement provider without being licensed by the commissioner; or

(b) Knowingly acted as a life settlement broker without the proper authorization under section 4 this act;

the commissioner may assess a civil penalty of not more than twenty-five thousand dollars for each violation, after providing notice and an opportunity for a hearing in accordance with chapters 34.05 and 48.04 RCW.

(8) Upon failure to pay a civil penalty when due, the attorney general may bring a civil action on behalf of the commissioner to recover the unpaid penalty. Any amounts collected by the commissioner must be paid to the state treasurer for the account of the general fund.

NEW SECTION. **Sec. 20.** AUTHORITY TO ADOPT RULES. The commissioner may adopt rules implementing and administering this chapter including, but not limited to:

(1) Establishing standards for evaluating reasonableness of payments under life settlement contracts for persons who are terminally ill or chronically ill including, but not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of a person that is chronically or terminally ill;

(2) Requiring a bond or other mechanism for financial accountability for life settlement providers; and

(3) Governing the activities, relationships, and responsibilities of providers, brokers, insurers, and their agents.

NEW SECTION. **Sec. 21.** UNFAIR TRADE PRACTICES. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

NEW SECTION. **Sec. 22.** EXISTING VIATICAL SETTLEMENT LICENSES. (1) All viatical settlement brokers' licenses that are in effect on the effective date of this section shall expire upon the effective date of this section.

(2) All viatical settlement providers' licenses that are in effect on the effective date of this section shall be converted to a life settlement provider license and upon the next renewal date of the license the life settlement provider

must be in compliance with the requirements to be licensed as a life settlement provider under section 3 of this act.

(3) A provider lawfully transacting business in this state prior to the effective date of this section may continue to do so if the provider submits a completed application and pays the required fee to the commissioner within thirty days of the effective date of this section. A provider that has submitted an application and paid the required fee to the commissioner within thirty days of the effective date of this section may continue to act as a provider for an additional ninety days from the receipt of the application by the commissioner and payment of the required fee, or approval or denial of the license by the commissioner, whichever is earlier. Any person transacting business in this state under this subsection must comply with all other requirements of this chapter.

Sec. 23. RCW 42.56.400 and 2007 c 197 s 7, 2007 c 117 s 36, and 2007 c 82 s 17 are each reenacted and 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 ((~~all viators regulated~~)) 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; ((~~and~~))

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595; and

(16) Documents, materials, or information obtained by the insurance commissioner under sections 8(1) and 17 (3) and (7)(a)(ii) of this act.

NEW SECTION. **Sec. 24.** Captions used in this act are not any part of the law.

NEW SECTION. **Sec. 25.** Sections 1 through 22, 24, and 26 of this act are each added to chapter 48.102 RCW.

NEW SECTION. **Sec. 26.** This act does not affect any existing right acquired or liability or obligation incurred under the sections repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections.

NEW SECTION. **Sec. 27.** The following acts or parts of acts are each repealed:

(1) RCW 48.102.005 (Definitions) and 1995 c 161 s 1;

(2) RCW 48.102.010 (License required for providers and brokers—Application—Requirements—Fee—Rules) and 1995 c 161 s 2;

(3) RCW 48.102.015 (Commissioner may suspend, revoke, or refuse to issue or renew license—Information requirements—Hearing—Fine) and 2002 c 227 s 5 & 1995 c 161 s 3;

(4) RCW 48.102.020 (Commissioner approval required for contract form, rate, fee, commission, or other compensation charged—Finding necessary for disapproval) and 1995 c 161 s 4;

(5) RCW 48.102.025 (Licensee must file annual statement) and 1995 c 161 s 5;

(6) RCW 48.102.030 (Examination of business and affairs of applicant or licensee—Production of information—Expenses—Confidentiality of information—Recordkeeping requirements) and 1995 c 161 s 6;

(7) RCW 48.102.035 (Requirement to provide information to the viator) and 1995 c 161 s 7;

(8) RCW 48.102.040 (Requirement for provider to obtain information—Medical information is confidential—Rescission rights—Time is of the essence) and 1995 c 161 s 8;

(9) RCW 48.102.045 (Must be licensed—Transfer to unlicensed entity is void—Rights in policy restored to viator—Exceptions allowed by rule) and 1995 c 161 s 9;

(10) RCW 48.102.050 (Rules as necessary to implement chapter) and 1995 c 161 s 10;

(11) RCW 48.102.055 (Consumer protection act applies—Civil action—Damages—Costs—Attorneys' fees) and 1995 c 161 s 11;

(12) RCW 48.102.900 (Short title—1995 c 161) and 1995 c 161 s 12; and

(13) RCW 48.102.901 (Application of chapter 21.20 RCW—1995 c 161) and 1995 c 161 s 13.

Passed by the Senate March 2, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 105

[Senate Bill 5233]

COUNTY ELECTED OFFICIALS—COUNTY SEAT—OFFICES

AN ACT Relating to county elected officials keeping offices at the county seat; and amending RCW 36.16.090, 36.23.080, 36.28.160, 36.29.170, and 36.80.015.

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

Sec. 1. RCW 36.16.090 and 1963 c 4 s 36.16.090 are each amended to read as follows:

The boards of county commissioners of the several counties of the state shall provide a suitable furnished office for each of the county officers in their respective courthouses and may provide additional offices elsewhere for the officers at the board's discretion.

Sec. 2. RCW 36.23.080 and 1963 c 4 s 36.23.080 are each amended to read as follows:

((~~The office of~~)) The clerk of the superior court shall ((~~be kept~~)) keep an office at the county seat of the county of which he or she is clerk.

Sec. 3. RCW 36.28.160 and 1963 c 4 s 36.28.160 are each amended to read as follows:

The sheriff must keep ((~~his~~)) an office at the county seat of the county of which he or she is sheriff.

Sec. 4. RCW 36.29.170 and 2001 c 299 s 9 are each amended to read as follows:

The county treasurer shall keep ((~~the~~)) an office ((~~of the treasurer~~)) at the county seat, and shall keep the same open for transaction of business during business hours; and the treasurer and the treasurer's deputy are authorized to administer all oaths necessary in the discharge of the duties of the office.

Sec. 5. RCW 36.80.015 and 1963 c 4 s 36.80.015 are each amended to read as follows:

The county road engineer shall keep ((~~his~~)) an office at the county seat in such room or rooms as are provided by the county, and he or she shall be furnished with all necessary cases and other suitable articles, and also with all

blank books and blanks necessary to the proper discharge of his or her official duties. The records and books in the county road engineer's office shall be public records, and shall at all proper times be open to the inspection and examination of the public.

Passed by the Senate March 2, 2009.
Passed by the House April 7, 2009.
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CHAPTER 106

[Substitute Senate Bill 5271]
DECLARATIONS OF CANDIDACY

AN ACT Relating to candidate filing; and amending RCW 29A.24.070, 29A.24.091, and 29A.80.041.

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

Sec. 1. RCW 29A.24.070 and 2006 c 263 s 614 are each amended to read as follows:

Declarations of candidacy shall be filed with the following filing officers:

(1) The secretary of state for declarations of candidacy for statewide offices, United States senate, and United States house of representatives;

(2) The secretary of state for declarations of candidacy for the state legislature, the court of appeals, and the superior court when the candidate is seeking office in a district comprised of voters from two or more counties((~~. The secretary of state and the county auditor may accept declarations of candidacy for candidates for the state legislature, the court of appeals, and the superior court when the candidate is seeking office in a district comprised of voters from one county~~));

(3) The county auditor for all other offices. For any nonpartisan office, other than judicial offices and school director in joint districts, where voters from a district comprising more than one county vote upon the candidates, a declaration of candidacy shall be filed with the county auditor of the county in which a majority of the registered voters of the district reside. For school directors in joint school districts, the declaration of candidacy shall be filed with the county auditor of the county designated by the superintendent of public instruction as the county to which the joint school district is considered as belonging under RCW 28A.323.040((~~;~~

~~(4) For all other purposes of this title, a declaration of candidacy for the state legislature, the court of appeals, and the superior court filed with the secretary of state shall be deemed to have been filed with the county auditor when the candidate is seeking office in a district composed of voters from one county~~)).

Each official with whom declarations of candidacy are filed under this section, within one business day following the closing of the applicable filing period, shall transmit to the public disclosure commission the information required in RCW 29A.24.031 (1) through (4) for each declaration of candidacy filed in his or her office during such filing period or a list containing the name of each candidate who files such a declaration in his or her office during such filing

period together with a precise identification of the position sought by each such candidate and the date on which each such declaration was filed. Such official, within three days following his or her receipt of any letter withdrawing a person's name as a candidate, shall also forward a copy of such withdrawal letter to the public disclosure commission.

Sec. 2. RCW 29A.24.091 and 2006 c 206 s 3 are each amended to read as follows:

A ((~~filing fee of one dollar shall accompany each declaration of candidacy for precinct committee officer; a~~)) filing fee of ten dollars shall accompany the declaration of candidacy for any office with a fixed annual salary of one thousand dollars or less; a filing fee equal to one percent of the annual salary of the office at the time of filing shall accompany the declaration of candidacy for any office with a fixed annual salary of more than one thousand dollars per annum. No filing fee need accompany a declaration of candidacy for precinct committee officer or any office for which compensation is on a per diem or per meeting attended basis.

A candidate who lacks sufficient assets or income at the time of filing to pay the filing fee required by this section shall submit with his or her declaration of candidacy a filing fee petition. The petition shall contain not less than a number of signatures of registered voters equal to the number of dollars of the filing fee. The signatures shall be of voters registered to vote within the jurisdiction of the office for which the candidate is filing.

When the candidacy is for:

(1) A statewide office, the United States senate, or the United States house of representatives, the fee shall be paid to the secretary of state;

(2) A legislative or judicial office that includes territory from more than one county, the fee shall be paid to the secretary of state for equal division between the treasuries of the counties comprising the district((~~.~~));

((~~(2)~~)) (3) A legislative or judicial office that includes territory from only one county((~~:~~

~~(a)~~)), the fee shall be paid to the county auditor ((~~if the candidate filed his or her declaration of candidacy with the county auditor;~~

~~(b) The fee shall be paid to the secretary of state if the candidate filed his or her declaration of candidacy with the secretary of state. The secretary of state shall then promptly transmit the fee to the county auditor of the county in which the legislative or judicial office is located.~~));

((~~(3)~~)) (4) A city or town office, the fee shall be paid to the county auditor who shall transmit it to the city or town clerk for deposit in the city or town treasury.

Sec. 3. RCW 29A.80.041 and 2004 c 271 s 148 are each amended to read as follows:

Any member of a major political party who is a registered voter in the precinct may ((~~upon payment of a fee of one dollar~~)) file his or her declaration of candidacy as prescribed under RCW 29A.24.031 with the county auditor for the office of precinct committee officer of his or her party in that precinct. When elected at the primary, the precinct committee officer shall serve so long as the committee officer remains an eligible voter in that precinct.

Passed by the Senate March 7, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 107

[Substitute Senate Bill 5327]

ELECTION PROVISIONS—TECHNICAL CORRECTIONS

AN ACT Relating to technical corrections to election provisions; amending RCW 28A.343.300, 28A.343.600, 28A.343.640, and 35.02.086; adding a new section to chapter 29A.04 RCW; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 28A.343.300 and 1991 c 363 s 20 are each amended to read as follows:

The governing board of a school district shall be known as the board of directors of the district.

Unless otherwise specifically provided, as in ((~~RCW 29.13.060~~)) section 4 of this act, each member of a board of directors shall be elected by ballot by the registered voters of the school district and shall hold office for a term of four years and until a successor is elected and qualified. Terms of school directors shall be staggered, and insofar as possible, not more than a majority of one shall be elected to full terms at any regular election. In case a member or members of a board of directors are to be elected to fill an unexpired term or terms, the ballot shall specify the term for which each such member is to be elected.

Except for a school district of the first class having within its boundaries a city with a population of four hundred thousand people or more which shall have a board of directors of seven members, the board of directors of every school district of the first class or school district of the second class shall consist of five members.

Sec. 2. RCW 28A.343.600 and 1990 c 33 s 318 are each amended to read as follows:

Any first-class school district having a board of directors of five members as provided in RCW ((~~28A.315.450~~)) 28A.343.300 and which elects directors for a term of six years under the provisions of ((~~RCW 29.13.060~~)) section 4 of this act shall cause the office of at least one director and no more than two directors to be up for election at each regular school district election held hereafter and, except as provided in RCW ((~~28A.315.680~~)) 28A.343.670, any first-class school district having a board of directors of seven members as provided in RCW ((~~28A.315.450~~)) 28A.343.300 shall cause the office of two directors and no more than three directors to be up for election at each regular school district election held hereafter.

Sec. 3. RCW 28A.343.640 and 1991 c 363 s 26 are each amended to read as follows:

Upon the establishment of a new school district of the first class as provided for in RCW ((~~28A.315.580~~)) 28A.343.020 containing more than one former first-class district, the directors of the largest former first-class district and three directors representative of the other former first-class districts selected by a

majority of the board members of the former first-class districts and two directors representative of former second-class districts selected by a majority of the board members of former second-class districts shall meet at the call of the educational service district superintendent and shall constitute the board of directors of the new district. Vacancies once such a board has been reconstituted shall not be filled unless the number of remaining board members is less than seven, and such vacancies shall be filled in the manner otherwise provided by law.

Each board of directors so constituted shall proceed at once to organize in the manner prescribed by law and thereafter shall have all of the powers and authority conferred by law upon boards of first-class districts until the next regular school election and until their successors are elected and qualified. At such election other than districts electing directors for six-year terms as provided in ((~~RCW 29.13.060, as now or hereafter amended~~)) section 4 of this act, five directors shall be elected either at large or by director districts, as the case may be, two for a term of two years and three for a term of four years. At such election for districts electing directors for six years other than a district having within its boundaries a city with a population of four hundred thousand people or more and electing directors for six year terms, five directors shall be elected either at large or by director districts, as the case may be, one for a term of two years, two for a term of four years, and two for a term of six years.

NEW SECTION. **Sec. 4.** A new section is added to chapter 29A.04 RCW under the subchapter heading "Times for Holding Elections" to read as follows:

(1) In each county with a population of two hundred ten thousand or more, first-class school districts containing a city of the first-class shall hold their elections biennially as provided in RCW 29A.04.330.

(2) Except as provided in RCW 28A.343.610, the directors to be elected may be elected for terms of six years and until their successors are elected, qualified, and assume office in accordance with RCW 29A.20.040.

(3) If the board of directors of a school district pursuant to subsection (1) of this section reduces the length of the term of office for school directors in the district from six to four years, the reduction in the length of term must not affect the term of office of any incumbent director without his or her consent, and a provision must be made to appropriately stagger future elections of school directors.

Sec. 5. RCW 35.02.086 and 2006 c 344 s 20 are each amended to read as follows:

Each candidate for a city or town elective position shall file a declaration of candidacy with the county auditor of the county in which all or the major portion of the city or town is located not more than sixty days nor less than forty-five days prior to the primary election at which the initial elected officials are nominated((~~, according to RCW 29A.24.050~~)). The elective positions shall be as provided in law for the type of city or town and form or plan of government specified in the petition to incorporate, and for the population of the city or town as determined by the county legislative authority or boundary review board where applicable. Any candidate may withdraw his or her declaration ((~~according to RCW 29A.24.131~~)) at any time within five days after the last day allowed for filing a declaration of candidacy. All names of candidates to be

voted upon shall be printed upon the ballot alphabetically in groups under the designation of the respective titles of offices for which they are candidates. Names of candidates printed upon the ballot need not be rotated.

NEW SECTION. **Sec. 6.** Sections 1 through 4 of this act are retroactive and shall be applied from July 1, 2004, the date that RCW 29.13.060 was inadvertently repealed as part of a reorganization and recodification of the statutes on elections.

NEW SECTION. **Sec. 7.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 7, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 108

[Senate Bill 5695]

WASHINGTON STATE PATROL—ACCEPTANCE OF DONATIONS

AN ACT Relating to the authority of the Washington state patrol to accept donations; and adding a new section to chapter 43.43 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 43.43 RCW to read as follows:

The Washington state patrol may accept any and all donations, bequests, gifts, conveyances, devices, and grants conditional or otherwise; or money, property, service, or other things of value which may be received from the United States or any agency thereof, any governmental agency, institution, person, firm, or corporation, public and private, to be held, used, or applied for the purpose of fulfilling its mission.

Passed by the Senate March 12, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 109

[Senate Bill 5284]

TRUTH IN MUSIC ADVERTISING ACT

AN ACT Relating to truth in music advertising; adding a new section to chapter 19.25 RCW; creating a new section; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 19.25 RCW to read as follows:

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

(a) "Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(b) "Recording group" means a vocal or instrumental group, at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(c) "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phonorecord, in which the sounds are embodied.

(2) A person shall not advertise or conduct a live musical performance or production through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group unless any of the following apply:

(a) The performing group is the authorized registrant and owner of a federal service mark for the group registered in the United States patent and trademark office;

(b) At least one member of the performing group was previously a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation of the group;

(c) The live musical performance or production is identified in all advertising and promotion as a salute or tribute;

(d) The advertising does not relate to a live musical performance or production taking place in this state; or

(e) The performance or production is expressly authorized by the recording group.

(3)(a) A person who violates this section is subject to a civil penalty not less than five thousand dollars or more than fifteen thousand dollars per violation. An action for a civil penalty may be brought by the attorney general or a county or city prosecutor and is enforceable as a civil judgment.

(b) A person who violates this section is subject to the equitable remedies described in chapter 19.86 RCW.

(c) Each performance or production declared unlawful under subsection (2) of this section constitutes a separate violation.

(d) This section does not preclude prosecution of a violation of this section under any other provision of law.

NEW SECTION. **Sec. 2.** This act may be known and cited as the truth in music advertising act.

Passed by the Senate March 6, 2009.

Passed by the House April 7, 2009.

Approved by the Governor April 16, 2009.

Filed in Office of Secretary of State April 17, 2009.

CHAPTER 110

[Senate Bill 5305]

STATE RETIREMENT PROVISIONS—REPEAL

AN ACT Relating to repealing certain obsolete state retirement system statutes; and repealing RCW 41.32.360 and 41.32.366.

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

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

(1) RCW 41.32.360 (Basis of contributions to disability reserve fund) and 1991 c 35 s 47, 1963 ex.s. c 14 s 8, 1955 c 274 s 17, & 1947 c 80 s 36; and

(2) RCW 41.32.366 (Basis of contributions to death benefit fund) and 1991 c 35 s 48 & 1963 ex.s. c 14 s 10.

Passed by the Senate February 27, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 111

[Senate Bill 5315]

PERS PLAN 1—SURVIVOR ANNUITY OPTION

AN ACT Relating to extending the survivor annuity option for preretirement death in plan 1 of the public employees' retirement system to members who die after leaving active service; and amending RCW 41.40.270.

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

Sec. 1. RCW 41.40.270 and 2003 c 155 s 6 are each amended to read as follows:

(1) Except as specified in subsection (4) of this section, should a member die before the date of retirement the amount of the accumulated contributions standing to the member's credit in the employees' savings fund, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, at the time of death:

(a) Shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there be no such designated person or persons still living at the time of the member's death, or if a member fails to file a new beneficiary designation subsequent to marriage, remarriage, dissolution of marriage, divorce, or reestablishment of membership following termination by withdrawal or retirement, such accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the surviving spouse as if in fact such spouse had been nominated by written designation as aforesaid, or if there be no such surviving spouse, then to the member's legal representatives.

(2) Upon the death ((~~in service, or while on authorized leave of absence for a period not to exceed one hundred and twenty days from the date of payroll separation,~~)) of any member who is qualified but has not applied for a service retirement allowance or has completed ten years of service at the time of death,

the designated beneficiary, or the surviving spouse as provided in subsection (1) of this section, may elect to waive the payment provided by subsection (1) of this section. Upon such an election, a joint and one hundred percent survivor option under RCW 41.40.188, calculated under the retirement allowance described in RCW 41.40.185 or 41.40.190, whichever is greater, actuarially reduced, except under subsection (5) of this section, by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 shall automatically be given effect as if selected for the benefit of the designated beneficiary. If the member is not then qualified for a service retirement allowance, such benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance.

(3) Subsection (1) of this section, unless elected, shall not apply to any member who has applied for service retirement in RCW 41.40.180, as now or hereafter amended, and thereafter dies between the date of separation from service and the member's effective retirement date, where the member has selected a survivorship option under RCW 41.40.188. In those cases the beneficiary named in the member's final application for service retirement may elect to receive either a cash refund, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, or monthly payments according to the option selected by the member.

(4) If a member dies within sixty days following application for disability retirement under RCW 41.40.230, the beneficiary named in the application may elect to receive the benefit provided by:

(a) This section; or

(b) RCW 41.40.235, according to the option chosen under RCW 41.40.188 in the disability application.

(5) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, is not subject to an actuarial reduction. The member's retirement allowance is computed under RCW 41.40.185.

Passed by the Senate March 4, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 112

[Senate Bill 5322]

CIVIL SERVICE COMMISSIONS—SHERIFFS' OFFICES—MEMBERSHIP

AN ACT Relating to civil service commissions for sheriffs' offices; and amending RCW 41.14.020 and 41.14.030.

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

Sec. 1. RCW 41.14.020 and 1959 c 1 s 2 are each amended to read as follows:

Definition of terms:

(1) "Commission" means the civil service commission, or combined county civil service commission, herein created, and "commissioner" means any one of the ((~~three~~)) members of any such commission;

(2) "Appointing power" means the county sheriff who is invested by law with power and authority to select, appoint, or employ any deputy, deputies, or other necessary employees subject to civil service;

(3) "Appointment" includes all means of selecting, appointing, or employing any person to any office, place, position, or employment subject to civil service;

(4) "County" means any county of the state, or any counties combined pursuant to RCW 41.14.040 for the purpose of carrying out the provisions of this chapter;

(5) "Deputy sheriff or other members of the office of county sheriff" means all persons regularly employed in the office of county sheriff either on a part time or full time basis.

Sec. 2. RCW 41.14.030 and 1959 c 1 s 3 are each amended to read as follows:

(1) There is created in each county and in each combination of counties, combined pursuant to RCW 41.14.040 to carry out the provisions of this chapter, a civil service commission which shall be composed of three persons, or five persons under subsection (2) of this section. The commission members shall be appointed by the board of county commissioners, or boards of county commissioners of each combination of counties, within sixty days after December 4, 1958. No person shall be appointed to the commission who is not a citizen of the United States, a resident of the county, or one of the counties combined, for at least two years immediately preceding his appointment, and an elector of the county wherein he resides. The term of office of the commissioners shall be six years, except that the first three members of the commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of the commission may be removed from office for incompetency, incompatibility, or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, That no member of the commission shall be removed until charges have been preferred, in writing, due notice, and a full hearing had. Any vacancy in the commission shall be filled by the county commissioners for the unexpired term. Two members of the commission shall constitute a quorum and the votes of any two members concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission. Confirmation of the appointment of commissioners by any legislative body shall not be required. At the time of appointment not more than two commissioners shall be adherents of the same political party. No member after appointment shall hold any salaried public office or engage in county employment, other than his commission duties. The members of the commission shall serve without compensation.

(2)(a) Each county and each combination of counties under RCW 41.14.040 may, by ordinance, increase the number of members serving on a commission from three to five members. If a commission is increased to five members, the terms of the three commissioners serving at the time of the increase are not

affected. The initial term of office for the two additional commissioners is six years.

(b) Three commissioners constitute a quorum for a five-member commission and the votes of three commissioners concurring are sufficient for the decision of all matters and the transaction of all business decided or transacted by a five-member commission.

(c) At the time of appointment of the two additional commissioners, no more than three commissioners may be adherents of the same political party.

(d) Except as provided otherwise in this subsection (2), subsection (1) of this section applies to five-member commissions.

Passed by the Senate March 6, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 113

[Substitute Senate Bill 5343]

ESTATE DISTRIBUTION DOCUMENTS—MARKETING—
ACCOUNTANTS AND ENROLLED AGENTS

AN ACT Relating to exempting certified public accountants and enrolled agents from the restrictions on marketing estate distribution documents for certain purposes; and amending RCW 19.295.005, 19.295.010, and 19.295.020.

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

Sec. 1. RCW 19.295.005 and 2007 c 67 s 1 are each amended to read as follows:

The legislature finds the practice of using "living trusts" as a marketing tool by persons who are not authorized to practice law, who are not acting directly under the supervision of a person authorized to practice law, ((~~or~~)) who are not a financial institution, or who are not properly credentialed and regulated professionals as specified under RCW 19.295.020 (5) and (6) for purposes of gathering information for the preparation of an estate distribution document to be a deceptive means of obtaining personal asset information and of developing and generating leads for sales to senior citizens. The legislature further finds that this practice endangers the financial security of consumers and may frustrate their estate planning objectives. Therefore, the legislature intends to prohibit the marketing of services related to preparation of estate distribution documents by persons who are not authorized to practice law or who are not a financial institution.

This chapter is not intended to limit consumers from ((~~receiving~~)) obtaining legitimate estate planning ((~~services~~)) documents, including "living trusts," from those authorized to practice law; but is intended to prohibit persons not licensed to engage in the practice of law from the unscrupulous practice of marketing legal ((~~services~~)) documents as a means of targeting senior citizens for financial exploitation.

Sec. 2. RCW 19.295.010 and 2008 c 161 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) "Market" or "marketing" includes every offer, contract, or agreement to prepare or gather information for the preparation of, or to provide, individualized advice about an estate distribution document.

(2) "Estate distribution document" means any one or more of the following documents, instruments, or writings prepared, or intended to be prepared, for a specific person or as marketing materials for distribution to any person, other than documents, instruments, writings, or marketing materials relating to a payable on death account established under RCW 30.22.040(9) or a transfer on death account established under chapter 21.35 RCW:

(a) Last will and testament or any writing, however designated, that is intended to have the same legal effect as a last will and testament, and any codicil thereto;

(b) Revocable and irrevocable inter vivos trusts and any instrument which purports to transfer any of the trustor's current and/or future interest in real or personal property thereto;

(c) Agreement that fixes the terms and provisions of the sale of a decedent's interest in any real or personal property at or following the date of the decedent's death.

(3) "Financial institution" means a bank holding company registered under federal law, a bank, trust company, mutual savings bank, savings bank, savings and loan association or credit union organized under state or federal law, or any affiliate, subsidiary, officer, or employee of a financial institution.

(4) "Gathering information for the preparation of an estate distribution document" means collecting data, facts, figures, records, and other particulars about a specific person or persons for the preparation of an estate distribution document, but does not include the collection of such information for clients in the customary and usual course of financial, tax, and associated planning by a certificate holder or licensee regulated under chapter 18.04 RCW.

(5) "Person" means any natural person, corporation, partnership, limited liability company, firm, or association.

Sec. 3. RCW 19.295.020 and 2007 c 67 s 3 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, it is unlawful for a person to market estate distribution documents, directly or indirectly, in or from this state unless the person is authorized to practice law in this state.

(2) A person employed by someone authorized to practice law in this state may gather information for, or assist in the preparation of, estate distribution documents as long as that person does not provide any legal advice.

(3) This chapter applies to any person who markets estate distribution documents in or from this state. Marketing occurs in this state, whether or not either party is then present in this state, if the offer originates in this state or is directed into this state or is received or accepted in this state.

(4) This chapter does not apply to any financial institution.

(5) This chapter does not apply to a certificate holder or licensee regulated under chapter 18.04 RCW for purposes of gathering information for the preparation of an estate distribution document.

(6) This chapter does not apply to an individual who is an enrolled agent enrolled to practice before the internal revenue service pursuant to Treasury Department Circular No. 230 for purposes of gathering information for the preparation of an estate distribution document.

Passed by the Senate March 12, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 114

[Substitute Senate Bill 5350]

POULTRY SLAUGHTER, PREPARATION, SALE—PERMITS

AN ACT Relating to special permits for poultry slaughter, preparation, and sale; and amending RCW 69.07.103.

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

Sec. 1. RCW 69.07.103 and 2003 c 397 s 2 are each amended to read as follows:

(1) A special((~~, temporary~~)) permit issued by the department under this section is required for the slaughter ((~~and~~)), preparation, and sale of one thousand or fewer ((~~pastured chickens~~)) poultry in a calendar year by ((~~the agricultural~~)) a poultry producer ((~~of the chickens~~)) for the sale of whole raw ((~~chickens by the producer~~)) poultry directly to the ultimate consumer at the producer's farm((~~, and for such sale. Such activities shall not be conducted without the permit. However, if the~~)). Activities ((~~are~~)) conducted under ((~~such a~~)) the permit((~~, the activities are exempted~~)) are exempt from any other licensing requirements of this chapter.

(2)(a) The department must adopt by rule requirements for ((~~a special, temporary permit for the activities described in subsection (1) of this section~~)) the permit. The requirements must be generally patterned after those established by ((~~WAC 246-215-190 as it exists on July 27, 2003,~~)) the state board of health for temporary food service establishments, but must be tailored specifically to ((~~these~~)) poultry slaughter, preparation, and sale activities. The requirements must include, but are not limited to, those for: Cooling procedures, when applicable; sanitary facilities, equipment, and utensils; clean water; washing and other hygienic practices; and waste and wastewater disposal.

(b) ((~~The rules must also identify the length of time such a permit is valid. In determining the length of time, the department must take care to ensure that it is adequate to accommodate the seasonal nature of the permitted activities. In adopting any rule under this section, the department must also carefully consider the economic constraints on the regulated activity.~~)) A permit expires December 31st and may be issued for either one or two years as requested by the permit applicant upon payment of the applicable fee in accordance with subsection (4) of this section.

(3) The department shall conduct such inspections ((~~of the activities permitted under this section~~)) as are reasonably necessary to ensure compliance with permit requirements.

(4) The fee for a special permit ((~~issued under this section~~)) is seventy-five dollars for one year, or one hundred twenty-five dollars for two years.

((~~(5) For the purposes of this section, "chicken" means the species Gallus domesticus.~~))

Passed by the Senate March 2, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 115

[Senate Bill 5426]

PARTIAL CITY ANNEXATION—FIRE PROTECTION DISTRICTS

AN ACT Relating to authorizing certain areas in cities or towns with a population greater than five thousand but less than ten thousand to annex to a fire protection district; and amending RCW 52.04.061, 52.04.071, 52.04.081, 52.04.091, 52.04.101, 52.04.111, 52.04.121, and 52.04.131.

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

Sec. 1. RCW 52.04.061 and 1999 c 105 s 3 are each amended to read as follows:

(1) A city or town lying adjacent to a fire protection district may be annexed to such district if at the time of the initiation of annexation the population of the city or town is 100,000 or less. The legislative authority of the city or town may initiate annexation by the adoption of an ordinance stating an intent to join the fire protection district and finding that the public interest will be served thereby. If the board of fire commissioners of the fire protection district shall concur in the annexation, notification thereof shall be transmitted to the legislative authority or authorities of the counties in which the city or town and the district are situated.

(2) When a city or town is located in two counties, and at least eighty percent of the population resides in one county, all of that portion of the city lying in that county and encompassing eighty percent of the population may be annexed to a fire protection district if at the time of the initiation of annexation the proposed area lies adjacent to a fire protection district, and the population of the proposed area is greater than five thousand but less than ten thousand. The legislative authority of the city or town may initiate annexation by the adoption of an ordinance stating an intent to join the fire protection district and finding that the public interest will be served thereby. If the board of fire commissioners of the fire protection district shall concur in the annexation, notification thereof must be transmitted to the legislative authority or authorities of the counties in which the city or town and the district are situated.

Sec. 2. RCW 52.04.071 and 2006 c 344 s 34 are each amended to read as follows:

The county legislative authority or authorities shall by resolution call a special election to be held in the city, partial city as set forth in RCW 52.04.061(2), or town and in the fire protection district at the next date according

to RCW 29A.04.321, and shall cause notice of the election to be given as provided for in RCW 29A.52.351.

The election on the annexation of the city, partial city as set forth in RCW 52.04.061(2), or town into the fire protection district shall be conducted by the auditor of the county or counties in which the city, partial city as set forth in RCW 52.04.061(2), or town and the fire protection district are located in accordance with the general election laws of the state. The results thereof shall be canvassed by the canvassing board of the county or counties. No person is entitled to vote at the election unless he or she is a qualified elector in the city, partial city as set forth in RCW 52.04.061(2), or town or unless he or she is a qualified elector within the boundaries of the fire protection district. The ballot proposition shall be in substantially the following form:

"Shall the city, partial city as set forth in RCW 52.04.061(2), or town of . . . . . be annexed to and be a part of . . . . . fire protection district?

YES . . . . . .
NO . . . . . ."

If a majority of the persons voting on the proposition in the city, partial city as set forth in RCW 52.04.061(2), or town and a majority of the persons voting on the proposition in the fire protection district vote in favor thereof, the city, partial city as set forth in RCW 52.04.061(2), or town shall be annexed and shall be a part of the fire protection district.

Sec. 3. RCW 52.04.081 and 1984 c 230 s 17 are each amended to read as follows:

The annual tax levies authorized by chapter 52.16 RCW shall be imposed throughout the fire protection district, including any city, partial city as set forth in RCW 52.04.061(2), or town annexed thereto. Any city, partial city as set forth in RCW 52.04.061(2), or town annexed to a fire protection district is entitled to levy up to three dollars and sixty cents per thousand dollars of assessed valuation less any regular levy made by the fire protection district or by a library district under RCW 27.12.390 in the incorporated area: PROVIDED, That the limitations upon regular property taxes imposed by chapter 84.55 RCW apply.

Sec. 4. RCW 52.04.091 and 1989 c 76 s 1 are each amended to read as follows:

When any city, code city, partial city as set forth in RCW 52.04.061(2), or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, thereafter, any territory annexed by the city shall also be annexed and be a part of the fire protection district.

Sec. 5. RCW 52.04.101 and 1979 ex.s. c 179 s 3 are each amended to read as follows:

The legislative body of such a city, partial city as set forth in RCW 52.04.061(2), or town which has annexed to such a fire protection district, may, by resolution, present to the voters of such city, partial city as set forth in RCW 52.04.061(2), or town a proposition to withdraw from said fire protection district at any general election held at least three years following the annexation to the fire protection district. If the voters approve such a proposition to withdraw from said fire protection district, the city, partial city as set forth in RCW

52.04.061(2), or town shall have a vested right in the capital assets of the district proportionate to the taxes levied within the corporate boundaries of the city, partial city as set forth in RCW 52.04.061(2), or town and utilized by the fire district to acquire such assets.

Sec. 6. RCW 52.04.111 and 1986 c 254 s 10 are each amended to read as follows:

When any city, code city, partial city as set forth in RCW 52.04.061(2), or town is annexed to a fire protection district under RCW 52.04.061 and 52.04.071, any employee of the fire department of such city, code city, partial city as set forth in RCW 52.04.061(2), or town who (1) was at the time of annexation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire protection district (2) will, as a direct consequence of annexation, be separated from the employ of the city, code city, partial city as set forth in RCW 52.04.061(2), or town, and (3) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer his employment to the fire protection district as provided in this section and RCW 52.04.121 and 52.04.131.

For purposes of this section and RCW 52.04.121 and 52.04.131, employee means an individual whose employment with a city, code city, partial city as set forth in RCW 52.04.061(2), or town has been terminated because the city, code city, partial city as set forth in RCW 52.04.061(2), or town was annexed by a fire protection district for purposes of fire protection.

Sec. 7. RCW 52.04.121 and 1994 c 73 s 4 are each amended to read as follows:

(1) An eligible employee may transfer into the fire protection district civil service system, if any, or if none, then may request transfer of employment under this section by filing a written request with the board of fire commissioners of the fire protection district and by giving written notice to the legislative authority of the city, code city, partial city as set forth in RCW 52.04.061(2), or town. Upon receipt of such request by the board of fire commissioners the transfer of employment shall be made. The employee so transferring will (a) be on probation for the same period as are new employees of the fire protection district in the position filled, but if the transferring employee has already completed a probationary period as a firefighter prior to the transfer, then the employee may only be terminated during the probationary period for failure to adequately perform assigned duties, not meeting the minimum qualifications of the position, or behavior that would otherwise be subject to disciplinary action, (b) be eligible for promotion no later than after completion of the probationary period, (c) receive a salary at least equal to that of other new employees of the fire protection district in the position filled, and (d) in all other matters, such as retirement, vacation, and sick leave, have all the rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district from the beginning of employment with the city, code city, partial city as set forth in RCW 52.04.061(2), or town fire department: PROVIDED, That for purposes of layoffs by the annexing fire agency, only the time of service accrued with the annexing agency shall apply unless an agreement is reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies. The city,

code city, partial city as set forth in RCW 52.04.061(2), or town shall, upon receipt of such notice, transmit to the board of fire commissioners a record of the employee's service with the city, code city, partial city as set forth in RCW 52.04.061(2), or town which shall be credited to such employee as a part of the period of employment in the fire protection district. All accrued benefits are transferable provided that the recipient agency provides comparable benefits. All benefits shall then accrue based on the combined seniority of each employee in the recipient agency.

(2) As many of the transferring employees shall be placed upon the payroll of the fire protection district as the district determines are needed to provide services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 52.04.111 and 52.04.131 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the fire protection district when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the fire protection district shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

Sec. 8. RCW 52.04.131 and 1986 c 254 s 12 are each amended to read as follows:

When a city, code city, partial city as set forth in RCW 52.04.061(2), or town is annexed to a fire protection district and as a result any employee is laid off who is eligible to transfer to the fire protection district pursuant to this section and RCW 52.04.111 and 52.04.121, the city, code city, partial city as set forth in RCW 52.04.061(2), or town shall notify the employee of the right to transfer and the employee shall have ninety days to transfer employment to the fire protection district.

Passed by the Senate March 6, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 116

[Substitute Senate Bill 5434]

ACCOUNTANCY—PROHIBITED PRACTICES

AN ACT Relating to prohibited practices in accountancy; and amending RCW 18.04.345.

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

Sec. 1. RCW 18.04.345 and 2008 c 16 s 5 are each amended to read as follows:

(1) No individual may assume or use the designation "certified public accountant-inactive" or "CPA-inactive" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the individual is a certified public accountant-inactive or CPA-inactive unless the individual

holds a certificate. Individuals holding only a certificate may not practice public accounting.

(2) No individual may hold himself or herself out to the public or assume or use the designation "certified public accountant" or "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the individual is a certified public accountant or CPA unless the individual qualifies for the privileges authorized by RCW 18.04.350(2) or holds a license under RCW 18.04.105 and 18.04.215.

(3) No firm with an office in this state may ((~~practice public accounting in this state~~)) perform or offer to perform attest services as defined in RCW 18.04.025(1) or compilation services as defined in RCW 18.04.025(6) or assume or use the designation "certified public accountant" or "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants or CPAs, unless the firm is licensed under RCW 18.04.195 and all offices of the firm in this state are maintained and registered under RCW 18.04.205. This subsection does not limit the services permitted under RCW 18.04.350(10) by persons not required to be licensed under this chapter.

(4) No firm may perform the services defined in RCW 18.04.025(1) (a), (c), or (d) for a client with its home office in this state unless the firm is licensed under RCW 18.04.195, renews the firm license as required under RCW 18.04.215, and all offices of the firm in this state are maintained and registered under RCW 18.04.205.

(5) No individual, partnership, limited liability company, or corporation offering public accounting services to the public may hold himself, herself, or itself out to the public, or assume or use along, or in connection with his, hers, or its name, or any other name the title or designation "certified accountant," "chartered accountant," "licensed accountant," "licensed public accountant," "public accountant," or any other title or designation likely to be confused with "certified public accountant" or any of the abbreviations "CA," "LA," "LPA," or "PA," or similar abbreviations likely to be confused with "CPA."

(6) No licensed firm may operate under an alias, a firm name, title, or "DBA" that differs from the firm name that is registered with the board.

(7) No individual with an office in this state may sign, affix, or associate his or her name or any trade or assumed name used by the individual in his or her business to any report prescribed by professional standards unless the individual holds a license to practice under RCW 18.04.105 and 18.04.215, a firm holds a license under RCW 18.04.195, and all of the individual's offices in this state are registered under RCW 18.04.205.

(8) No individual licensed in another state may sign, affix, or associate a firm name to any report prescribed by professional standards, or associate a firm name in conjunction with the title certified public accountant, unless the individual:

(a) Qualifies for the practice privileges authorized by RCW 18.04.350(2); or

(b) Is licensed under RCW 18.04.105 and 18.04.215, and all of the individual's offices in this state are maintained and registered under RCW 18.04.205.

(9) No individual, partnership, limited liability company, or corporation not holding a license to practice under RCW 18.04.105 and 18.04.215, or firm not

licensed under RCW 18.04.195 or firm not registering all of the firm's offices in this state under RCW 18.04.205, or not qualified for the practice privileges authorized by RCW 18.04.350(2), may hold himself, herself, or itself out to the public as an "auditor" with or without any other description or designation by use of such word on any sign, card, letterhead, or in any advertisement or directory.

(10) For purposes of this section, because individuals practicing using practice privileges under RCW 18.04.350(2) are deemed substantially equivalent to licensees under RCW 18.04.105 and 18.04.215, every word, term, or reference that includes the latter shall be deemed to include the former, provided the conditions of such practice privilege, as set forth in RCW 18.04.350 (4) and (5) are maintained.

(11) Notwithstanding anything to the contrary in this section, it is not a violation of this section for a firm that does not hold a valid license under RCW 18.04.195 and that does not have an office in this state to provide its professional services in this state so long as it complies with the requirements of RCW 18.04.195(1)(b).

Passed by the Senate March 7, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 117

[Senate Bill 5699]

OFFICE OF PUBLIC GUARDIANSHIP—AUTHORITY

AN ACT Relating to the office of public guardianship; and amending RCW 2.72.030.

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

Sec. 1. RCW 2.72.030 and 2007 c 364 s 4 are each amended to read as follows:

The public guardianship administrator is authorized to establish and administer a public guardianship program as follows:

(1)(a) The office shall contract with public or private entities or individuals to provide public guardianship services to persons age eighteen or older whose income does not exceed two hundred percent of the federal poverty level determined annually by the United States department of health and human services or who are receiving long-term care services through the Washington state department of social and health services. Neither the public guardianship administrator nor the office may act as public guardian or limited guardian or act in any other representative capacity for any individual.

(b) The office is exempt from RCW 39.29.008 because the primary function of the office is to contract for public guardianship services that are provided in a manner consistent with the requirements of this chapter. The office shall otherwise comply with chapter 39.29 RCW and is subject to audit by the state auditor.

(c) Public guardianship service contracts are dependent upon legislative appropriation. This chapter does not create an entitlement.

(d) The initial implementation of public guardianship services shall be on a pilot basis in a minimum of two geographical areas that include one urban area and one rural area. There may be one or several contracts in each area.

(2) The office shall, within one year of the commencement of its operation, adopt eligibility criteria to enable it to serve individuals with the greatest need when the number of cases in which courts propose to appoint a public guardian exceeds the number of cases in which public guardianship services can be provided. In adopting such criteria, the office may consider factors including, but not limited to, the following: Whether an incapacitated individual is at significant risk of harm from abuse, exploitation, abandonment, neglect, or self-neglect; and whether an incapacitated person is in imminent danger of loss or significant reduction in public services that are necessary for the individual to live successfully in the most integrated and least restrictive environment that is appropriate in light of the individual's needs and values.

(3) The office shall adopt minimum standards of practice for public guardians providing public guardianship services. Any public guardian providing such services must be certified by the certified professional guardian board established by the supreme court.

(4) The office shall require a public guardian to visit each incapacitated person for which public guardianship services are provided no less than monthly to be eligible for compensation.

(5) The office shall not petition for appointment of a public guardian for any individual. It may develop((~~, and shall consult with the advisory committee regarding the need to develop,~~)) a proposal for the legislature to make affordable legal assistance available to petition for guardianships.

(6) The office shall not authorize payment for services for any entity that is serving more than twenty incapacitated persons per certified professional guardian.

(7) The office shall monitor and oversee the use of state funding to ensure compliance with this chapter.

(8) The office shall collect uniform and consistent basic data elements regarding service delivery. This data shall be made available to the legislature and supreme court in a format that is not identifiable by individual incapacitated person to protect confidentiality.

(9) The office shall report to the legislature on how services other than guardianship services, and in particular services that might reduce the need for guardianship services, might be provided under contract with the office by December 1, 2009. The services to be considered should include, but not be limited to, services provided under powers of attorney given by the individuals in need of the services.

(10) The office shall require public guardianship providers to seek reimbursement of fees from program clients who are receiving long-term care services through the department of social and health services to the extent, and only to the extent, that such reimbursement may be paid, consistent with an order of the superior court, from income that would otherwise be required by the department to be paid toward the cost of the client's care. Fees reimbursed shall be remitted by the provider to the office unless a different disposition is directed by the public guardianship administrator.

(11) The office shall require public guardianship providers to certify annually that for each individual served they have reviewed the need for continued public guardianship services and the appropriateness of limiting, or further limiting, the authority of the public guardian under the applicable guardianship order, and that where termination or modification of a guardianship order appears warranted, the superior court has been asked to take the corresponding action.

(12) The office shall adopt a process for receipt and consideration of and response to complaints against the office and contracted providers of public guardianship services. The process shall include investigation in cases in which investigation appears warranted in the judgment of the administrator. ((~~The office shall provide the advisory committee with a summary and analysis of the results of these complaints. When requested by the complaining party, his or her identity shall not be disclosed to the advisory committee created under section 5 of this act.~~))

(13) The office shall contract with the Washington state institute for public policy for a study. An initial report is due two years following July 22, 2007, and a second report by December 1, 2011. The study shall analyze costs and off-setting savings to the state from the delivery of public guardianship services.

(14) The office shall develop standardized forms and reporting instruments that may include, but are not limited to, intake, initial assessment, guardianship care plan, decisional accounting, staff time logs, changes in condition or abilities of an incapacitated person, and values history. The office shall collect and analyze the data gathered from these reports ((~~and submit it to the advisory committee periodically~~)).

(15) The office shall identify training needs for guardians it contracts with, and shall make recommendations((~~, after consultation with the advisory committee,~~)) to the supreme court, the certified professional guardian board, and the legislature for improvements in guardianship training. The office may offer training to individuals providing services pursuant to this chapter or to individuals who, in the judgment of the administrator or the administrator's designee, are likely to provide such services in the future.

(16) The office shall establish a system for monitoring the performance of public guardians, and office staff shall make in-home visits to a randomly selected sample of public guardianship clients. The office may conduct further monitoring, including in-home visits, as the administrator deems appropriate. For monitoring purposes, office staff shall have access to any information relating to a public guardianship client that is available to the guardian. ((~~The office shall confer with the advisory committee in developing its monitoring process.~~))

(17) During the first five years of its operations, the office shall issue annual reports of its activities((~~, after review of and comment by the advisory committee~~)).

Passed by the Senate March 6, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 118

[Senate Bill 5767]

CLEAN AIR ACT—OUTDOOR BURNING—CLARIFICATIONS

AN ACT Relating to nonsubstantive changes clarifying outdoor burning provisions of the Washington clean air act; amending RCW 70.94.775, 70.94.743, 70.94.755, 70.94.760, 70.94.765, 70.94.745, 70.94.750, 70.94.650, 70.94.654, 70.94.656, 70.94.660, 70.94.670, 70.94.690, 70.94.700, and 70.94.651; adding new sections to chapter 70.94 RCW; creating new sections; and recodifying RCW 70.94.775, 70.94.743, 70.94.780, 70.94.755, 70.94.760, 70.94.765, 70.94.745, 70.94.750, 70.94.650, 70.94.654, 70.94.656, 70.94.660, 70.94.665, 70.94.670, 70.94.690, 70.94.700, and 70.94.651.

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

NEW SECTION. **Sec. 1.** The purpose of this act is to make technical, nonsubstantive changes to outdoor burning provisions of the Washington clean air act, chapter 70.94 RCW, to improve clarity. No provision of this act may be construed as a substantive change to the Washington clean air act.

PART 1
OUTDOOR BURNING—GENERAL PROVISIONS

NEW SECTION. **Sec. 101.** A new section is added to chapter 70.94 RCW under the subchapter heading "outdoor burning" to read as follows:

As used in this subchapter, "outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

Sec. 102. RCW 70.94.775 and 1995 c 362 s 2 are each amended to read as follows:

Except as provided in ((~~RCW 70.94.650(5)~~)) section 601 of this act, no person shall cause or allow any outdoor fire:

(1) Containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation that normally emits dense smoke or obnoxious odors. Agricultural heating devices that otherwise meet the requirements of this chapter shall not be considered outdoor fires under this section;

(2) During a forecast, alert, warning or emergency condition as defined in RCW 70.94.715 or impaired air quality condition as defined in RCW 70.94.473.

Sec. 103. RCW 70.94.743 and 2004 c 213 s 1 are each amended to read as follows:

(1) Consistent with the policy of the state to reduce outdoor burning to the greatest extent practical((~~:~~

~~(a)~~)), outdoor burning shall not be allowed in:

(a) Any area of the state where federal or state ambient air quality standards are exceeded for pollutants emitted by outdoor burning((~~:~~

~~(b) Outdoor burning shall not be allowed in~~)); or

(b) Any urban growth area as defined by RCW 36.70A.030, or any city of the state having a population greater than ten thousand people if such cities are threatened to exceed state or federal air quality standards, and alternative disposal practices consistent with good solid waste management are reasonably available or practices eliminating production of organic refuse are reasonably available. ((~~In no event shall such burning be allowed after December 31, 2000,~~

~~except that within the urban growth areas for cities having a population of less than five thousand people, that are neither within nor contiguous with any nonattainment or maintenance area designated under the federal clean air act, in no event shall such burning be allowed after December 31, 2006.~~

~~(e)~~)) (2) Notwithstanding any other provision of this section, outdoor burning may be allowed for the exclusive purpose of managing storm or flood-related debris. The decision to allow burning shall be made by the entity with permitting jurisdiction as determined under RCW 70.94.660 or 70.94.755 (as recodified by this act). If outdoor burning is allowed in areas subject to subsection (1)(a) or (b) of this ((~~subsection~~)) section, a permit shall be required, and a fee may be collected to cover the expenses of administering and enforcing the permit. All conditions and restrictions pursuant to RCW 70.94.750(1) and 70.94.775 (as recodified by this act) apply to outdoor burning allowed under this section.

(((~~(d)(i)~~))) (3)(a) Outdoor burning that is normal, necessary, and customary to ongoing agricultural activities, that is consistent with agricultural burning authorized under RCW 70.94.650 and 70.94.656 (as recodified by this act), is allowed within the urban growth area ((~~as defined in (b) of this subsection if the burning is not conducted during air quality episodes, or where a determination of impaired air quality has been made as provided in RCW 70.94.473, and the agricultural activities preceded the designation as an urban growth area~~)) in accordance with RCW 70.94.650(8)(a) (as recodified by this act).

(((~~(ii)~~))) (b) Outdoor burning of cultivated orchard trees((~~, whether or not agricultural crops will be replanted on the land,~~)) shall be allowed as an ongoing agricultural activity under this section ((~~if a local horticultural pest and disease board formed under chapter 15.09 RCW, an extension office agent with Washington State University that has horticultural experience, or an entomologist employed by the department of agriculture, has determined in writing that burning is an appropriate method to prevent or control the spread of horticultural pests or diseases~~)) in accordance with RCW 70.94.650(8)(b) (as recodified by this act).

(((~~(2) "Outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion.~~

~~(3)~~))) (4) This section shall not apply to silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

PART 2
OUTDOOR BURNING—PROGRAM

Sec. 201. RCW 70.94.755 and 1997 c 225 s 2 are each amended to read as follows:

Each activated air pollution control authority, and the department of ecology in those areas outside the jurisdictional boundaries of an activated air pollution control authority, shall establish, through regulations, ordinances, or policy, a program implementing the limited burning policy authorized by RCW 70.94.743 through 70.94.765 (as recodified by this act).

Sec. 202. RCW 70.94.760 and 1986 c 100 s 55 are each amended to read as follows:

Nothing contained in RCW ((~~70.94.740~~)) 70.94.743 through 70.94.765 (as recodified by this act) is intended to alter or change the provisions of RCW 70.94.660 (as recodified by this act), 70.94.710 through 70.94.730, and 76.04.205.

Sec. 203. RCW 70.94.765 and 1972 ex.s. c 136 s 6 are each amended to read as follows:

Nothing in RCW ((~~70.94.740~~)) 70.94.743 through 70.94.765 (as recodified by this act) shall be construed as prohibiting a local air pollution control authority or the department of ecology in those areas outside the jurisdictional boundaries of an activated pollution control authority from allowing the burning of outdoor fires.

PART 3
RESIDENTIAL AND LAND CLEARING BURNING

Sec. 301. RCW 70.94.745 and 1995 c 206 s 1 are each amended to read as follows:

(1) It shall be the responsibility and duty of the department of natural resources, department of ecology, department of agriculture, fire districts, and local air pollution control authorities to establish, through regulations, ordinances, or policy, a limited burning permit program.

(2) The permit program shall apply to residential and land clearing burning in the following areas:

(a) In the nonurban areas of any county with an unincorporated population of greater than fifty thousand; and

(b) In any city and urban growth area that is not otherwise prohibited from burning pursuant to RCW 70.94.743 (as recodified by this act).

(3) The permit program shall apply only to land clearing burning in the nonurban areas of any county with an unincorporated population of less than fifty thousand.

(4) The permit program may be limited to a general permit by rule, or by verbal, written, or electronic approval by the permitting entity.

(5) Notwithstanding any other provision of this section, neither a permit nor the payment of a fee shall be required for outdoor burning for the purpose of disposal of tumbleweeds blown by wind. Such burning shall not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW ((~~70.94.714~~)) 70.94.715. This subsection (5) shall only apply within counties with a population less than two hundred fifty thousand.

(6) Burning shall be prohibited in an area when an alternate technology or method of disposing of the organic refuse is available, reasonably economical, and less harmful to the environment. It is the policy of this state to foster and encourage development of alternate methods or technology for disposing of or reducing the amount of organic refuse.

(7) Incidental agricultural burning must be allowed without applying for any permit and without the payment of any fee if:

(a) The burning is incidental to commercial agricultural activities;

(b) The operator notifies the local fire department within the area where the burning is to be conducted;

(c) The burning does not occur during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715; and

(d) Only the following items are burned:

(i) Orchard prunings;

(ii) Organic debris along fence lines or irrigation or drainage ditches; or

(iii) Organic debris blown by wind.

(8) As used in this section, "nonurban areas" are unincorporated areas within a county that ((~~is~~)) are not designated as ((~~an~~)) urban growth areas under chapter 36.70A RCW.

(9) Nothing in this section shall require fire districts to enforce air quality requirements related to outdoor burning, unless the fire district enters into an agreement with the department of ecology, department of natural resources, a local air pollution control authority, or other appropriate entity to provide such enforcement.

Sec. 302. RCW 70.94.750 and 1991 c 199 s 412 are each amended to read as follows:

The following outdoor fires described in this section may be burned subject to the provisions of this chapter and also subject to city ordinances, county resolutions, rules of fire districts and laws, and rules enforced by the department of natural resources if a permit has been issued by a fire protection agency, county, or conservation district:

(1) Fires consisting of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his or her designee.

(2) Fires consisting of residue of a natural character such as trees, stumps, shrubbery or other natural vegetation arising from land clearing projects or agricultural pursuits for pest or disease control; ((~~provided~~)) except that the fires described in this subsection may be prohibited in those areas having a general population density of one thousand or more persons per square mile.

PART 4
AGRICULTURAL BURNING

Sec. 401. RCW 70.94.650 and 1998 c 43 s 1 are each amended to read as follows:

(1) Any person who proposes to set fires in the course of((~~:~~

~~(a) Weed abatement;~~

~~(b) Instruction in methods of fire fighting, except training to fight structural fires as provided in RCW 52.12.150 or training to fight aircraft crash rescue fires as provided in subsection (5) of this section, and except forest fire training; or~~

~~(c)~~)) agricultural activities((~~,~~)) shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70.94.654 (as recodified by this act). General permit criteria of statewide applicability shall be established by the department, by rule, after consultation with the various air pollution control authorities.

(a) Permits shall be issued under this section based on seasonal operations or by individual operations, or both. ((~~All permits shall be conditioned~~))

(b) Incidental agricultural burning consistent with provisions established in RCW 70.94.745 (as recodified by this act) is allowed without applying for any permit and without the payment of any fee.

(2) The department of ecology, local air authorities, or a local entity with delegated permit authority shall:

(a) Condition all permits to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered((~~. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both.~~));

(b) Condition all burning permits ((~~will be designed~~)) to minimize air pollution insofar as practical((~~. Nothing in this section shall relieve the applicant from obtaining permits, licenses, or other approvals required by any other law.~~));

(c) Act upon, within seven days from the date an application is filed under this section, an application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, weed abatement, or development of physiological conditions conducive to increased crop yield((~~, shall be acted upon within seven days from the date such application is filed. The department of ecology and local air authorities shall~~));

(d) Provide convenient methods for issuance and oversight of agricultural burning permits((~~. The department and local air authorities shall,~~)); and

(e) Work, through agreement, ((~~work~~)) with counties and cities to provide convenient methods for granting permission for agricultural burning, including telephone, facsimile transmission, issuance from local city or county offices, or other methods.

(3) A local air authority administering the permit program under ((~~this~~)) subsection (((~~(1)(c)~~))) (2) of this section shall not limit the number of days of allowable agricultural burning, but may consider the time of year, meteorological conditions, and other criteria specified in rules adopted by the department to implement ((~~this~~)) subsection (((~~(1)(c)~~))) (2) of this section.

(((~~(2)~~))) (4) In addition to following any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. Nothing in this section relieves the applicant from obtaining permits, licenses, or other approvals required by any other law.

(5) The department of ecology, the appropriate local air authority, or a local entity with delegated permitting authority pursuant to RCW 70.94.654 (as recodified by this act) at the time the permit is issued shall assess and collect permit fees ((~~shall be assessed~~)) for burning under this section ((~~and shall be collected by the department of ecology, the appropriate local air authority, or a local entity delegated permitting authority pursuant to RCW 70.94.654 at the time the permit is issued~~)). All fees collected shall be deposited in the air

pollution control account created in RCW 70.94.015, except for that portion of the fee necessary to cover local costs of administering a permit issued under this section. Fees shall be set by rule by the permitting agency at the level determined by the task force created by subsection (((~~(4)~~))) (6) of this section, but shall not exceed two dollars and fifty cents per acre to be burned. After fees are established by rule, any increases in such fees shall be limited to annual inflation adjustments as determined by the state office of the economic and revenue forecast council.

(((~~(3) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental effects of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.~~

~~(4)~~))) (6) An agricultural burning practices and research task force shall be established under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair; one representative of eastern Washington local air authorities; three representatives of the agricultural community from different agricultural pursuits; one representative of the department of agriculture; two representatives from universities or colleges knowledgeable in agricultural issues; one representative of the public health or medical community; and one representative of the conservation districts. The task force shall:

(a) Identify best management practices for reducing air contaminant emissions from agricultural activities and provide such information to the department and local air authorities((~~. The task force shall~~));

(b) Determine the level of fees to be assessed by the permitting agency pursuant to subsection (((~~(2)~~))) (5) of this section, based upon the level necessary to cover the costs of administering and enforcing the permit programs, to provide funds for research into alternative methods to reduce emissions from such burning, and to the extent possible be consistent with fees charged for such burning permits in neighboring states. The fee level shall provide, to the extent possible, for lesser fees for permittees who use best management practices to minimize air contaminant emissions((~~. The task force shall~~));

(c) Identify research needs related to minimizing emissions from agricultural burning and alternatives to such burning((~~. Further, the task force shall~~)); and

(d) Make recommendations to the department on priorities for spending funds provided through this chapter for research into alternative methods to reduce emissions from agricultural burning.

(((~~(5) A permit is not required under this section, or under RCW 70.94.743 through 70.94.780, from an air pollution control authority, the department, or any local entity with delegated permit authority, for aircraft crash rescue fire training activities meeting the following conditions:~~

~~(a) Firefighters participating in the training fires must be limited to those who provide fire fighting support to an airport that is either certified by the federal aviation administration or operated in support of military or governmental activities;~~

~~(b) The fire training may not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715 for the area where training is to be conducted;~~

~~(c) The number of training fires allowed per year without a permit shall be the minimum number necessary to meet federal aviation administration or other federal safety requirements;~~

~~(d) The facility shall use current technology and be operated in a manner that will minimize, to the extent possible, the air contaminants generated during operation; and~~

~~(e) Prior to the commencement of the aircraft fire training, the organization conducting training shall notify both the: (i) Local fire district or fire department; and (ii) air pollution control authority, department of ecology, or local entity delegated permitting authority under RCW 70.94.654, having jurisdiction within the area where training is to be conducted.~~

~~Written approval from the department or a local air pollution control authority shall be obtained prior to the initial operation of aircraft crash rescue fire training. Such approval will be granted to fire training activities meeting the conditions in this subsection.~~

~~(6) Aircraft crash rescue fire training activities conducted in compliance with this subsection are not subject to the prohibition, in RCW 70.94.775(1), of outdoor fires containing petroleum products and are not considered outdoor burning under RCW 70.94.743 through 70.94.780.~~

~~(7) To provide for fire fighting instruction in instances not governed by subsection (6) of this section, or other actions to protect public health and safety, the department or a local air pollution control authority may issue permits that allow limited burning of prohibited materials listed in RCW 70.94.775(1).~~))

(7) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental effects of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.

(8)(a) Outdoor burning that is normal, necessary, and customary to ongoing agricultural activities, that is consistent with agricultural burning authorized under this section and RCW 70.94.656 (as recodified by this act), is allowed within the urban growth area as described in RCW 70.94.743 (as recodified by this act) if the burning is not conducted during air quality episodes, or where a determination of impaired air quality has been made as provided in RCW 70.94.473, and the agricultural activities preceded the designation as an urban growth area.

(b) Outdoor burning of cultivated orchard trees, whether or not agricultural crops will be replanted on the land, shall be allowed as an ongoing agricultural activity under this section if a local horticultural pest and disease board formed under chapter 15.09 RCW, an extension office agent with Washington State University that has horticultural experience, or an entomologist employed by the department of agriculture, has determined in writing that burning is an appropriate method to prevent or control the spread of horticultural pests or diseases.

Sec. 402. RCW 70.94.654 and 1993 c 353 s 2 are each amended to read as follows:

Whenever an air pollution control authority, or the department of ecology for areas outside the jurisdictional boundaries of an activated air pollution control authority, shall find that any fire protection agency, county, or conservation district is capable of effectively administering the issuance and enforcement of permits for any or all of the kinds of burning identified in RCW 70.94.650 (as recodified by this act) and sections 601 and 704 of this act and desirous of doing so, the authority or the department of ecology, as appropriate, may delegate powers necessary for the issuance or enforcement, or both, of permits for any or all of the kinds of burning to the fire protection agency, county, or conservation district. Such delegation may be withdrawn by the authority or the department of ecology upon finding that the fire protection agency, county, or conservation district is not effectively administering the permit program.

Sec. 403. RCW 70.94.656 and 1998 c 245 s 130 are each amended to read as follows:

It is hereby declared to be the policy of this state that strong efforts should be made to minimize adverse effects on air quality from the open burning of field and turf grasses grown for seed. To such end this section is intended to promote the development of economical and practical alternate agricultural practices to such burning, and to provide for interim regulation of such burning until practical alternates are found.

(1) The department shall approve of a study or studies for the exploration and identification of economical and practical alternate agricultural practices to the open burning of field and turf grasses grown for seed. Any study conducted pursuant to this section shall be conducted by Washington State University. The university may not charge more than eight percent for administrative overhead. Prior to the issuance of any permit for such burning under RCW 70.94.650 (as recodified by this act), there shall be collected a fee not to exceed one dollar per acre of crop to be burned. Any such fees received by any authority shall be transferred to the department of ecology. The department of ecology shall deposit all such acreage fees in a special grass seed burning research account, hereby created, in the state treasury.

(2) The department shall allocate moneys annually from this account for the support of any approved study or studies as provided for in subsection (1) of this section. Whenever the department of ecology shall conclude that sufficient reasonably available alternates to open burning have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved, and any money remaining therein shall revert to the general fund. The fee collected under subsection (1) of this section shall constitute the research portion of fees required under RCW 70.94.650 (as recodified by this act) for open burning of grass grown for seed.

(3) Whenever on the basis of information available to it, the department after public hearings have been conducted wherein testimony will be received and considered from interested parties wishing to testify shall conclude that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed, the department shall, by order, certify approval of such alternate. Thereafter, in

any case which any such approved alternate is reasonably available, the open burning of field and turf grasses grown for seed shall be disallowed and no permit shall issue therefor.

(4) Until approved alternates become available, the department or the authority may limit the number of acres on a pro rata basis among those affected for which permits to burn will be issued in order to effectively control emissions from this source.

(5) Permits issued for burning of field and turf grasses may be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions.

(6) ((~~By November 1, 1996, and~~)) Every two years ((~~thereafter~~)) until grass seed burning is prohibited, Washington State University may prepare a brief report assessing the potential of the university's research to result in economical and practical alternatives to grass seed burning.

PART 5
SILVICULTURAL BURNING

Sec. 501. RCW 70.94.660 and 1991 c 199 s 404 are each amended to read as follows:

(1) The department of natural resources shall have the responsibility for issuing and regulating burning permits required by it relating to the following activities for the protection of life or property and/or for the public health, safety, and welfare:

(a) Abating a forest fire hazard;

(b) Prevention of a fire hazard;

(c) Instruction of public officials in methods of forest fire fighting;

(d) Any silvicultural operation to improve the forest lands of the state; and

(e) Silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

(2) The department of natural resources shall not retain such authority, but it shall be the responsibility of the appropriate fire protection agency for permitting and regulating outdoor burning on lands where the department of natural resources does not have fire protection responsibility.

(3) Permit fees shall be assessed for silvicultural burning under the jurisdiction of the department of natural resources and collected by the department of natural resources as provided for in this section. All fees shall be deposited in the air pollution control account, created in RCW 70.94.015. The legislature shall appropriate to the department of natural resources funds from the air pollution control account to enforce and administer the program under RCW 70.94.665 and 70.94.660, 70.94.670, and 70.94.690 (as recodified by this act). Fees shall be set by rule by the department of natural resources at the level necessary to cover the costs of the program after receiving recommendations on such fees from the public and the forest fire advisory board established by RCW 76.04.145.

Sec. 502. RCW 70.94.670 and 1991 c 199 s 405 are each amended to read as follows:

The department of natural resources in granting burning permits for fires for the purposes set forth in RCW 70.94.660 (as recodified by this act) shall condition the issuance and use of such permits to comply with air quality standards established by the department of ecology after full consultation with the department of natural resources. Such burning shall not cause the state air quality standards to be exceeded in the ambient air up to two thousand feet above ground level over critical areas designated by the department of ecology, otherwise subject to air pollution from other sources. Air quality standards shall be established and published by the department of ecology which shall also establish a procedure for advising the department of natural resources when and where air contaminant levels exceed or threaten to exceed the ambient air standards over such critical areas. The air quality shall be quantitatively measured by the department of ecology or the appropriate local air pollution control authority at established monitoring stations over such designated areas. Further, such permitted burning shall not cause damage to public health or the environment. All permits issued under this section shall be subject to all applicable fees, permitting, penalty, and enforcement provisions of this chapter. The department of natural resources shall set forth smoke dispersal objectives designed consistent with this section to minimize any air pollution from such burning and the procedures necessary to meet those objectives.

The department of natural resources shall encourage more intense utilization in logging and alternative silviculture practices to reduce the need for burning. The department of natural resources shall, whenever practical, encourage landowners to develop and use alternative acceptable disposal methods subject to the following priorities: (1) Slash production minimization, (2) slash utilization, (3) nonburning disposal, (4) silvicultural burning. Such alternative methods shall be evaluated as to the relative impact on air, water, and land pollution, public health, and their financial feasibility.

The department of natural resources shall not issue burning permits and shall revoke previously issued permits at any time in any area where the department of ecology or local board has declared a stage of impaired air quality as defined in RCW 70.94.473.

Sec. 503. RCW 70.94.690 and 1991 c 199 s 406 are each amended to read as follows:

In the regulation of outdoor burning not included in RCW 70.94.660 (as recodified by this act) requiring permits from the department of natural resources, said department and the state, local, or regional air pollution control authorities will cooperate in regulating such burning so as to minimize insofar as possible duplicate inspections and separate permits while still accomplishing the objectives and responsibilities of the respective agencies. The department of natural resources shall include any local authority's burning regulations with permits issued where applicable pursuant to RCW ((~~70.94.740~~)) 70.94.743 through 70.94.775 (as recodified by this act). The department shall develop agreements with all local authorities to coordinate regulations.

Permits shall be withheld by the department of natural resources when so requested by the department of ecology if a forecast, alert, warning, or

emergency condition exists as defined in the episode criteria of the department of ecology.

Sec. 504. RCW 70.94.700 and 1971 ex.s. c 232 s 6 are each amended to read as follows:

The department of natural resources and the department of ecology may adopt rules ((~~and regulations~~)) necessary to implement their respective responsibilities under the provisions of RCW 70.94.650 through 70.94.700 (as recodified by this act).

PART 6
AIRCRAFT CRASH RESCUE AND OTHER FIREFIGHTER TRAINING

NEW SECTION. **Sec. 601.** A new section is added to chapter 70.94 RCW under the subchapter heading "outdoor burning" to read as follows:

(1) Aircraft crash rescue fire training activities meeting the following conditions do not require a permit under this section, or under RCW 70.94.743 through 70.94.780 (as recodified by this act), from an air pollution control authority, the department, or any local entity with delegated permit authority:

(a) Firefighters participating in the training fires must be limited to those who provide fire fighting support to an airport that is either certified by the federal aviation administration or operated in support of military or governmental activities;

(b) The fire training may not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715 for the area where training is to be conducted;

(c) The number of training fires allowed per year without a permit shall be the minimum number necessary to meet federal aviation administration or other federal safety requirements;

(d) The facility shall use current technology and be operated in a manner that will minimize, to the extent possible, the air contaminants generated during operation; and

(e) The organization conducting training shall notify both the: (i) Local fire district or fire department; and (ii) air pollution control authority, department of ecology, or local entity delegated permitting authority under RCW 70.94.654 (as recodified by this act), having jurisdiction within the area where training is to be conducted before the commencement of aircraft fire training. Written approval from the department or a local air pollution control authority shall be obtained prior to the initial operation of aircraft crash rescue fire training. Such approval will be granted to fire training activities meeting the conditions in this subsection.

(2) Aircraft crash rescue fire training activities conducted in compliance with subsection (1) of this section are not subject to the prohibition, in RCW 70.94.775(1)(as recodified by this act), of outdoor fires containing petroleum products and are not considered outdoor burning under RCW 70.94.743 through 70.94.780 (as recodified by this act).

(3) Training to fight structural fires located outside urban growth areas in counties that plan under the requirements of RCW 36.70A.040 and outside of any city with a population of ten thousand or more in all other counties does not need a permit under this section from an air pollution control authority or the

department of ecology, but must be conducted in accordance with RCW 52.12.150.

(4) Training to fight forest fires does not require a permit from an air pollution control authority or the department of ecology.

(5) To provide for fire fighting instruction in instances not governed by subsections (1) through (3) of this section, or other actions to protect public health and safety, the department or a local air pollution control authority may issue permits that allow limited burning of prohibited materials listed in RCW 70.94.775(1) (as recodified by this act).

PART 7
OUTDOOR BURNING—OTHER

NEW SECTION. **Sec. 701.** A new section is added to chapter 70.94 RCW under the subchapter heading "outdoor burning" to read as follows:

Consistent with RCW 70.94.743 (as recodified by this act), outdoor burning may be allowed anywhere in the state for the exclusive purpose of managing storm or flood-related debris.

NEW SECTION. **Sec. 702.** A new section is added to chapter 70.94 RCW under the subchapter heading "outdoor burning" to read as follows:

Nothing in this chapter prohibits fires necessary for Indian ceremonies or for the sending of smoke signals if part of a religious ritual. Permits issued for burning under this section shall be drafted to minimize emissions including denial of permission to burn during periods of adverse meteorological conditions.

Sec. 703. RCW 70.94.651 and 1991 c 199 s 407 are each amended to read as follows:

Nothing ((~~contained~~)) in this chapter ((~~shall~~)) prohibits fires necessary((~~: (1)~~)) to promote the regeneration of rare and endangered plants found within natural area preserves as identified under chapter 79.70 RCW((~~; and (2) for Indian ceremonies or for the sending of smoke signals if part of a religious ritual~~)). Permits issued for burning under this section shall be drafted to minimize emissions including denial of permission to burn during periods of adverse meteorological conditions.

NEW SECTION. **Sec. 704.** A new section is added to chapter 70.94 RCW under the subchapter heading "outdoor burning" to read as follows:

Any person who proposes to set fires in the course of weed abatement shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70.94.654 (as recodified by this act). General permit criteria of statewide applicability shall be established by the department, by rule, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both. All permits shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or

property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. All burning permits will be designed to minimize air pollution insofar as practical. Nothing in this section relieves the applicant from obtaining permits, licenses, or other approvals required by any other law. An application for a permit to set fires in the course of weed abatement shall be acted upon within seven days from the date such application is filed.

NEW SECTION. **Sec. 705.** A new section is added to chapter 70.94 RCW under the subchapter heading "outdoor burning" to read as follows:

Consistent with RCW 70.94.745 (as recodified by this act), neither a permit nor the payment of a fee shall be required for outdoor burning for the purpose of disposal of tumbleweeds blown by wind. Such burning shall not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715. This section shall only apply within counties with a population less than two hundred fifty thousand.

PART 8
MISCELLANEOUS PROVISIONS

NEW SECTION. **Sec. 801.** Part headings as used in this act are not any part of the law.

NEW SECTION. **Sec. 802.** The following sections are recodified in chapter 70.94 RCW in the following order under the subchapter heading "outdoor burning."

RCW 70.94.775
RCW 70.94.743
RCW 70.94.780
RCW 70.94.755
RCW 70.94.760
RCW 70.94.765
RCW 70.94.745
RCW 70.94.750
RCW 70.94.650
RCW 70.94.654
RCW 70.94.656
RCW 70.94.660
RCW 70.94.665
RCW 70.94.670
RCW 70.94.690
RCW 70.94.700
RCW 70.94.651

NEW SECTION. **Sec. 803.** 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 3, 2009.
Passed by the House April 7, 2009.

Approved by the Governor April 16, 2009.
Filed in Office of Secretary of State April 17, 2009.

CHAPTER 119

[Substitute House Bill 2013]

SELF-SERVICE STORAGE INSURANCE PRODUCERS

AN ACT Relating to self-service storage specialty producers; amending RCW 48.14.010 and 48.17.170; adding a new chapter to Title 48 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) "Commissioner" means the insurance commissioner of this state.

(2) "Occupant" means a person, or his or her sublessee, successor, or assign, who is entitled to the use of the storage space at a self-service storage facility under a rental agreement, to the exclusion of others.

(3) "Owner" means the owner, operator, property management company, lessor, or sublessor of a self-service storage facility. "Owner" does not mean an occupant.

(4) "Personal property" means movable property not affixed to land, and includes, but is not limited to, goods, merchandise, furniture, and household items.

(5) "Self-service storage insurance producer" means any owner of a facility that is licensed as a specialty lines insurance producer under chapter 48.17 RCW to offer, sell, or solicit self-service storage insurance under this chapter.

(6) "Self-service storage facility" or "facility" means any real property designed and used for the purpose of renting or leasing individual storage space to occupants who are to have access to the space for the purpose of storing and removing personal property on a self-service basis, but does not include a garage or other storage area in a private residence.

(7) "Self-service storage insurance" is insurance that in connection with and incidental to the rental of space at a facility provides coverage to occupants at the facility for the loss of or damage to stored personal property that occurs at that facility.

NEW SECTION. **Sec. 2.** (1) An owner; or officer, director, or employee of an owner; may not offer, sell, or solicit the purchase of self-service storage insurance unless that person is:

(a) Licensed as an insurance producer with a property line of authority under chapter 48.17 RCW; or

(b) Licensed as a self-service storage insurance producer under chapter 48.17 RCW and is in compliance with this chapter.

(2) If the owner is licensed as a self-service storage insurance producer under chapter 48.17 RCW and is in compliance with this chapter, then an employee of the owner who is in compliance with section 8(1) of this act is not required to be individually licensed.

(3) The commissioner may issue a specialty line insurance producer license to an owner that is in compliance with this chapter authorizing the owner to act as a self-service storage insurance producer under this chapter, in connection

with and incidental to rental agreements, on behalf of any insurer authorized to write self-service storage insurance in this state.

NEW SECTION. **Sec. 3.** An owner may apply to be licensed as a self-service storage insurance producer under, and if in compliance with, this chapter by filing the following documents with the commissioner:

(1) A written application for licensure, signed by the applicant or by an officer of the applicant, in the form prescribed by the commissioner that includes a listing of all locations at which the owner intends to offer, sell, or solicit self-service storage insurance; and

(2)(a) A certificate by the insurer that is to be named in self-service storage insurance producer license, stating that the insurer:

(i) Has satisfied itself that the named applicant is trustworthy and competent to act as its self-service storage insurance producer, limited to this purpose;

(ii) Has reviewed the employee training and education program required by section 8(1)(c) of this act and that it satisfies the statutory requirements; and

(iii) Will appoint the applicant to act as its self-service storage insurance producer to offer, sell, or solicit self-service storage insurance, if the license for which the applicant is applying is issued by the commissioner.

(b) The certification shall be subscribed by an authorized representative of the insurer on a form prescribed by the commissioner.

NEW SECTION. **Sec. 4.** An owner issued a self-service storage insurance producer license under this chapter is not subject to the prelicensure or continuing education requirements in chapter 48.17 RCW.

NEW SECTION. **Sec. 5.** (1) A self-service storage insurance producer license authorizes a self-service storage insurance producer and its employees to offer and sell to, enroll in, and bill and collect premiums from occupants for insurance covering the loss of or damage to personal property stored at a facility on a master, corporate, group, or individual policy basis.

(2) A self-service storage insurance producer is not required to treat moneys collected from occupants purchasing insurance under this chapter as funds received in a fiduciary capacity, if:

(a) The insurer represented by the self-service storage insurance producer has consented in writing, signed by an officer of the insurer, that the premiums need not be segregated from funds received by the self-service storage insurance producer; and

(b) The charges for insurance coverage are itemized and ancillary to the rental agreement.

(3) An owner is not required to be licensed pursuant to this section merely to display and make available to prospective occupants brochures and other promotional materials created by or on behalf of an authorized insurer, provided that either the owner or its employees, or both, are not paid a commission or other consideration.

NEW SECTION. **Sec. 6.** A self-service storage insurance producer may not solicit insurance under section 2 of this act unless:

(1) At every location where occupants are enrolled in self-service storage insurance programs, written disclosure material regarding the program is made available to prospective occupants; and

(2) All employees who offer and sell to, enroll in, and bill and collect premiums from occupants for insurance have completed a training program for employees of the licensed self-service storage insurance producer as approved by the commissioner.

NEW SECTION. **Sec. 7.** The written disclosure material required in section (6)(1) of this act must:

(1) Summarize the material terms of insurance coverage offered to occupants, including the name, address, telephone number of the insurer, price, benefits, exclusions, and conditions;

(2) Prominently and conspicuously disclose that the policies offered by the self-service storage insurance producer may provide a duplication of coverage already provided by an occupant's homeowner's insurance policy, renter's insurance policy, vehicle insurance policy, watercraft insurance policy, or other source of property insurance coverage;

(3) State that if self-service storage insurance is required as a condition of rental, the requirement may be satisfied by the occupant purchasing the insurance being offered to the occupant by the owner or by presenting evidence of other applicable insurance coverage;

(4) Describe the process for filing a claim;

(5) State in writing all costs related to the insurance; and

(6) Disclose any other information required by rule by the commissioner.

NEW SECTION. **Sec. 8.** (1) An employee of a self-service storage insurance producer may be authorized to offer, sell, or solicit self-service storage insurance under the authority of the self-service storage insurance producer's license, if all of the following conditions have been satisfied:

(a) The employee is eighteen years of age or older;

(b) The employee is a trustworthy person and has not committed any act set forth in RCW 48.17.530;

(c) The employee has completed a training and education program;

(d) The self-service storage insurance producer, at the time it submits its self-service storage insurance producer license application, also submits a list of the names of all employees to its self-service storage insurance producer license on forms prescribed by the commissioner. The list shall be submitted to the commissioner annually and kept current by reporting all changes, deletions, or additions within thirty days after the change, deletion, or addition occurred. Each list shall be retained by the self-service storage insurance producer for a period of three years from submission; and

(e) The self-service storage insurance producer submits to the commissioner with its initial self-service storage insurance producer license application, and annually thereafter, a certification subscribed by an officer of the self-service storage insurance producer on a form prescribed by the commissioner, stating all of the following:

(i) No person other than an employee offers, sells, or solicits self-service storage insurance on its behalf or while working as an employee of the self-service storage insurance producer; and

(ii) All employees have completed the training and education program under subsection (4) of this section.

(2) A self-service storage insurance producer's employee may only act on behalf of the self-service storage insurance producer in the offer, sale, or solicitation of self-service storage insurance. A self-service storage insurance producer is responsible for, and must supervise, all actions of its employees related to the offering, sale, or solicitation of self-service storage insurance. The conduct of an employee is the same as the conduct of the self-service storage insurance producer for purposes of this chapter.

(3) The manager at each location of a self-service storage insurance producer, or the direct supervisor of the self-service storage insurance producer's employees at each location, must be an employee of that self-service storage insurance producer and is responsible for the supervision of each additional employee at that location. Each self-service storage insurance producer shall identify the employee who is the manager or direct supervisor at each location in the employee list that it submits under subsection (1)(d) of this section.

(4) Each self-service storage insurance producer shall provide a training and education program for each employee prior to allowing an employee to offer, sell, or solicit self-service storage insurance. Details of the program must be submitted to the commissioner, along with the license application, for approval prior to use, and resubmitted for approval of any changes prior to use. This training program shall meet the following minimum standards:

(a) Each employee shall receive instruction about the insurance authorized under this chapter that may be offered for sale to prospective occupants; and

(b) Each employee shall receive training about the requirements and limitations imposed on self-service storage insurance producer and employees under this chapter. The training must include specific instruction that the employee is prohibited by law from making any statement or engaging in any conduct express or implied, that would lead a consumer to believe that the:

(i) Occupant does not have insurance policies in place that already provide the coverage being offered by the self-service storage producer under this chapter; or

(ii) Employee is qualified to evaluate the adequacy of the occupant's existing insurance coverages.

(5) The training and education program submitted to the commissioner is approved if no action is taken within thirty days of its submission.

(6) An employee's authorization to offer, sell, or solicit self-service storage insurance expires when the employee's employment with the self-service storage insurance producer is terminated.

(7) The self-service storage insurance producer shall retain for a period of one year from the date of each transaction records which enable it to identify the name of the employee involved in each rental transaction when an occupant purchases self-service storage insurance.

NEW SECTION. **Sec. 9.** The commissioner may adopt rules necessary to implement and administer this chapter.

Sec. 10. RCW 48.14.010 and 2007 c 117 s 37 are each amended to read as follows:

(1) The commissioner shall collect in advance the following fees:

(a)	**For filing charter documents:**		
	(i)	Original charter documents, bylaws or record of organization of insurers, or certified copies thereof, required to be filed.....	$250.00
	(ii)	Amended charter documents, or certified copy thereof, other than amendments of bylaws	$ 10.00
	(iii)	No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.	
(b)	**Certificate of authority:**		
	(i)	Issuance.....	$ 25.00
	(ii)	Renewal.....	$ 25.00
(c)	**Annual statement of insurer, filing** ...		$ 20.00
(d)	**Organization or financing of domestic insurers and affiliated corporations:**		
	(i)	Application for solicitation permit, filing	$100.00
	(ii)	Issuance of solicitation permit ..	$ 25.00
(e)	**Insurance producer licenses:**		
	(i)	License application	$ 55.00
	(ii)	License renewal, every two years	$ 55.00
	(iii)	Initial appointment and renewal of appointment of each insurance producer, every two years	$ 20.00
	(iv)	Limited line insurance producer license application and renewal, every two years	$ 20.00
(f)	**Reinsurance intermediary licenses:**		
	(i)	Reinsurance intermediary-broker, each year	$ 50.00
	(ii)	Reinsurance intermediary-manager, each year	$100.00
(g)	**Surplus line broker license application and renewal, every two years**.....		$200.00
(h)	**Adjusters' licenses:**		
	(i)	Independent adjuster, every two years	$ 50.00
	(ii)	Public adjuster, every two years	$ 50.00
(i)	**Managing general agent appointment, every two years**		$200.00
(j)	**Examination for license, each examination:**		

All examinations, except examinations administered by an independent testing service, the fees for which are to be approved by the commissioner and collected directly by and retained by such independent testing service . . . . . $ 20.00

(k) Miscellaneous services:

(i) Filing other documents . . . . . $ 5.00

(ii) Commissioner's certificate under seal . . . . . $ 5.00

(iii) Copy of documents filed in the commissioner's office, reasonable charge therefor as determined by the commissioner.

(l) Self-service storage specialty insurance producer license application and renewal:

Every two years, $130.00 for an owner with under fifty employees or $375.00 for an owner with fifty or more employees; plus a location fee of $35.00 for each additional location of an owner.

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the general fund.

(a) Fees for examinations administered by an independent testing service that are approved by the commissioner under subsection (1)(j) of this section shall be collected directly by the independent testing service and retained by it.

(b) Fees for copies of documents filed in the commissioner's office shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the insurance commissioner's regulatory account.

Sec. 11. RCW 48.17.170 and 2007 c 117 s 12 are each amended to read as follows:

(1) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090 and 48.17.110 shall be issued an insurance producer license. An insurance producer may receive a license in one or more of the following lines of authority:

(a) "Life," which is insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) "Disability," which is insurance coverage for accident, health, and disability or sickness, bodily injury, or accidental death, and may include benefits for disability income;

(c) "Property," which is insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) "Casualty," which is insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(e) "Variable life and variable annuity products," which is insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity product that reflects the investment experience of a separate account;

(f) "Personal lines," which is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) Limited lines:

(i) Surety;

(ii) Limited line credit insurance;

(iii) Travel;

(h) Specialty lines:

(i) Communications equipment or services;

(ii) Rental car; ((~~or~~))

(iii) Self-service storage; or

(i) Any other line of insurance permitted under state laws or rules.

(2) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090(4) shall be issued a title insurance agent license.

(3) All insurance producers', title insurance agents', and adjusters' licenses issued by the commissioner shall be valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(4) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any insurance producer's, title insurance agent's, or adjuster's license as provided in this title, the license may be renewed into another like period by filing with the commissioner by any means acceptable to the commissioner on or before the expiration date a request, by or on behalf of the licensee, for such renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010.

(5) If the request and fee for renewal of an insurance producer's, title insurance agent's, or adjuster's license is filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of a renewal license, or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed order of such refusal to the licensee. Any request for renewal not so filed until after date of expiration may be considered by the commissioner as an application for a new license.

(6) For all licenses, if request for renewal of an insurance producer's, title insurance agent's, or adjuster's license or payment of the fee is not received by the commissioner prior to the expiration date as required under subsection (4) of this section, the insurer or applicant for renewal shall pay to the commissioner and the commissioner shall collect, in addition to the regular fee, a surcharge as follows: For the first thirty days or part thereof of delinquency the surcharge is fifty percent of the fee; for all delinquencies extending more than thirty days, the surcharge is one hundred percent of the fee. A surcharge of two hundred percent of the renewal fee is required for any delinquency extending more than sixty

days after the expiration date. This subsection shall not exempt any person from any penalty provided by law for transacting business without a valid and subsisting license or appointment, or affect the commissioner's right, at his or her discretion, to consider such delinquent application as one for a new license or appointment.

(7) An individual insurance producer, title insurance agent, or adjuster who allows his or her license to lapse may, within twelve months after the expiration date, reinstate the same license without the necessity of passing a written examination.

(8) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance such as a long-term medical disability, may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(9) The license shall contain the licensee's name, address, personal identification number, and the date of issuance, lines of authority, expiration date, and any other information the commissioner deems necessary.

(10) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a penalty under either RCW 48.17.530 or 48.17.560, or both.

NEW SECTION. **Sec. 12.** Sections 1 through 9 of this act constitute a new chapter in Title 48 RCW.

NEW SECTION. **Sec. 13.** This act takes effect July 1, 2010.

Passed by the House March 3, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 17, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 120

[Substitute House Bill 1621]

CONSUMER LOAN COMPANIES—BUSINESS PRACTICES REGULATION

AN ACT Relating to regulating the business practices of consumer loan companies for compliance with the secure and fair enforcement for mortgage licensing act of 2008; amending RCW 31.04.015, 31.04.025, 31.04.035, 31.04.045, 31.04.102, 31.04.105, 31.04.145, and 31.04.165; adding new sections to chapter 31.04 RCW; creating a new section; and providing effective dates.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 31.04 RCW to read as follows:

The legislature finds and declares that accessibility to credit is vital to the citizens of this state. The legislature declares that it is essential for the protection of citizens of this state and the stability of the state's economy that standards for licensing and regulation of the business practices of lenders be imposed. The legislature further finds that the activities of lenders and mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable, and immediate impact upon this state's

consumers, this state's economy, the neighborhoods and communities of this state, and the housing and real estate industry. The legislature therefore declares that this act is necessary to encourage responsible lending in all credit transactions, to protect borrowers, and to preserve access to credit in the residential real estate lending market.

Sec. 2. RCW 31.04.015 and 2001 c 81 s 1 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

~~(((1) "Person" includes individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.~~

~~(2) "License" means a single license issued under the authority of this chapter with respect to a single place of business.~~

~~(3) "Licensee" means a person to whom one or more licenses have been issued.~~

~~(4) "Director" means the director of financial institutions.~~

~~(5) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.~~

~~(6) "Add-on method" means the method of precomputing interest payable on a loan whereby the interest to be earned is added to the principal balance and the total plus any charges allowed under this chapter is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms. The director may adopt by rule a more detailed explanation of the meaning and use of this method.~~

~~(7) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding for the time outstanding with each payment applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of the principal until paid in full. In using such method, interest shall not be payable in advance nor compounded, except that on a loan secured by real estate, a licensee may collect at the time of the loan closing up to but not exceeding forty-five days of prepaid interest. The director may adopt by rule a more detailed explanation of the meaning and use of this method.~~

~~(8) "Applicant" means a person applying for a license under this chapter.~~

~~(9) "Borrower" means any person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan.~~

~~(10) "Loan" means a sum of money lent at interest or for a fee or other charge and includes both open-end and closed-end loan transactions.~~

~~(11) "Loan originator" means a person employed, either directly or indirectly, or retained as an independent contractor by a licensee, to make or assist a person in applying to obtain a loan.~~

~~(12) "Making a loan" means closing a loan in a person's name, or advancing, offering to advance, or making a commitment to advance funds to a borrower for a loan.~~

~~(13) "Mortgage broker" means the same as defined in RCW 19.146.010, except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same loan transaction.~~

~~(14) "Officer" means an official appointed by the company for the purpose of making business decisions or corporate decisions.~~

~~(15) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership; company; association or corporation; or a limited liability company, and the owner of a sole proprietorship.~~

~~(16) "Senior officer" means an officer of a licensee at the vice president level or above.~~

~~(17) "Third party service provider" means any person other than the licensee or a mortgage broker who provides goods or services to the licensee or borrower in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, real estate brokers or salespersons, title insurance companies and agents, appraisers, structural and pest inspectors, or escrow companies.~~)) (1) "Add-on method" means the method of precomputing interest payable on a loan whereby the interest to be earned is added to the principal balance and the total plus any charges allowed under this chapter is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(2) "Applicant" means a person applying for a license under this chapter.

(3) "Borrower" means any person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan.

(4) "Depository institution" has the same meaning as in section 3 of the federal deposit insurance act on the effective date of this section, and includes credit unions.

(5) "Director" means the director of financial institutions.

(6) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

(7) "Individual servicing a mortgage loan" means a person on behalf of a lender or servicer licensed by this state, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

(8) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.

(9) "License" means a single license issued under the authority of this chapter with respect to a single place of business.

(10) "Licensee" means a person to whom one or more licenses have been issued.

(11) "Loan" means a sum of money lent at interest or for a fee or other charge and includes both open-end and closed-end loan transactions.

(12) "Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 19.146 RCW.

(13) "Making a loan" means advancing, offering to advance, or making a commitment to advance funds to a borrower for a loan.

(14) "Mortgage broker" means the same as defined in RCW 19.146.010, except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a consumer loan licensee acting as the mortgage broker in the same loan transaction.

(15)(a) "Mortgage loan originator" means an individual who for compensation or gain (i) takes a residential mortgage loan application, or (ii) offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include any individual who performs purely administrative or clerical tasks; and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code. For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan.

(b) "Mortgage loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For the purposes of this act the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in (b)(i) through (iv) of this subsection.

(c) This subsection does not apply to an individual servicing a mortgage loan before July 1, 2011.

(16) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage loan originators.

(17) "Officer" means an official appointed by the company for the purpose of making business decisions or corporate decisions.

(18) "Person" includes individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

(19) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership; company; association or corporation; or a limited liability company, and the owner of a sole proprietorship.

(20) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of a depository institution; a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or an institution regulated by the farm credit administration and is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(21) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(v) of the truth in lending act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

(22) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

(23) "Senior officer" means an officer of a licensee at the vice president level or above.

(24) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding for the time outstanding with each payment applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of the principal until paid in full. In using such method, interest shall not be payable in advance nor compounded, except that on a loan secured by real estate, a licensee may collect at the time of the loan closing up to but not exceeding forty-five days of prepaid interest. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(25) "Third-party service provider" means any person other than the licensee or a mortgage broker who provides goods or services to the licensee or borrower in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, real estate brokers or salespersons, title insurance companies and agents, appraisers, structural and pest inspectors, or escrow companies.

(26) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

Sec. 3. RCW 31.04.025 and 2008 c 78 s 1 are each amended to read as follows:

((~~Each loan made to a resident of this state by a licensee is subject to the authority and restrictions of this chapter, unless such loan is made under the authority of chapter 63.14 RCW. This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions, nor to any pawnbroking business lawfully transacted under and as permitted by any law of this state regulating pawnbrokers, nor to any loan of credit made pursuant to a credit card plan.~~))

(1) This chapter does not apply to the following:

(a) Any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions;

(b) Entities making loans under chapter 19.60 RCW (pawnbroking);

(c) Entities making loans under chapter 63.14 RCW (retail installment sales of goods and services);

(d) Entities making loans under chapter 31.45 RCW (check cashers and sellers);

(e) Any person making loans primarily for business, commercial, or agricultural purposes, or making loans made to government or government agencies or instrumentalities, or to organizations as defined in the federal truth in lending act;

(f) Entities making loans under chapter 43.185 RCW (housing trust fund);

(g) Entities making loans under programs of the United States department of agriculture, department of housing and urban development, or other federal government program that provides funding or access to funding for single-family housing developments or grants to low-income individuals for the purchase or repair of single-family housing; and

(h) Entities making loans which are not residential mortgage loans under a credit card plan.

(2) The director may, at his or her discretion, waive applicability of the consumer loan company licensing provisions of this chapter to other persons, not including individuals subject to the S.A.F.E. act, making loans when the director determines it necessary to facilitate commerce and protect consumers. The director may adopt rules interpreting this section.

Sec. 4. RCW 31.04.035 and 2008 c 78 s 2 are each amended to read as follows:

No person may engage in the business of making secured or unsecured loans of money, credit, or things in action without first obtaining and maintaining a license in accordance with this chapter, except those exempt under RCW 31.04.025.

Sec. 5. RCW 31.04.045 and 2001 c 81 s 4 are each amended to read as follows:

(1) Application for a license under this chapter must be ((~~in writing and~~)) made to the nationwide mortgage licensing system and registry or in the form

prescribed by the director. The application must contain at least the following information:

(a) The name and the business addresses of the applicant;

(b) If the applicant is a partnership or association, the name of every member;

(c) If the applicant is a corporation, the name, residence address, and telephone number of each officer and director;

(d) The street address, county, and municipality from which business is to be conducted; and

(e) Such other information as the director may require by rule.

(2) As part of or in connection with an application for any license under this section, or periodically upon license renewal, each officer, director, and owner applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

(3) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(4) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(5) At the time of filing an application for a license under this chapter, each applicant shall pay to the director or through the nationwide mortgage licensing system and registry an investigation fee and the license fee in an amount determined by rule of the director to be sufficient to cover the director's costs in administering this chapter.

((~~(3)~~)) (6) Each applicant shall file and maintain a surety bond, approved by the director, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as such surety shall not exceed in the aggregate the penal sum of the bond. The penal sum of the bond shall be ((~~one hundred thousand dollars for each licensed location up to and including five licensed locations, and an additional ten thousand dollars for each licensed location in excess of five licensed locations, except that a licensee who makes a loan secured by real property shall maintain at a minimum a surety bond with a penal sum of not less than four hundred thousand dollars~~)) a minimum of thirty thousand dollars and based on the annual

dollar amount of loans originated. The bond shall run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter. In lieu of a surety bond, if the applicant is a Washington business corporation, the applicant may maintain unimpaired capital, surplus, and long-term subordinated debt in an amount that at any time its outstanding promissory notes or other evidences of debt (other than long-term subordinated debt) in an aggregate sum do not exceed three times the aggregate amount of its unimpaired capital, surplus, and long-term subordinated debt. The director may define qualifying "long-term subordinated debt" for purposes of this section.

Sec. 6. RCW 31.04.102 and 2002 c 346 s 1 are each amended to read as follows:

(1) For all loans made by a licensee that are not secured by a lien on real property, the licensee must make disclosures in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. ((~~Sec. [Part]~~)) Part 226, and all other applicable federal laws and regulations.

(2) For all loans made by a licensee that are secured by a lien on real property, the licensee shall provide to each borrower within three business days following receipt of a loan application a written disclosure containing an itemized estimation and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a loan from the licensee. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not available when the disclosure is provided. Disclosure in a form which complies with the requirements of the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. ((~~Sec. [Part]~~)) Part 226, the real estate settlement procedures act and regulation X, 24 C.F.R. Sec. 3500, and all other applicable federal laws and regulations, as now or hereafter amended, shall be deemed to constitute compliance with this disclosure requirement. Each licensee shall comply with all other applicable federal and state laws and regulations.

(3) In addition, for all loans made by the licensee that are secured by a lien on real property, the licensee must provide to the borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three days of receipt of a loan application. The annual percentage rate must be calculated in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. ((~~Sec. [Part]~~)) Part 226. If a licensee provides the borrower with a disclosure in compliance with the requirements of the truth in lending act within three business days of receipt of a loan application, then the licensee has complied with this subsection. If the director determines that the federal government has required a disclosure that substantially meets the objectives of this subsection, then the director may make a determination by rule that compliance with this federal disclosure requirement constitutes compliance with this subsection.

(4) In addition for all consumer loans made by the licensee that are secured by a lien on real property, the licensee must provide the borrower with the one-page disclosure summary required in RCW 19.144.020.

Sec. 7. RCW 31.04.105 and 2001 c 81 s 10 are each amended to read as follows:

Every licensee may:

(1) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(2) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(3) Agree with the borrower for the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender;

(4) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;

(5) Charge and collect a penalty of not more than ten ((~~cents or less on each dollar~~)) percent of any installment payment delinquent ten days or more;

(6) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee;

(7) Make open-end loans as provided in this chapter;

(8) Charge and collect a fee for dishonored checks in an amount approved by the director; and

(9) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower.

Sec. 8. RCW 31.04.145 and 2001 c 81 s 11 are each amended to read as follows:

(1) For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the director may at any time, either personally or by designees, investigate or examine the loans and business and, wherever located, the books, accounts, records, papers, documents, files,

and other information used in the business of every licensee and of every person who is engaged in the business making or assisting in the making of loans at interest rates authorized by this chapter, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For these purposes, the director or designated representatives shall have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons. The director or persons designated by the director may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, records, files, and any other information the director or designated persons deem relevant to the inquiry. The director may require the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, records, files, or other information. If a licensee or person does not attend and testify, or does not produce the requested books, accounts, papers, records, files, or other information, then the director or designated persons may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, records, files, or other information.

(2) The director shall make such periodic examinations of the affairs, business, office, and records of each licensee as determined by rule.

(3) Every licensee examined or investigated by the director or the director's designee shall pay to the director the cost of the examination or investigation of each licensed place of business as determined by rule by the director.

(4) In order to carry out the purposes of this section, the director may:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this act;

(d) Accept and rely on examination or investigation reports made by other government officials, within or without this state;

(e) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director; or

(f) Assess the licensee, individual, or person subject to this act the cost of the services in (a) of this subsection.

NEW SECTION. **Sec. 9.** A new section is added to chapter 31.04 RCW to read as follows:

The authority of this chapter remains in effect, whether such a licensee, individual, or person subject to this act acts or claims to act under any licensing or registration law of this state, or claims to act without such an authority.

NEW SECTION. **Sec. 10.** A new section is added to chapter 31.04 RCW to read as follows:

An individual defined as a mortgage loan originator shall not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

NEW SECTION. **Sec. 11.** A new section is added to chapter 31.04 RCW to read as follows:

The following are exempt from licensing as mortgage loan originators under this chapter:

(1) Registered mortgage loan originators, or any individual required to be registered;

(2) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of a lender, mortgage broker, or other mortgage loan originator; or

(3) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member.

NEW SECTION. **Sec. 12.** A new section is added to chapter 31.04 RCW to read as follows:

An independent contractor may not engage in residential mortgage loan origination activities as a loan processor unless the independent contractor obtains and maintains a license under this chapter. Each independent contractor loan processor licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.

NEW SECTION. **Sec. 13.** A new section is added to chapter 31.04 RCW to read as follows:

An individual engaging solely in loan processor activities, who does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such an individual can or will perform any of the activities of a mortgage loan originator is not required to obtain and maintain a mortgage loan originator license under this chapter.

NEW SECTION. **Sec. 14.** A new section is added to chapter 31.04 RCW to read as follows:

Applicants for a mortgage loan originator license shall apply on a form as prescribed by the director. Each form must contain content as set forth by rule, regulation, instruction, or procedure of the director and may be changed or updated as necessary by the director in order to carry out the purposes of this

chapter, but must not be inconsistent with that required by the nationwide mortgage licensing system and registry.

NEW SECTION. **Sec. 15.** A new section is added to chapter 31.04 RCW to read as follows:

In order to fulfill the purposes of this act, the director is authorized to establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

NEW SECTION. **Sec. 16.** A new section is added to chapter 31.04 RCW to read as follows:

(1) As part of or in connection with an application for any license under this section, or periodically upon license renewal, the mortgage loan originator applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

(2) As part of or in connection with an application for any license under this section, the mortgage loan originator applicant shall furnish information pertaining to personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including (a) the submission of authorization for the nationwide mortgage licensing system and registry and the director to obtain an independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal fair credit reporting act, and (b) information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(4) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

NEW SECTION. **Sec. 17.** A new section is added to chapter 31.04 RCW to read as follows:

(1) The application for a mortgage loan originator license must contain at least the following information:

(a) The name, address, date of birth, and social security number of the mortgage loan originator applicant, and any other names, dates of birth, or social security numbers previously used by the mortgage loan originator applicant, unless waived by the director; and

(b) Other information regarding the mortgage loan originator applicant's background, experience, character, and general fitness as the director may require by rule, or as deemed necessary by the nationwide mortgage licensing system and registry.

(2) At the time of filing an application for a license or a license renewal under this chapter, each mortgage loan originator applicant shall pay to the director through the nationwide mortgage licensing system and registry the application or renewal fee of up to one hundred fifty dollars. The director shall deposit the moneys in the financial services regulation fund.

NEW SECTION. **Sec. 18.** A new section is added to chapter 31.04 RCW to read as follows:

(1) The director shall issue and deliver a mortgage loan originator license if, after investigation, the director makes at a minimum the following findings:

(a) The applicant has paid the required license fees;

(b) The applicant has met the requirements of this chapter;

(c) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that, for the purposes of this subsection, a subsequent formal vacation of such revocation is not a revocation;

(d) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court (i) during the seven-year period preceding the date of the application for licensing and registration; or (ii) at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

(e) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this act. For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years;

(f) The applicant has completed the prelicensing education requirement as required by this chapter;

(g) The applicant has passed a written test that meets the test requirement as required by this chapter;

(h) The consumer loan licensee that the applicant works for has met the surety bond requirement as required by this chapter;

(i) The applicant has not been found to be in violation of this chapter or rules adopted under this chapter;

(j) The mortgage loan originator licensee has completed, during the calendar year preceding a licensee's annual license renewal date, continuing education as required by this chapter.

(2) If the director finds the conditions of this section have not been met, the director shall not issue the mortgage loan originator license. The director shall notify the applicant of the denial and return to the mortgage loan originator applicant any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

NEW SECTION. **Sec. 19.** A new section is added to chapter 31.04 RCW to read as follows:

(1) A mortgage loan originator license issued under this section expires annually. The director shall establish rules regarding the mortgage loan originator license renewal process created under this chapter. At a minimum a mortgage loan originator may not renew a license under this chapter unless the mortgage loan originator continues to meet the minimum standards for a license, and has satisfied the annual continuing education requirements.

(2) A mortgage loan originator licensee may surrender a license by delivering to the director through the nationwide mortgage licensing system and registry written notice of surrender, but the surrender does not affect the mortgage loan originator licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such a surrender.

NEW SECTION. **Sec. 20.** A new section is added to chapter 31.04 RCW to read as follows:

For the purposes of implementing an orderly and efficient mortgage loan originator licensing process, the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals the director may establish expedited review and licensing procedures.

NEW SECTION. **Sec. 21.** A new section is added to chapter 31.04 RCW to read as follows:

To prevent undue delay in the issuance of a mortgage loan originator license and to facilitate the business of a mortgage loan originator, an interim license with a fixed date of expiration may be issued when the director determines that the mortgage loan originator has substantially fulfilled the requirements for mortgage loan originator licensing. The director may adopt rules describing the information required before an interim license can be granted.

NEW SECTION. **Sec. 22.** A new section is added to chapter 31.04 RCW to read as follows:

(1) Each mortgage loan originator applicant shall complete at least twenty hours of prelicensing education approved by the nationwide mortgage licensing system and registry. The prelicensing education shall include at least three hours of federal law and regulations; three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; two hours of training related to lending standards for the nontraditional mortgage product

marketplace; and at least two hours of training specifically related to Washington law.

(2) A mortgage loan originator applicant having successfully completed the prelicensing education requirements approved by the nationwide mortgage licensing system and registry for any state shall be accepted as credit towards completion of prelicensing education requirements in this state.

(3) This chapter does not preclude any prelicensing education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such an employer or entity. Prelicensing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

NEW SECTION. **Sec. 23.** A new section is added to chapter 31.04 RCW to read as follows:

(1) To obtain a mortgage loan originator license, an individual must pass a test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

(2) An individual is not considered to have passed a test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(a) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(b) After failing three consecutive tests, an individual must wait at least six months before taking the test again.

(c) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer must retake the test, not taking into account any time during which that individual is a registered mortgage loan originator.

(3) This section does not prohibit a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the mortgage loan originator applicant or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

NEW SECTION. **Sec. 24.** A new section is added to chapter 31.04 RCW to read as follows:

(1) A licensed mortgage loan originator must complete a minimum of eight hours of continuing education approved by the nationwide mortgage licensing system and registry which must include at least three hours of federal law and regulations; two hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and two hours of training related to lending standards for the nontraditional mortgage product marketplace. Additionally, the director may require at least one hour of continuing education on Washington law provided by and administered through an approved provider.

(2) The nationwide mortgage licensing system and registry must review and approve continuing education courses. Review and approval of a continuing education course must include review and approval of the course provider.

(3) A licensed mortgage loan originator may only receive credit for a continuing education course in the year in which the course is taken, and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(5) A person having successfully completed the education requirements approved by the nationwide mortgage licensing system and registry for any state must have their credits accepted as credit towards completion of continuing education requirements in this state.

(6) This section does not preclude any education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity. Continuing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

NEW SECTION. **Sec. 25.** A new section is added to chapter 31.04 RCW to read as follows:

The director shall establish a process whereby mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the director.

NEW SECTION. **Sec. 26.** A new section is added to chapter 31.04 RCW to read as follows:

(1) Except as otherwise provided in section 1512 of the S.A.F.E. act, the requirements under any federal law or chapter 42.56 RCW regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, continues to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) For the purposes under subsection (1) of this section, the director is authorized to enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies as established by rule, regulation, or order of the director.

(3) Information or material that is subject to a privilege or confidentiality under subsection (1) of this section is not subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to that information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of that person, that privilege.

(4) Chapter 42.56 RCW relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) of this section is superseded by the requirements of this section.

(5) This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the nationwide mortgage licensing system and registry for access by the public.

NEW SECTION. **Sec. 27.** A new section is added to chapter 31.04 RCW to read as follows:

Each consumer loan company licensee who makes or brokers a loan secured by real property shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain the information as the nationwide mortgage licensing system and registry may require.

NEW SECTION. **Sec. 28.** A new section is added to chapter 31.04 RCW to read as follows:

The director is authorized to regularly report violations of this act, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry.

NEW SECTION. **Sec. 29.** A new section is added to chapter 31.04 RCW to read as follows:

The unique identifier of any mortgage loan originator must be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule, regulation, or order of the director. This section does not apply to consumer loan company licensees.

Sec. 30. RCW 31.04.165 and 2001 c 81 s 13 are each amended to read as follows:

(1) The director has the power, and broad administrative discretion, to administer and interpret this chapter to facilitate the delivery of financial services to the citizens of this state by consumer loan companies and mortgage loan originators subject to this chapter. The director shall adopt all rules necessary to administer this chapter and to ensure complete and full disclosure by licensees of lending transactions governed by this chapter.

(2) If it appears to the director that a licensee is conducting business in an injurious manner or is violating any provision of this chapter, the director may order or direct the discontinuance of any such injurious or illegal practice.

(3) For purposes of this section, "conducting business in an injurious manner" means conducting business in a manner that violates any provision of this chapter, or that creates the reasonable likelihood of a violation of any provision of this chapter.

(4) The director or designated persons, with or without prior administrative action, may bring an action in superior court to enjoin the acts or practices that constitute violations of this chapter and to enforce compliance with this chapter or any rule or order made under this chapter. Upon proper showing, injunctive relief or a temporary restraining order shall be granted. The director shall not be required to post a bond in any court proceedings.

NEW SECTION. **Sec. 31.** In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, sections 10 through 14, 16 through 19, 21 through 25, and 27 through 29 of this act take effect July 1, 2010.

NEW SECTION. **Sec. 32.** In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, section 5 of this act takes effect January 1, 2010.

NEW SECTION. **Sec. 33.** The director of financial institutions or the director's designee may take the actions necessary to ensure this act is implemented on its effective dates.

Passed by the House March 9, 2009.
Passed by the Senate April 8, 2009.
Approved by the Governor April 17, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 121

[Substitute House Bill 1825]

GROWTH MANAGEMENT ACT—FACILITIES PLANNING REQUIREMENTS

AN ACT Relating to identifying specific facilities planning requirements under the growth management act; and amending RCW 36.70A.110, 36.70A.210, and 36.70A.115.

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

Sec. 1. RCW 36.70A.110 and 2004 c 206 s 1 are each amended to read as follows:

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses

that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. In the case of urban growth areas contained totally within a national historical reserve, the city may restrict densities, intensities, and forms of urban growth as determined to be necessary and appropriate to protect the physical, cultural, or historic integrity of the reserve. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

(5) On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter. Within three years and three months of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall adopt development regulations designating interim urban

growth areas under this chapter. Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act, chapter 43.21C RCW, and RCW 36.70A.110. Such action may be appealed to the appropriate growth management hearings board under RCW 36.70A.280. Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(6) Each county shall include designations of urban growth areas in its comprehensive plan.

(7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county.

Sec. 2. RCW 36.70A.210 and 1998 c 171 s 4 are each amended to read as follows:

(1) The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. For the purposes of this section, a "county-wide planning policy" is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities.

(2) The legislative authority of a county that plans under RCW 36.70A.040 shall adopt a county-wide planning policy in cooperation with the cities located in whole or in part within the county as follows:

(a) No later than sixty calendar days from July 16, 1991, the legislative authority of each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040 shall convene a meeting with representatives of each city located within the county for the purpose of establishing a collaborative process that will provide a framework for the adoption of a county-wide planning policy. In other counties that are required or choose to plan under RCW 36.70A.040, this meeting shall be convened no later than sixty days after the date the county adopts its resolution of intention or was certified by the office of financial management.

(b) The process and framework for adoption of a county-wide planning policy specified in (a) of this subsection shall determine the manner in which the county and the cities agree to all procedures and provisions including but not limited to desired planning policies, deadlines, ratification of final agreements and demonstration thereof, and financing, if any, of all activities associated therewith.

(c) If a county fails for any reason to convene a meeting with representatives of cities as required in (a) of this subsection, the governor may immediately impose any appropriate sanction or sanctions on the county from those specified under RCW 36.70A.340.

(d) If there is no agreement by October 1, 1991, in a county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or if there is no agreement within one hundred twenty days of the date the county adopted its resolution of intention or was certified by the office of financial management in any other county that is required or chooses to plan under RCW 36.70A.040,

the governor shall first inquire of the jurisdictions as to the reason or reasons for failure to reach an agreement. If the governor deems it appropriate, the governor may immediately request the assistance of the department of community, trade, and economic development to mediate any disputes that preclude agreement. If mediation is unsuccessful in resolving all disputes that will lead to agreement, the governor may impose appropriate sanctions from those specified under RCW 36.70A.340 on the county, city, or cities for failure to reach an agreement as provided in this section. The governor shall specify the reason or reasons for the imposition of any sanction.

(e) No later than July 1, 1992, the legislative authority of each county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or no later than fourteen months after the date the county adopted its resolution of intention or was certified by the office of financial management the county legislative authority of any other county that is required or chooses to plan under RCW 36.70A.040, shall adopt a county-wide planning policy according to the process provided under this section and that is consistent with the agreement pursuant to (b) of this subsection, and after holding a public hearing or hearings on the proposed county-wide planning policy.

(3) A county-wide planning policy shall at a minimum, address the following:

(a) Policies to implement RCW 36.70A.110;

(b) Policies for promotion of contiguous and orderly development and provision of urban services to such development;

(c) Policies for siting public capital facilities of a county-wide or statewide nature, including transportation facilities of statewide significance as defined in RCW 47.06.140;

(d) Policies for county-wide transportation facilities and strategies;

(e) Policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution;

(f) Policies for joint county and city planning within urban growth areas;

(g) Policies for county-wide economic development and employment, which must include consideration of the future development of commercial and industrial facilities; and

(h) An analysis of the fiscal impact.

(4) Federal agencies and Indian tribes may participate in and cooperate with the county-wide planning policy adoption process. Adopted county-wide planning policies shall be adhered to by state agencies.

(5) Failure to adopt a county-wide planning policy that meets the requirements of this section may result in the imposition of a sanction or sanctions on a county or city within the county, as specified in RCW 36.70A.340. In imposing a sanction or sanctions, the governor shall specify the reasons for failure to adopt a county-wide planning policy in order that any imposed sanction or sanctions are fairly and equitably related to the failure to adopt a county-wide planning policy.

(6) Cities and the governor may appeal an adopted county-wide planning policy to the growth management hearings board within sixty days of the adoption of the county-wide planning policy.

(7) Multicounty planning policies shall be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous

urban areas and may be adopted by other counties, according to the process established under this section or other processes agreed to among the counties and cities within the affected counties throughout the multicounty region.

Sec. 3. RCW 36.70A.115 and 2003 c 333 s 1 are each amended to read as follows:

Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management.

Passed by the House March 3, 2009.
Passed by the Senate April 8, 2009.
Approved by the Governor April 17, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 122

[House Bill 1826]

FORECLOSURE SALES—PROCEEDS

AN ACT Relating to the proceeds from foreclosure sales; and amending RCW 61.12.150.

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

Sec. 1. RCW 61.12.150 and Code 1881 s 617 are each amended to read as follows:

If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue does not bear interest, a deduction shall be made therefrom by discounting the legal interest((~~, and~~)). In all cases where the proceeds of the sale ((~~shall be~~)) are more than sufficient to pay the amount due and costs, the surplus shall be applied to all interests in, or liens or claims of liens against, the property eliminated by sale under this section in the order of priority that the interest, lien, or claim attached to the property. Any remaining surplus shall be paid to the mortgage debtor, his or her heirs and assigns.

Passed by the House March 3, 2009.
Passed by the Senate April 8, 2009.
Approved by the Governor April 17, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 123

[Engrossed Substitute House Bill 1939]

VEHICLE DEALERS—DOCUMENTARY SERVICE FEES

AN ACT Relating to vehicle dealer documentary service fees; and amending RCW 46.70.180.

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

Sec. 1. RCW 46.70.180 and 2007 c 155 s 2 are each amended to read as follows:

Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2)(a)(i) To incorporate within the terms of any purchase and sale or lease agreement any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price or capitalized cost of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale.

(ii) However, an amount not to exceed ((~~fifty dollars~~)) the applicable amount provided in (iii)(A) and (B) of this subsection (2)(a) per vehicle sale or lease may be charged by a dealer to recover administrative costs for collecting motor vehicle excise taxes, licensing and registration fees and other agency fees, verifying and clearing titles, transferring titles, perfecting, releasing, or satisfying liens or other security interests, and other administrative and documentary services rendered by a dealer in connection with the sale or lease of a vehicle and in carrying out the requirements of this chapter or any other provisions of state law.

(iii) A dealer may charge under (a)(ii) of this subsection:

(A) As of the effective date of this act through June 30, 2014, an amount not to exceed one hundred fifty dollars; and

(B) As of July 1, 2014, an amount not to exceed fifty dollars.

(b) A dealer may charge the documentary service fee in (a) of this subsection under the following conditions:

(i) The documentary service fee is disclosed in writing to a prospective purchaser or lessee before the execution of a purchase and sale or lease agreement;

(ii) The dealer discloses to the purchaser or lessee in writing that the documentary service fee is ((~~not represented~~)) a negotiable fee. The disclosure must be written in a typeface that is at least as large as the typeface used in the standard text of the document that contains the disclosure and that is bold faced, capitalized, underlined, or otherwise set out from the surrounding material so as to be conspicuous. The dealer shall not represent to the purchaser or lessee ((~~as a~~)) that the fee or charge is required by the state to be paid by either the dealer or prospective purchaser or lessee;

(iii) The documentary service fee is separately designated from the selling price or capitalized cost of the vehicle and from any other taxes, fees, or charges; and

(iv) Dealers disclose in any advertisement that a documentary service fee in an amount ((~~up to fifty dollars~~)) provided in (iv)(A) and (B) of this subsection (2)(b) may be added to the sale price or the capitalized cost:

(A) As of the effective date of this act through June 30, 2014, an amount up to one hundred fifty dollars; and

(B) As of July 1, 2014, an amount up to fifty dollars.

For the purposes of this subsection (2), the term "documentary service fee" means the optional amount charged by a dealer to provide the services specified in (a) of this subsection.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold or leased to a person for a consideration and upon further consideration that the purchaser or lessee agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser or lessee being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Entering into a written contract, written purchase order or agreement, retail installment sales agreement, note and security agreement, or written lease agreement, hereinafter collectively referred to as contract or lease, signed by the prospective buyer or lessee of a vehicle, which:

(a) Is subject to any conditions or the dealer's or his or her authorized representative's future acceptance, and the dealer fails or refuses within four calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer or lessee to inform the buyer or lessee either: (i) That the dealer unconditionally accepts the contract or lease, having satisfied, removed, or waived all conditions to acceptance or performance, including, but not limited to, financing, assignment, or lease approval; or (ii) that the dealer rejects the contract or lease, thereby automatically voiding the contract or lease, as long as such voiding does not negate commercially reasonable contract or lease provisions pertaining to the return of the subject vehicle and any physical damage, excessive mileage after the demand for return of the vehicle, and attorneys' fees authorized by law, and tenders the refund of any initial payment or security made or given by the buyer or lessee, including, but not limited to, any down payment, and tenders return of the trade-in vehicle, key, other trade-in, or certificate of title to a trade-in. Tender may be conditioned on return of the subject vehicle if previously delivered to the buyer or lessee.

The provisions of this subsection (4)(a) do not impair, prejudice, or abrogate the rights of a dealer to assert a claim against the buyer or lessee for misrepresentation or breach of contract and to exercise all remedies available at law or in equity, including those under chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing company discovers that approval of the contract or financing or approval of the lease was based upon material misrepresentations made by the buyer or lessee, including, but not limited to, misrepresentations regarding income, employment, or debt of the buyer or lessee, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation. A dealer shall not be in violation of this subsection (4)(a) if the buyer or lessee made a material misrepresentation to the dealer, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation.

When a dealer informs a buyer or lessee under this subsection (4)(a) regarding the unconditional acceptance or rejection of the contract, lease, or financing by an electronic mail message, the dealer must also transmit the communication by any additional means;

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer or lessee as part of the purchase price or lease, for any reason except:

(i) Failure to disclose that the vehicle's certificate of ownership has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.050 and 46.12.075; or

(ii) Substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(iii) Excessive additional miles or a discrepancy in the mileage. "Excessive additional miles" means the addition of five hundred miles or more, as reflected on the vehicle's odometer, between the time the vehicle was first valued by the dealer for purposes of determining its trade-in value and the time of actual delivery of the vehicle to the dealer. "A discrepancy in the mileage" means (A) a discrepancy between the mileage reflected on the vehicle's odometer and the stated mileage on the signed odometer statement; or (B) a discrepancy between the mileage stated on the signed odometer statement and the actual mileage on the vehicle; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesperson to refuse to furnish, upon request of a prospective purchaser or lessee, for vehicles previously registered to a business or governmental entity, the name and address of the business or governmental entity.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle. However, a dealer may issue a second temporary permit on a vehicle if the following conditions are met:

(a) The lienholder fails to deliver the vehicle title to the dealer within the required time period;

(b) The dealer has satisfied the lien; and

(c) The dealer has proof that payment of the lien was made within two calendar days, exclusive of Saturday, Sunday, or a legal holiday, after the sales contract has been executed by all parties and all conditions and contingencies in the sales contract have been met or otherwise satisfied.

(9) For a dealer, salesperson, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser or lessee prior to the delivery of the bargained-for vehicle, to commingle the "on deposit" funds with assets of the dealer, salesperson, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser or lessee has taken delivery of the bargained-for vehicle. Delivery of a manufactured home shall be deemed to occur in accordance with RCW 46.70.135(5). Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does not include any loan proceeds or moneys that might have been paid on an installment contract.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser or lessee, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales or lease agreement signed by the seller and buyer or lessee.

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, purchase moneys or funds that have been deposited into or withdrawn out of any account controlled or used by any buyer's agent, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle.

(12) For a buyer's agent, acting directly or through a subsidiary, to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle. In

addition, it is unlawful for any buyer's agent to engage in any of the following acts on behalf of or in the name of the consumer:

(a) Receiving or paying any purchase moneys or funds into or out of any account controlled or used by any buyer's agent;

(b) Signing any vehicle purchase orders, sales contracts, leases, odometer statements, or title documents, or having the name of the buyer's agent appear on the vehicle purchase order, sales contract, lease, or title; or

(c) Signing any other documentation relating to the purchase, sale, lease, or transfer of any new motor vehicle.

It is unlawful for a buyer's agent to use a power of attorney obtained from the consumer to accomplish or effect the purchase, sale, lease, or transfer of ownership documents of any new motor vehicle by any means which would otherwise be prohibited under (a) through (c) of this subsection. However, the buyer's agent may use a power of attorney for physical delivery of motor vehicle license plates to the consumer.

Further, it is unlawful for a buyer's agent to engage in any false, deceptive, or misleading advertising, disseminated in any manner whatsoever, including but not limited to making any claim or statement that the buyer's agent offers, obtains, or guarantees the lowest price on any motor vehicle or words to similar effect.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. This subsection also applies to leased vehicles. In addition, it is unlawful for any buyer's agent to fail to have a written agreement with the customer that: (a) Sets forth the terms of the parties' agreement; (b) discloses to the customer the total amount of any fees or other compensation being paid by the customer to the buyer's agent for the agent's services; and (c) further discloses whether the fee or any portion of the fee is refundable.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.93 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his or her capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he or she is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and prudent business judgment for the purpose of fulfilling the franchise; and (ii) the cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party:

PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith;

(c) Encourage, aid, abet, or teach a vehicle dealer to sell or lease vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale or lease of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser or lessee of any new or unused vehicle that has been sold or leased, distributed for sale or lease, or transferred into this state for resale or lease by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

(16) To knowingly and intentionally engage in collusion with a registered owner of a vehicle to repossess and return or resell the vehicle to the registered owner in an attempt to avoid a suspended license impound under chapter 46.55 RCW. However, compliance with chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise disposing of the vehicle, including providing redemption rights to the debtor, is not a violation of this section.

Passed by the House March 9, 2009.

Passed by the Senate April 8, 2009.

Approved by the Governor April 17, 2009.

Filed in Office of Secretary of State April 20, 2009.

CHAPTER 124

[Substitute House Bill 2214]

AIRPORT OPERATORS—FINANCING—TRANSPORTATION EQUIPMENT AND FACILITIES

AN ACT Relating to the reasonable costs of financing consolidated rental car facilities and common use transportation equipment and facilities; amending RCW 14.08.120; and declaring an emergency.

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

Sec. 1. RCW 14.08.120 and 2005 c 76 s 1 are each amended to read as follows:

In addition to the general powers conferred in this chapter, and without limitation thereof, a municipality that has established or may hereafter establish airports, restricted landing areas, or other air navigation facilities, or that has acquired or set apart or may hereafter acquire or set apart real property for that purpose or purposes is authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or body of the municipality by ordinance or resolution that prescribes the powers and duties of the officer, board, or body; and the municipality may also vest authority for industrial and commercial development in a municipal airport commission consisting of at least five resident taxpayers of the municipality to be appointed by the governing board of the municipality by an ordinance or resolution that includes (a) the terms of office, which may not exceed six years and which shall be staggered so that not more than three terms will expire in the same year, (b) the method of appointment and filling vacancies, (c) a provision that there shall be no compensation but may provide for a per diem of not to exceed twenty-five dollars per day plus travel expenses for time spent on commission business, (d) the powers and duties of the commission, and (e) any other matters necessary to the exercise of the powers relating to industrial and commercial development. The expense of the construction, enlargement, improvement, maintenance, equipment, industrial and commercial development, operation, and regulation are the responsibility of the municipality.

(2) To adopt and amend all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or outside the territorial limits of the municipality; to provide fire protection for the airport, including the acquisition and operation of fire protection equipment and facilities, and the right to contract with any private body or political subdivision of the state for the furnishing of such fire protection; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of the rules, regulations, and ordinances, and enforce those penalties in the same manner in which penalties prescribed by other rules, regulations, and ordinances of the municipality are enforced. For the purposes of such management and government and direction of public use, that part of all highways, roads, streets, avenues, boulevards, and territory that adjoins the limits of any airport or restricted landing area acquired or maintained under the provisions of this chapter is under like control and management of the municipality. It may also adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within the municipality or its police jurisdiction against the perils and hazards of

instrumentalities used in aerial navigation. Rules, regulations, and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They shall conform to and be consistent with the laws of this state and the rules of the state department of transportation and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and the rules and standards issued from time to time pursuant thereto.

(3) To create a special airport fund, and provide that all receipts from the operation of the airport be deposited in the fund, which fund shall remain intact from year to year and may be pledged to the payment of aviation bonds, or kept for future maintenance, construction, or operation of airports or airport facilities.

(4) To lease airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department thereof, for operation; to lease or assign to private parties, any municipal or state government or the national government, or any department thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment of such airports; to authorize its lessees to construct, alter, repair, or improve the leased premises at the cost of the lessee and to reimburse its lessees for such cost, provided the cost is paid solely out of funds fully collected from the airport's tenants; to sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities: PROVIDED, That in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

(5) Acting through its governing body, to sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aircraft landings, aircraft takeoffs or related aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property. The municipal airport commission, if one has been organized and appointed under subsection (1) of this section, may lease any airport property for aircraft landings, aircraft takeoffs, or related aeronautic purposes. If there is a finding by the governing body of the municipality that any airport property, real or personal, is not required for aircraft landings, aircraft takeoffs, or related aeronautic purposes, then the municipal airport commission may lease such space, land, area, or improvements, or construct improvements, or take leases back for financing purposes, grant concessions on such space, land, area, or improvements, all for industrial or commercial purposes, by private negotiation and under such terms and conditions that seem just and proper to the municipal airport commission. Any such lease of real property for aircraft manufacturing or aircraft industrial purposes or to any manufacturer of aircraft or aircraft parts or for any other business, manufacturing, or industrial purpose or operation relating to, identified with, or in any way dependent upon the use, operation, or maintenance of the airport, or for any commercial or industrial purpose may be made for any period

not to exceed seventy-five years, but any such lease of real property made for a longer period than ten years shall contain provisions requiring the municipality and the lessee to permit the rentals for each five-year period thereafter, to be readjusted at the commencement of each such period if written request for readjustment is given by either party to the other at least thirty days before the commencement of the five-year period for which the readjustment is requested. If the parties cannot agree upon the rentals for the five-year period, they shall submit to have the disputed rentals for the period adjusted by arbitration. The lessee shall pick one arbitrator, and the governing body of the municipality shall pick one, and the two so chosen shall select a third. After a review of all pertinent facts the board of arbitrators may increase or decrease such rentals or continue the previous rate thereof.

The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the bond sinking fund. If all the proceeds of the sale are not needed to pay the principal of bonds remaining unpaid, the remainder shall be paid into the airport fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations of tax funds shall be paid into the airport fund of the municipality.

(6) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used: PROVIDED, That in all cases the public is not deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. The municipality shall have and may enforce liens, as provided by law for liens and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(7) To impose a customer facility charge upon customers of rental car companies accessing the airport for the purposes of financing, designing, constructing, operating, and maintaining consolidated rental car facilities and common use transportation equipment and facilities which are used to transport the customer between the consolidated car rental facilities and other airport facilities. The airport operator may require the rental car companies to collect the facility charges, and any facility charges so collected shall be deposited in a trust account for the benefit of the airport operator and remitted at the direction of the airport operator, but no more often than once per month. The charge shall be calculated on a per-day basis. Facility charges may not exceed the reasonable costs of financing, designing, constructing, operating, and maintaining the consolidated car rental facilities and common use transportation equipment and facilities and may not be used for any other purpose. For the purposes of this subsection (7), if an airport operator makes use of its own funds to finance the consolidated rental car facilities and common use transportation equipment and facilities, the airport operator (a) is entitled to earn a rate of return on such funds no greater than the interest rate that the airport operator would pay to finance such facilities in the appropriate capital market, provided that the airport operator establish the rate of return in consultation with the rental car companies, and (b) may use the funds earned under (a) of this subsection for purposes other

than those associated with the consolidated rental car facilities and common use transportation equipment and facilities.

(8) To exercise all powers necessarily incidental to the exercise of the general and special powers granted in this section.

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

Passed by the House March 6, 2009.
Passed by the Senate April 8, 2009.
Approved by the Governor April 17, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 125

[Substitute Senate Bill 5469]
INTERMEDIATE LICENSES—LIMITATIONS

AN ACT Relating to limitations on the use of intermediate licenses; and amending RCW 46.20.075.

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

Sec. 1. RCW 46.20.075 and 2000 c 115 s 2 are each amended to read as follows:

(1) An intermediate license authorizes the holder to drive a motor vehicle under the conditions specified in this section. An applicant for an intermediate license must be at least sixteen years of age and:

(a) Have possessed a valid instruction permit for a period of not less than six months;

(b) Have passed a driver licensing examination administered by the department;

(c) Have passed a course of driver's education in accordance with the standards established in RCW 46.20.100;

(d) Present certification by his or her parent, guardian, or employer to the department stating (i) that the applicant has had at least fifty hours of driving experience, ten of which were at night, during which the driver was supervised by a person at least twenty-one years of age who has had a valid driver's license for at least three years, and (ii) that the applicant has not been issued a notice of traffic infraction or cited for a traffic violation that is pending at the time of the application for the intermediate license;

(e) Not have been convicted of or found to have committed a traffic violation within the last six months before the application for the intermediate license; and

(f) Not have been adjudicated for an offense involving the use of alcohol or drugs during the period the applicant held an instruction permit.

(2) For the first six months after the issuance of an intermediate license or until the holder reaches eighteen years of age, whichever occurs first, the holder of the license may not operate a motor vehicle that is carrying any passengers under the age of twenty who are not members of the holder's immediate family as defined in RCW 42.17.020. For the remaining period of the intermediate license, the holder may not operate a motor vehicle that is carrying more than

three passengers who are under the age of twenty who are not members of the holder's immediate family.

(3) The holder of an intermediate license may not operate a motor vehicle between the hours of 1 a.m. and 5 a.m. except when the holder is accompanied by a parent, guardian, or a licensed driver who is at least twenty-five years of age.

(4) It is a traffic infraction for the holder of an intermediate license to operate a motor vehicle in violation of the restrictions imposed under this section.

(5) Enforcement of this section by law enforcement officers may be accomplished only as a secondary action when a driver of a motor vehicle has been detained for a suspected violation of this title or an equivalent local ordinance or some other offense.

(6) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if necessary for agricultural purposes.

(7) An intermediate licensee may drive at any hour without restrictions on the number of passengers in the vehicle if, for the twelve-month period following the issuance of the intermediate license, he or she:

(a) Has not been involved in an ((~~automobile~~)) accident involving only one motor vehicle;

(b) Has not been involved in an accident where he or she was cited in connection with the accident or was found to have caused the accident;

(c) Has not been involved in an accident where no one was cited or was found to have caused the accident; and

((~~(b)~~)) (d) Has not been convicted of or found to have committed a traffic offense described in chapter 46.61 RCW or violated restrictions placed on an intermediate licensee under this section.

Passed by the Senate March 2, 2009.
Passed by the House April 8, 2009.
Approved by the Governor April 17, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 126

[Senate Bill 5492]

COMMERCIAL NUCLEAR POWER PLANTS—ARBITRATION

AN ACT Relating to applying RCW 41.56.430 through 41.56.490 to employees working under a site certificate issued under chapter 80.50 RCW; and adding a new section to chapter 41.56 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 41.56 RCW to read as follows:

(1) In order to assure the uninterrupted and dedicated service of employees employed by employees of operators of certain commercial nuclear plants, the provisions of RCW 41.56.430 through 41.56.470, 41.56.480, and 41.56.490 shall apply to the operating and maintenance employees of a joint operating agency as defined in RCW 43.52.250 who are employed at a commercial nuclear power plant operating under a site certificate issued under chapter 80.50 RCW, except as provided in subsection (2) of this section.

(2) In making its determination, the arbitration panel shall take into consideration the following factors:

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

(b) Stipulations of the parties;

(c) A comparison of the wages, benefits, hours of work, and working conditions of the personnel involved in the proceeding with those of like personnel in relevant Washington labor markets. For classifications not found in Washington, the comparison shall be made with similar personnel in the states of California and Arizona, taking into account the relative differences in the cost of living;

(d) Economic indices, fiscal constraints, relative differences in the cost of living, and similar factors determined by the arbitration panel to be pertinent to the case;

(e) Other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, benefits, hours of work, and working conditions.

Passed by the Senate March 5, 2009.
Passed by the House April 8, 2009.
Approved by the Governor April 17, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 127

[Senate Bill 5511]

CITY-COUNTY ASSISTANCE ACCOUNT DISTRIBUTIONS

AN ACT Relating to making changes affecting city-county assistance account distributions in response to the recommendations of the joint legislative audit and review committee; amending RCW 43.08.290; and creating a new section.

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

Sec. 1. RCW 43.08.290 and 2005 c 450 s 2 are each amended to read as follows:

(1) The city-county assistance account is created in the state treasury. All receipts from real estate excise tax disbursements provided under RCW 82.45.060 ((~~shall~~)) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes provided in this section.

(2) Funds deposited in the city-county assistance account ((~~shall~~)) must be distributed equally to the cities and counties.

(3)(a) Funds distributed to counties ((~~shall~~)) must, to the extent possible, increase the sum of revenues ((~~received~~)) under RCW 82.14.030(1) and streamlined sales tax mitigation funds received by each county to the greater of two hundred fifty thousand dollars or:

(i) For a county with an unincorporated population of one hundred thousand or less, seventy percent of the statewide weighted average per capita level of sales and use tax revenues ((~~collected~~)) received under RCW 82.14.030(1) ((~~for~~)) with respect to taxable activity in the unincorporated areas of all counties imposing the sales and use tax authorized under RCW 82.14.030(1) in the previous calendar year, for certifications before October 1, 2009, or the previous fiscal year, for certifications on and after October 1, 2009; and

(ii) For a county with an unincorporated population of more than one hundred thousand, sixty-five percent of the statewide weighted average per capita level of sales and use tax revenues ((~~collected~~)) received under RCW 82.14.030(1) ((~~for~~)) with respect to taxable activity in the unincorporated areas of all counties imposing the sales and use tax authorized under RCW 82.14.030(1) in the previous calendar year, for certifications before October 1, 2009, or the previous fiscal year, for certifications on and after October 1, 2009.

(b) For each county with an unincorporated population of fifteen thousand or less, the county ((~~shall~~)) must receive the greater of the amount in (a) of this subsection or the amount received in local government assistance provided by section 716, chapter 276, Laws of 2004.

(c) For each county with an unincorporated population of more than fifteen thousand and less than twenty-two thousand, the county ((~~shall~~)) must receive in calendar year 2006 and 2007 the greater of the amount provided in (a) of this subsection or the amount received in local government assistance provided by section 716, chapter 276, Laws of 2004.

(d) To the extent that revenues are insufficient to fund the distributions under this subsection, the distributions of all counties as otherwise determined under this subsection ((~~shall~~)) must be ratably reduced.

(e) To the extent that revenues exceed the amounts needed to fund the distributions under this subsection, the excess funds ((~~shall~~)) must be divided ratably based upon unincorporated population among those counties receiving funds under this subsection and imposing the tax ((~~collected~~)) authorized under RCW 82.14.030(2) at the maximum rate.

(4)(a) For each city with a population of five thousand or less with a per capita assessed property value less than twice the statewide average per capita assessed property value for all cities for the calendar year previous to the certification under subsection (6) of this section, the city ((~~shall~~)) must receive the greater of the following three amounts:

(i) An amount necessary to increase the sum of revenues ((~~collected~~)) under RCW 82.14.030(1) and streamlined sales tax mitigation funds received by a city up to fifty-five percent of the statewide weighted average per capita level of sales and use tax revenues ((~~collected~~)) received under RCW 82.14.030(1) ((~~for~~)) with respect to taxable activity in all cities imposing the sales and use tax authorized under RCW 82.14.030(1) in the previous calendar year, for certifications before October 1, 2009, or the previous fiscal year, for certifications on and after October 1, 2009.

(ii) The amount received in local government assistance provided for fiscal year 2005 by section 721, chapter 25, Laws of 2003 1st sp. sess.

(iii) For a city with a per capita assessed property value less than fifty-five percent of the statewide average per capita assessed property value for all cities, an amount determined by subtracting the city's per capita assessed property value from fifty-five percent of the statewide average per capita assessed property value, dividing that amount by one thousand, and multiplying the result by the city's population.

(b) For each city with a population of more than five thousand with a per capita assessed property value less than the statewide average per capita assessed property value for all cities for the calendar year previous to the certification

under subsection (6) of this section, the city ((~~shall~~)) must receive the greater of the following ((~~three~~)) two amounts:

(i) An amount necessary to increase the sum of revenues ((~~collected~~)) under RCW 82.14.030(1) and streamlined sales tax mitigation funds received by a city up to fifty percent of the statewide weighted average per capita level of sales and use tax revenues ((~~collected~~)) received under RCW 82.14.030(1) ((~~for~~)) with respect to taxable activity in all cities imposing the sales and use tax authorized under RCW 82.14.030(1) in the previous calendar year, for certifications before October 1, 2009, or the previous fiscal year, for certifications on and after October 1, 2009.

(ii) ((~~For calendar year 2006 and 2007, the amount received in local government assistance provided for fiscal year 2005 by section 721, chapter 25, Laws of 2003 1st sp. sess.~~

~~(iii)~~)) For a city with a per capita assessed property value less than fifty-five percent of the statewide average per capita assessed property value for all cities, an amount determined by subtracting the city's per capita assessed property value from fifty-five percent of the statewide average per capita assessed property value, dividing that amount by one thousand, and multiplying the result by the city's population.

(c) No city may receive an amount greater than one hundred thousand dollars a year under (a) or (b) of this subsection.

(d) To the extent that revenues are insufficient to fund the distributions under this subsection, the distributions of all cities as otherwise determined under this subsection ((~~shall~~)) must be ratably reduced.

(e) To the extent that revenues exceed the amounts needed to fund the distributions under this subsection, the excess funds ((~~shall~~)) must be divided ratably based upon population among those cities receiving funds under this subsection and imposing the tax collected under RCW 82.14.030(2) at the maximum rate.

(f) This subsection only applies to cities incorporated ((~~prior to~~)) before August 1, 2005.

(5) The two hundred fifty thousand dollar amount in subsection (3) of this section and the one hundred thousand dollar amount in subsection (4) of this section ((~~shall~~)) must be increased each year beginning in calendar year 2006 by inflation as defined in RCW 84.55.005, as determined by the department of revenue.

(6)(a) Distributions under subsections (3) and (4) of this section ((~~shall~~)) must be made quarterly beginning on October 1, 2005, based on population as last determined by the office of financial management. The department of revenue ((~~shall~~)) must certify the amounts to be distributed under this section ((~~to~~)) by the state treasurer. The certification ((~~shall~~)) must be made by October 1, 2005, for the October 1, 2005, distribution and the January 1, 2006, distribution, based on calendar year 2004 ((~~collections~~)) department of revenue distributions of sales and use taxes authorized under RCW 82.14.030(1). The certification ((~~shall~~)) must be made by March 1, 2006, for distributions beginning April 1, 2006, ((~~and~~)) by March ((~~1st of every year thereafter~~)) 1, 2007, for distributions beginning April 1, 2007, and by March 1, 2008, for distributions beginning April 1, 2008. The March 1st certification ((~~shall~~)) must

be used for distributions occurring on April 1st, July 1st, and October 1st of the year of certification and on January 1st of the year following certification.

(b) By March 1, 2009, the department of revenue must certify the amounts to be distributed under this section on April 1, 2009, July 1, 2009, and October 1, 2009. The certification must be based on calendar year 2008 department of revenue distributions of sales and use taxes authorized under RCW 82.14.030(1), and the population as last determined by the office of financial management.

(c) By October 1, 2009, the department of revenue must certify the amounts to be distributed under this section on January 1, 2010, April 1, 2010, July 1, 2010, and October 1, 2010. The certification must be based on department of revenue distributions in fiscal year 2009 of sales and use taxes authorized under RCW 82.14.030(1), streamlined sales tax mitigation data for mitigation distributions authorized under RCW 82.14.495 made December 2008 through September 2009, and population as last determined by the office of financial management.

(d) By September 1, 2010, and September 1st of every year thereafter, the department of revenue must make available a preliminary certification of the amounts to be distributed under this section on January 1st, April 1st, July 1st, and October 1st of the year immediately following certification. By October 1, 2010, and October 1st of every year thereafter, the department must finalize the certification. Once finalized, no changes may be made to the certification for any reason. Certifications must be based on distributions of sales and use taxes imposed under RCW 82.14.030(1) made by the department of revenue in the fiscal year that ended during the calendar year of certification, streamlined sales tax mitigation data for mitigation distributions authorized under RCW 82.14.495 made in the fiscal year that ended during the calendar year of certification, and population as last determined by the office of financial management.

(7) All distributions to local governments from the city-county assistance account constitute increases in state distributions of revenue to political subdivisions for purposes of state reimbursement for the costs of new programs and increases in service levels under RCW 43.135.060, including any claims or litigation pending against the state on or after January 1, 2005.

(8) As used in this section, "streamlined sales tax mitigation funds" means an amount determined by the department of revenue equal to the actual mitigation distribution amount under RCW 82.14.495 received by a jurisdiction in four consecutive calendar quarters, less the mitigation distribution amount that would have been received by the jurisdiction during the same four calendar quarters had mitigation been calculated without the local sales tax authorized under RCW 82.14.030(1). If the difference is a negative amount or if a jurisdiction does not receive any mitigation distribution during the applicable four calendar quarters, then "streamlined sales tax mitigation funds" is zero.

NEW SECTION. **Sec. 2.** This act applies both prospectively and retroactively to March 1, 2009.

Passed by the Senate March 5, 2009.
Passed by the House April 8, 2009.
Approved by the Governor April 17, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 128

[Substitute Senate Bill 5793]

SINGLE-OCCUPANCY FARM CONVEYANCE

AN ACT Relating to a single-occupancy farm conveyance; and amending RCW 70.87.010 and 70.87.200.

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

Sec. 1. RCW 70.87.010 and 2003 c 143 s 9 are each amended to read as follows:

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

(1) "Owner" means any person having title to or control of a conveyance, as guardian, trustee, lessee, or otherwise((~~;~~)).

(2) "Conveyance" means an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator, moving walk, and other elevating devices, as defined in this section((~~;~~)).

(3) "Existing installations" means an installation defined as an "installation, existing" in this chapter or in rules adopted under this chapter((~~;~~)).

(4) "Elevator" means a hoisting or lowering machine equipped with a car or platform that moves in guides and serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator (i) on which passengers are permitted to ride and (ii) that may be used to carry freight or materials when the load carried does not exceed the capacity of the elevator;

(b) "Freight elevator" means an elevator (i) used primarily for carrying freight and (ii) on which only the operator, the persons necessary for loading and unloading, and other employees approved by the department are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator that: (i) Operates between a sidewalk or other area outside the building and floor levels inside the building below the outside area, (ii) does not have a landing opening into the building at its upper limit of travel, and (iii) is not used to carry automobiles;

(d) "Hand elevator" means an elevator utilizing manual energy to move the car;

(e) "Inclined elevator" means an elevator that travels at an angle of inclination of seventy degrees or less from the horizontal;

(f) "Multideck elevator" means an elevator having two or more compartments located one immediately above the other;

(g) "Observation elevator" means an elevator designed to permit exterior viewing by passengers while the car is traveling;

(h) "Power elevator" means an elevator utilizing energy other than gravitational or manual to move the car;

(i) "Electric elevator" means an elevator where the energy is applied by means of an electric driving machine;

(j) "Hydraulic elevator" means an elevator where the energy is applied by means of a liquid under pressure in a cylinder equipped with a plunger or piston;

(k) "Direct-plunger hydraulic elevator" means a hydraulic elevator having a plunger or cylinder directly attached to the car frame or platform;

(l) "Electro-hydraulic elevator" means a direct-plunger elevator where liquid is pumped under pressure directly into the cylinder by a pump driven by an electric motor;

(m) "Maintained-pressure hydraulic elevator" means a direct-plunger elevator where liquid under pressure is available at all times for transfer into the cylinder;

(n) "Roped hydraulic elevator" means a hydraulic elevator having its plunger or piston connected to the car with wire ropes or indirectly coupled to the car by means of wire ropes and sheaves;

(o) "Rack and pinion elevator" means a power elevator, with or without a counterweight, that is supported, raised, and lowered by a motor or motors that drive a pinion or pinions on a stationary rack mounted in the hoistway;

(p) "Screw column elevator" means a power elevator having an uncounterweighted car that is supported, raised, and lowered by means of a screw thread;

(q) "Rooftop elevator" means a power passenger or freight elevator that operates between a landing at roof level and one landing below and opens onto the exterior roof level of a building through a horizontal opening;

(r) "Special purpose personnel elevator" means an elevator that is limited in size, capacity, and speed, and permanently installed in structures such as grain elevators, radio antenna, bridge towers, underground facilities, dams, power plants, and similar structures to provide vertical transportation of authorized personnel and their tools and equipment only;

(s) "Workmen's construction elevator" means an elevator that is not part of the permanent structure of a building and is used to raise and lower workers and other persons connected with, or related to, the building project;

(t) "Boat launching elevator" means a conveyance that serves a boat launching structure and a beach or water surface and is used for the carrying or handling of boats in which people ride;

(u) "Limited-use/limited-application elevator" means a power passenger elevator where the use and application is limited by size, capacity, speed, and rise, intended principally to provide vertical transportation for people with physical disabilities((;)).

(5) "Escalator" means a power-driven, inclined, continuous stairway used for raising and lowering passengers((;)).

(6) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car (a) that moves in guides in a substantially vertical direction, (b) the floor area of which does not exceed nine square feet, (c) the inside height of which does not exceed four feet, (d) the capacity of which does not exceed five hundred pounds, and (e) that is used exclusively for carrying materials((;)).

(7) "Automobile parking elevator" means an elevator: (a) Located in either a stationary or horizontally moving hoistway; (b) used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power-driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator; and (c) in which persons are not normally stationed on any level except the receiving level((;)).

(8) "Moving walk" means a passenger carrying device (a) on which passengers stand or walk and (b) on which the passenger carrying surface remains parallel to its direction of motion((;)).

(9) "Belt manlift" means a power driven endless belt provided with steps or platforms and a hand hold for the transportation of personnel from floor to floor((;)).

(10) "Department" means the department of labor and industries((;)).

(11) "Director" means the director of the department or his or her representative((;)).

(12) "Inspector" means an elevator inspector of the department or an elevator inspector of a municipality having in effect an elevator ordinance pursuant to RCW 70.87.200((;)).

(13) "Permit" means a permit issued by the department: (a) To perform conveyance work, other than maintenance; or (b) to operate a conveyance((;)).

(14) "Person" means this state, a political subdivision, any public or private corporation, any firm, or any other entity as well as an individual((;)).

(15) "One-man capacity manlift" means a single passenger, hand-powered counterweighted device, or electric-powered device, that travels vertically in guides and serves two or more landings((;)).

(16) "Private residence conveyance" means a conveyance installed in or on the premises of a single-family dwelling and operated for transporting persons or property from one elevation to another((;)).

(17) "Material hoist" means a hoist that is not a part of a permanent structure used to raise or lower materials during construction, alteration, or demolition. It is not applicable to the temporary use of permanently installed personnel elevators as material hoists((;)).

(18) "Material lift" means a lift that (a) is permanently installed, (b) is comprised of a car or platform that moves in guides, (c) serves two or more floors or landings, (d) travels in a vertical or inclined position, (e) is an isolated, self-contained lift, (f) is not part of a conveying system, and (g) is installed in a commercial or industrial area not accessible to the general public or intended to be operated by the general public((;)).

(19) "Casket lift" means a lift that (a) is installed at a mortuary, (b) is designed exclusively for carrying of caskets, (c) moves in guides in a basically vertical direction, and (d) serves two or more floors or landings((;)).

(20) "Wheelchair lift" means a lift that travels in a vertical or inclined direction and is designed for use by ((~~physically handicapped persons;~~)) individuals with disabilities.

(21) "Stairway chair lift" means a lift that travels in a basically inclined direction and is designed for use by ((~~physically handicapped persons~~;)) individuals with disabilities.

(22) "Personnel hoist" means a hoist that is not a part of a permanent structure, is installed inside or outside buildings during construction, alteration, or demolition, and used to raise or lower workers and other persons connected with, or related to, the building project. The hoist may also be used for transportation of materials((;)).

(23) "Advisory committee" means the elevator advisory committee as described in this chapter((;)).

(24) "Elevator helper/apprentice" means a person who works under the general direction of a licensed elevator mechanic. A license is not required to be an elevator helper/apprentice((;)).

(25) "Elevator contractor" means any person, firm, or company that possesses an elevator contractor license in accordance with this chapter and who is engaged in the business of performing conveyance work covered by this chapter((;)).

(26) "Elevator mechanic" means any person who possesses an elevator mechanic license in accordance with this chapter and who is engaged in performing conveyance work covered by this chapter((;)).

(27) "License" means a written license, duly issued by the department, authorizing a person, firm, or company to carry on the business of performing conveyance work or to perform conveyance work covered by this chapter((;)).

(28) "Elevator contractor license" means a license that is issued to an elevator contractor who has met the qualification requirements established in RCW 70.87.240((;)).

(29) "Elevator mechanic license" means a license that is issued to a person who has met the qualification requirements established in RCW 70.87.240((;)).

(30) "Licensee" means the elevator mechanic or elevator contractor((;)).

(31) "Conveyance work" means the alteration, construction, dismantling, erection, installation, maintenance, relocation, and wiring of a conveyance((;)).

(32) "Alteration" means any change to equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement((;)).

(33) "Maintenance" means a process of routine examination, lubrication, cleaning, servicing, and adjustment of parts, components, and/or subsystems for the purpose of ensuring performance in accordance with this chapter. "Maintenance" includes repair and replacement, but not alteration((;)).

(34) "Repair" means the reconditioning or renewal of parts, components, and/or subsystems necessary to keep equipment in compliance with this chapter((;)).

(35) "Replacement" means the substitution of a device, component, and/or subsystem in its entirety with a unit that is basically the same as the original for the purpose of ensuring performance in accordance with this chapter((;)).

(36) "Public agency" means a county, incorporated city or town, municipal corporation, state agency, institution of higher education, political subdivision, or other public agency and includes any department, bureau, office, board, commission or institution of such public entities((;)).

(37) "Platform" means a rigid surface that is maintained in a horizontal position at all times when in use, and upon which passengers stand or a load is carried.

(38) "Single-occupancy farm conveyance" means a hand-powered counterweighted single-occupancy conveyance that travels vertically in a grain elevator and is located on a farm that does not accept commercial grain.

Sec. 2. RCW 70.87.200 and 2003 c 143 s 20 are each amended to read as follows:

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

(a) A conveyance is permanently removed from service or made effectively inoperative; ((~~or~~))

(b) Lifts, man hoists, or material hoists are erected temporarily for use during construction work only and are of such a design that they must be operated by a ((~~workman~~)) worker stationed at the hoisting machine; or

(c) A single-occupancy farm conveyance is used exclusively by a farm operator and the farm operator's family members.

(2) Except as limited by RCW 70.87.050, municipalities having in effect an elevator code prior to June 13, 1963, may continue to assume jurisdiction over conveyance work and may inspect, issue permits, collect fees, and prescribe minimum requirements for conveyance work and operation if the requirements are equal to the requirements of this chapter and to all rules pertaining to conveyances adopted and administered by the department. Upon the failure of a municipality having jurisdiction over conveyances to carry out the provisions of this chapter with regard to a conveyance, the department may assume jurisdiction over the conveyance. If a municipality elects not to maintain jurisdiction over certain conveyances located therein, it may enter into a written agreement with the department transferring exclusive jurisdiction of the conveyances to the department. The city may not reassume jurisdiction after it enters into such an agreement with the department.

Passed by the Senate March 6, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 17, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 129

[Senate Bill 5980]

SCHOOL PLANT FACILITIES FUNDING

AN ACT Relating to school plant funding; amending RCW 28A.335.230, 28A.525.040, 28A.525.090, 28A.525.162, 28A.525.166, and 28A.525.168; and creating a new section.

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

NEW SECTION. **Sec. 1.** The intent of this act is to adopt more accurate and descriptive names for the components of the state funding formula for the allotment of appropriations for school plant facilities, as recommended by the joint legislative task force on school construction funding, to promote clarity and transparency in the funding formula. It is not the intent of this act to make substantive changes to the funding formula or policies.

Sec. 2. RCW 28A.335.230 and 2006 c 263 s 328 are each amended to read as follows:

School districts shall be required to lease for a reasonable fee vacant school plant facilities from a contiguous school district wherever possible.

No school district with unhoused students may be eligible for ((~~the~~)) state ((~~matching funds~~)) funding assistance for the construction of school plant facilities if:

(1) The school district contiguous to the school district applying for the state ((~~matching~~)) funding assistance percentage has vacant school plant facilities;

(2) The superintendent of public instruction has determined the vacant school plant facilities available in the contiguous district will fulfill the needs of the applicant district in housing unhoused students. In determining whether the

contiguous district school plant facilities meet the needs of the applicant district, consideration shall be given, but not limited to the geographic location of the vacant facilities as they relate to the applicant district; and

(3) A lease of the vacant school plant facilities can be negotiated.

Sec. 3. RCW 28A.525.040 and 1969 ex.s. c 223 s 28A.47.075 are each amended to read as follows:

State ((~~matching funds~~)) funding assistance shall not be denied to any school district undertaking any construction, repairs or improvements for school district purposes solely on the ground that said construction, repairs and improvements are in connection with portable buildings or classrooms.

Sec. 4. RCW 28A.525.090 and 2006 c 263 s 307 are each amended to read as follows:

(1) The superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel, shall adopt rules for appropriate use of the following construction management techniques: Value engineering, constructibility review, building commissioning, and construction management. Rules adopted under this section shall:

(a) Define each technique as it applies to school buildings;

(b) Describe the scope of work for each technique;

(c) Define the timing for implementing each technique in the construction process;

(d) Determine the appropriate size of projects for the use of each technique; and

(e) Determine standards for qualification and performance for each technique.

(2) Except as provided in rules adopted under subsection (1)(d) of this section, in allocating state moneys provided under this chapter, the superintendent of public instruction shall include in funding for each project, at the state ((~~matching~~)) funding assistance percentage, the cost of each of the construction management techniques listed in subsection (1) of this section.

(3) When assigning priority and allocating state funds for construction of common school facilities, the superintendent shall consider the adequacy of the construction management techniques used by a district and the compliance with the rules adopted under subsection (1) of this section.

(4) Except as provided in rules adopted under subsection (1)(d) of this section, the construction management techniques in subsection (1) of this section shall be used on each project submitted for approval by the superintendent.

(5)(a) School districts applying for state funding assistance for school facilities shall:

(i) Cause value engineering, constructibility review, and building commissioning to be performed by contract with a professional firm specializing in those construction management techniques; and

(ii) Contract or employ personnel to perform professional construction management.

(b) All recommendations from the value engineering and constructibility review construction techniques for a school project shall be presented to the school district's board of directors for acceptance or rejection. If the board of directors rejects a recommendation it shall provide a statement explaining the

reasons for rejecting the recommendation and include the statement in the application for state funding assistance to the superintendent of public instruction.

(6) The office of the superintendent of public instruction shall provide:

(a) An information and training program for school districts on the use of the construction management techniques; and

(b) Consulting services to districts on the benefits and best uses of these construction management techniques.

Sec. 5. RCW 28A.525.162 and 2006 c 263 s 309 are each amended to read as follows:

(1) Funds appropriated to the superintendent of public instruction from the common school construction fund shall be allotted by the superintendent of public instruction in accordance with student enrollment and the provisions of RCW 28A.525.200.

(2) No allotment shall be made to a school district until such district has provided ((~~matching~~)) local funds equal to or greater than the difference between the total approved project cost and the amount of state funding assistance to the district for financing the project computed pursuant to RCW 28A.525.166, with the following exceptions:

(a) The superintendent of public instruction may waive the ((~~matching~~)) local requirement for state funding assistance for districts which have provided funds for school building construction purposes through the authorization of bonds or through the authorization of excess tax levies or both in an amount equivalent to two and one-half percent of the value of its taxable property, as defined in RCW 39.36.015.

(b) No such ((~~matching~~)) local funds shall be required as a condition to the allotment of funds from the state for the purpose of making major or minor structural changes to existing school facilities in order to bring such facilities into compliance with the barrier free access requirements of section 504 of the federal rehabilitation act of 1973 (29 U.S.C. Sec. 706) and rules implementing the act.

(3) For the purpose of computing the state ((~~matching~~)) funding assistance percentage under RCW 28A.525.166 when a school district is granted authority to enter into contracts, adjusted valuation per pupil shall be calculated using headcount student enrollments from the most recent October enrollment reports submitted by districts to the superintendent of public instruction, adjusted as follows:

(a) In the case of projects for which local bonds were approved after May 11, 1989:

(i) For districts which have been designated as serving high school districts under RCW 28A.540.110, students residing in the nonhigh district so designating shall be excluded from the enrollment count if the student is enrolled in any grade level not offered by the nonhigh district;

(ii) The enrollment of nonhigh school districts shall be increased by the number of students residing within the district who are enrolled in a serving high school district so designated by the nonhigh school district under RCW 28A.540.110, including only students who are enrolled in grade levels not offered by the nonhigh school district; and

(iii) The number of preschool students with disabilities included in the enrollment count shall be multiplied by one-half;

(b) In the case of construction or modernization of high school facilities in districts serving students from nonhigh school districts, the adjusted valuation per pupil shall be computed using the combined adjusted valuations and enrollments of each district, each weighted by the percentage of the district's resident high school students served by the high school district; and

(c) The number of kindergarten students included in the enrollment count shall be multiplied by one-half.

(4) The superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel, shall prescribe such rules as are necessary to equate insofar as possible the efforts made by school districts to provide capital funds by the means aforesaid.

(5) For the purposes of this section, "preschool students with disabilities" means ((~~developmentally disabled~~)) children of preschool age who have developmental disabilities who are entitled to services under RCW 28A.155.010 through 28A.155.100 and are not included in the kindergarten enrollment count of the district.

Sec. 6. RCW 28A.525.166 and 2006 c 263 s 311 are each amended to read as follows:

Allocations to school districts of state funds provided by RCW 28A.525.162 through 28A.525.180 shall be made by the superintendent of public instruction and the amount of state funding assistance to a school district in financing a school plant project shall be determined in the following manner:

(1) The boards of directors of the districts shall determine the total cost of the proposed project, which cost may include the cost of acquiring and preparing the site, the cost of constructing the building or of acquiring a building and preparing the same for school use, the cost of necessary equipment, taxes chargeable to the project, necessary architects' fees, and a reasonable amount for contingencies and for other necessary incidental expenses: PROVIDED, That the total cost of the project shall be subject to review and approval by the superintendent.

(2) The state ((~~matching~~)) funding assistance percentage for a school district shall be computed by the following formula:

The ratio of the school district's adjusted valuation per pupil divided by the ratio of the total state adjusted valuation per pupil shall be subtracted from three, and then the result of the foregoing shall be divided by three plus (the ratio of the school district's adjusted valuation per pupil divided by the ratio of the total state adjusted valuation per pupil).

$$\text{Computed State Ratio} = \frac{\text{District adjusted 3-valuation per pupil} \div \text{Total state adjusted valuation per pupil}}{\text{District adjusted 3+valuation per pupil} \div \text{Total state adjusted valuation per pupil}} = - \% \text{ State Funding Assistance}$$

PROVIDED, That in the event the state funding assistance percentage ((~~of state assistance~~)) to any school district based on the above formula is less than twenty percent and such school district is otherwise eligible for state funding assistance

under RCW 28A.525.162 through 28A.525.180, the superintendent may establish for such district a state funding assistance percentage ((~~of state assistance~~)) not in excess of twenty percent of the approved cost of the project, if the superintendent finds that such additional assistance is necessary to provide minimum facilities for housing the pupils of the district.

(3) In addition to the computed ((~~percent of state assistance~~)) state funding assistance percentage developed in subsection (2) of this section, a school district shall be entitled to additional percentage points determined by the average percentage of growth for the past three years. One percent shall be added to the computed ((~~percent of state assistance~~)) state funding assistance percentage for each percent of growth, with a maximum of twenty percent.

(4) The approved cost of the project determined in the manner prescribed in this section multiplied by the state funding assistance percentage ((~~of state assistance~~)) derived as provided for in this section shall be the amount of state funding assistance to the district for the financing of the project: PROVIDED, That need therefor has been established to the satisfaction of the superintendent: PROVIDED, FURTHER, That additional state funding assistance may be allowed if it is found by the superintendent, considering policy recommendations from the school facilities citizen advisory panel that such assistance is necessary in order to meet (a) a school housing emergency resulting from the destruction of a school building by fire, the condemnation of a school building by properly constituted authorities, a sudden excessive and clearly foreseeable future increase in school population, or other conditions similarly emergent in nature; or (b) a special school housing burden resulting from industrial projects of statewide significance or imposed by virtue of the admission of nonresident students into educational programs established, maintained and operated in conformity with the requirements of law; or (c) a deficiency in the capital funds of the district resulting from financing, subsequent to April 1, 1969, and without benefit of the state funding assistance provided by prior state assistance programs, the construction of a needed school building project or projects approved in conformity with the requirements of such programs, after having first applied for and been denied state funding assistance because of the inadequacy of state funds available for the purpose, or (d) a condition created by the fact that an excessive number of students live in state owned housing, or (e) a need for the construction of a school building to provide for improved school district organization or racial balance, or (f) conditions similar to those defined under (a), (b), (c), (d), and (e) of this subsection, creating a like emergency.

Sec. 7. RCW 28A.525.168 and 2006 c 263 s 312 are each amended to read as follows:

Whenever the voters of a school district authorize the issuance of bonds and/or the levying of excess taxes in an amount sufficient to meet the requirements of RCW 28A.525.162 respecting eligibility for state funding assistance in providing school facilities, the taxable valuation of the district and the state funding assistance percentage ((~~of state assistance~~)) in providing school facilities prevailing at the time of such authorization shall be the valuation and the percentage used for the purpose of determining the eligibility of the district for an allotment of state funds and the amount or amounts of such allotments, respectively, for all projects for which the voters authorize capital funds as

aforesaid, unless a higher state funding assistance percentage ((~~of state assistance~~)) prevails on the date that state funds for assistance in financing a project are allotted by the superintendent of public instruction in which case the percentage prevailing on the date of allotment by the superintendent of funds for each project shall govern: PROVIDED, That if the superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel, determines at any time that there has been undue or unwarranted delay on the part of school district authorities in advancing a project to the point of readiness for an allotment of state funds, the taxable valuation of the school district and the state funding assistance percentage ((~~of state assistance~~)) prevailing on the date that the allotment is made shall be used for the purposes aforesaid: PROVIDED, FURTHER, That the date specified in this section as applicable in determining the eligibility of an individual school district for state funding assistance and in determining the amount of such assistance shall be applicable also to cases where it is necessary in administering chapter 28A.540 RCW to determine eligibility for and the amount of state funding assistance for a group of school districts considered as a single school administrative unit.

Passed by the Senate March 6, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 17, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 130

[Substitute Senate Bill 6000]

REAL ESTATE—SELLER DISCLOSURE—HOMEOWNERS' ASSOCIATIONS

AN ACT Relating to real estate disclosure requirements regarding homeowners' associations; and amending RCW 64.06.015, 64.06.020, and 64.06.040.

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

Sec. 1. RCW 64.06.015 and 2007 c 107 s 5 are each amended to read as follows:

(1) In a transaction for the sale of unimproved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT . . . . . ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller . . . . . is/. . . . . is not occupying the property.

I. SELLER'S DISCLOSURES:

*If you answer "Yes" to a question with an asterisk (*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE

[ ] Yes	[ ] No	[ ] Don't know	A. Do you have legal authority to sell the property? If no, please explain.
[ ] Yes	[ ] No	[ ] Don't know	*B. Is title to the property subject to any of the following? (1) First right of refusal (2) Option (3) Lease or rental agreement (4) Life estate?

[ ] Yes	[ ] No	[ ] Don't know	*C. Are there any encroachments, boundary agreements, or boundary disputes?
[ ] Yes	[ ] No	[ ] Don't know	*D. Is there a private road or easement agreement for access to the property?
[ ] Yes	[ ] No	[ ] Don't know	*E. Are there any rights-of-way, easements, or access limitations that may affect the Buyer's use of the property?
[ ] Yes	[ ] No	[ ] Don't know	*F. Are there any written agreements for joint maintenance of an easement or right-of-way?
[ ] Yes	[ ] No	[ ] Don't know	*G. Is there any study, survey project, or notice that would adversely affect the property?
[ ] Yes	[ ] No	[ ] Don't know	*H. Are there any pending or existing assessments against the property?
[ ] Yes	[ ] No	[ ] Don't know	*I. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?
[ ] Yes	[ ] No	[ ] Don't know	*J. Is there a boundary survey for the property?
[ ] Yes	[ ] No	[ ] Don't know	*K. Are there any covenants, conditions, or restrictions which affect the property?
			2. WATER
			A. Household Water
[ ] Yes	[ ] No	[ ] Don't know	(1) Does the property have potable water supply?
			(2) If yes, the source of water for the property is:
			[ ] Private or publicly owned water system
			[ ] Private well serving only the property
			*[ ] Other water system
[ ] Yes	[ ] No	[ ] Don't know	*If shared, are there any written agreements?
[ ] Yes	[ ] No	[ ] Don't know	*(3) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?
[ ] Yes	[ ] No	[ ] Don't know	*(4) Are there any known problems or repairs needed?
[ ] Yes	[ ] No	[ ] Don't know	(5) Is there a connection or hook-up charge payable before the property can be connected to the water main?
[ ] Yes	[ ] No	[ ] Don't know	(6) Have you obtained a certificate of water availability from the water purveyor serving the property? (If yes, please attach a copy.)
[ ] Yes	[ ] No	[ ] Don't know	(7) Is there a water right permit, certificate, or claim associated with household water supply for the property? (If yes, please attach a copy.)
[ ] Yes	[ ] No	[ ] Don't know	(a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?
			(b) If yes, has all or any portion of the water right not been used for five or more successive years? (If yes, please explain.)
			. . . . .
[ ] Yes	[ ] No	[ ] Don't know	(c) If no or don't know, is the water withdrawn from the water source less than 5,000 gallons a day?
[ ] Yes	[ ] No	[ ] Don't know	*(8) Are there any defects in the operation of the water system (e.g., pipes, tank, pump, etc.)?
			B. Irrigation Water
[ ] Yes	[ ] No	[ ] Don't know	(1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim? (If yes, please attach a copy.)

[ ] Yes	[ ] No	[ ] Don't know	(a) If yes, has all or any portion of the water right not been used for five or more successive years?
[ ] Yes	[ ] No	[ ] Don't know	(b) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?
[ ] Yes	[ ] No	[ ] Don't know	(2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies irrigation water to the property: . . . . .
			C. Outdoor Sprinkler System
[ ] Yes	[ ] No	[ ] Don't know	(1) Is there an outdoor sprinkler system for the property?
[ ] Yes	[ ] No	[ ] Don't know	(2) If yes, are there any defects in the system?
[ ] Yes	[ ] No	[ ] Don't know	*(3) If yes, is the sprinkler system connected to irrigation water?
			3. SEWER/SEPTIC SYSTEM
			A. The property is served by:
			[ ] Public sewer system
			[ ] On-site sewage system (including pipes, tanks, drainfields, and all other component parts)
			[ ] Other disposal system, please describe: . . . . .
[ ] Yes	[ ] No	[ ] Don't know	B. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?
			C. If the property is connected to an on-site sewage system:
[ ] Yes	[ ] No	[ ] Don't know	*(1) Was a permit issued for its construction?
[ ] Yes	[ ] No	[ ] Don't know	*(2) Was it approved by the local health department or district following its construction?
[ ] Yes	[ ] No	[ ] Don't know	(3) Is the septic system a pressurized system?
[ ] Yes	[ ] No	[ ] Don't know	(4) Is the septic system a gravity system?
[ ] Yes	[ ] No	[ ] Don't know	*(5) Have there been any changes or repairs to the on-site sewage system?
[ ] Yes	[ ] No	[ ] Don't know	(6) Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain: . . . . .
[ ] Yes	[ ] No	[ ] Don't know	(7) Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? If yes, please explain: . . . . .
			4. ELECTRICAL/GAS
[ ] Yes	[ ] No	[ ] Don't know	A. Is the property served by natural gas?
[ ] Yes	[ ] No	[ ] Don't know	B. Is there a connection charge for gas?
[ ] Yes	[ ] No	[ ] Don't know	C. Is the property served by electricity?
[ ] Yes	[ ] No	[ ] Don't know	D. Is there a connection charge for electricity?
[ ] Yes	[ ] No	[ ] Don't know	E. Are there any electrical problems on the property? If yes, please explain: . . . . .
			5. FLOODING
[ ] Yes	[ ] No	[ ] Don't know	A. Are there any flooding, standing water, or drainage problems on the property or affecting access to the property? If yes, please explain: . . . . .

[ ] Yes	[ ] No	[ ] Don't know	B. Is the property located in a government designated flood zone or floodplain?
			6. SOIL STABILITY
[ ] Yes	[ ] No	[ ] Don't know	A. Are there any settlement, earth movement, slides, or similar soil problems on the property? If yes, please explain: . . . . .
[ ] Yes	[ ] No	[ ] Don't know	B. Does any part of the property contain fill dirt, waste, or other fill material? If yes, please explain: . . . . .
			7. ENVIRONMENTAL
[ ] Yes	[ ] No	[ ] Don't know	*A. Have there been any drainage problems on the property?
[ ] Yes	[ ] No	[ ] Don't know	*B. Does the property contain fill material?
[ ] Yes	[ ] No	[ ] Don't know	*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?
[ ] Yes	[ ] No	[ ] Don't know	D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?
[ ] Yes	[ ] No	[ ] Don't know	*E. Are there any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?
[ ] Yes	[ ] No	[ ] Don't know	*F. Has the property been used for commercial or industrial purposes?
[ ] Yes	[ ] No	[ ] Don't know	*G. Is there any soil or groundwater contamination?
[ ] Yes	[ ] No	[ ] Don't know	*H. Are there transmission poles, transformers, or other utility equipment installed, maintained, or buried on the property?
[ ] Yes	[ ] No	[ ] Don't know	*I. Has the property been used as a legal or illegal dumping site?
[ ] Yes	[ ] No	[ ] Don't know	*J. Has the property been used as an illegal drug manufacturing site?
[ ] Yes	[ ] No	[ ] Don't know	*K. Are there any radio towers in the area that may cause interference with telephone reception?
			8. HOMEOWNERS' ASSOCIATION/ COMMON INTERESTS
[ ] Yes	[ ] No	[ ] Don't know	A. Is there a homeowners' association? Name of association and contact information for an officer, director, employee, or other authorized agent, if any, who may provide the association's financial statements, minutes, bylaws, fining policy, and other information that is not publicly available: . . . . .
[ ] Yes	[ ] No	[ ] Don't know	B. Are there regular periodic assessments: $ . . . . . per [ ] Month [ ] Year [ ] Other . . . . .
[ ] Yes	[ ] No	[ ] Don't know	*C. Are there any pending special assessments?
[ ] Yes	[ ] No	[ ] Don't know	*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

9. OTHER FACTS

[ ] Yes	[ ] No	[ ] Don't know	A. Are there any disagreements, disputes, encroachments, or legal actions concerning the property? If yes, please explain: . . . . .
[ ] Yes	[ ] No	[ ] Don't know	B. Does the property have any plants or wildlife that are designated as species ((~~or [of]~~)) <u>of</u> concern, or listed as threatened or endangered by the government?
[ ] Yes	[ ] No	[ ] Don't know	C. Is the property classified or designated as forest land or open space? If so, specify: . . . . .
[ ] Yes	[ ] No	[ ] Don't know	D. Do you have a forest management plan? If yes, attach.
[ ] Yes	[ ] No	[ ] Don't know	E. Have any development-related permit applications been submitted to any government agencies? If so, specify: . . . . . If the answer to E is "yes," what is the status or outcome of those applications? . . . . .

10. FULL DISCLOSURE BY SELLERS

			A. Other conditions or defects:
[ ] Yes	[ ] No	[ ] Don't know	*Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE . . . . . SELLER . . . . . SELLER . . . . . .

NOTICE TO BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.

B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.

C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.

D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.

E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE . . . . . BUYER . . . . . BUYER . . . . . .

(2) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction.

Sec. 2. RCW 64.06.020 and 2007 c 107 s 4 are each amended to read as follows:

(1) In a transaction for the sale of improved residential real property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement under RCW 64.06.010, or unless the transfer is otherwise exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT . . . . . ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

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Seller . . . . . is/ . . . . . is not occupying the property.

I. SELLER'S DISCLOSURES:

*If you answer "Yes" to a question with an asterisk (*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE

[ ] Yes	[ ] No	[ ] Don't know	A. Do you have legal authority to sell the property? If no, please explain.
[ ] Yes	[ ] No	[ ] Don't know	*B. Is title to the property subject to any of the following? (1) First right of refusal (2) Option (3) Lease or rental agreement (4) Life estate?
[ ] Yes	[ ] No	[ ] Don't know	*C. Are there any encroachments, boundary agreements, or boundary disputes?
[ ] Yes	[ ] No	[ ] Don't know	*D. Is there a private road or easement agreement for access to the property?
[ ] Yes	[ ] No	[ ] Don't know	*E. Are there any rights-of-way, easements, or access limitations that may affect the Buyer's use of the property?

[ ] Yes	[ ] No	[ ] Don't know	*F. Are there any written agreements for joint maintenance of an easement or right-of-way?
[ ] Yes	[ ] No	[ ] Don't know	*G. Is there any study, survey project, or notice that would adversely affect the property?
[ ] Yes	[ ] No	[ ] Don't know	*H. Are there any pending or existing assessments against the property?
[ ] Yes	[ ] No	[ ] Don't know	*I. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?
[ ] Yes	[ ] No	[ ] Don't know	*J. Is there a boundary survey for the property?
[ ] Yes	[ ] No	[ ] Don't know	*K. Are there any covenants, conditions, or restrictions which affect the property?

2. WATER

A. Household Water

(1) The source of water for the property is:
[ ] Private or publicly owned water system
[ ] Private well serving only the subject property . . . . . .
*[ ] Other water system

[ ] Yes	[ ] No	[ ] Don't know	*If shared, are there any written agreements?
[ ] Yes	[ ] No	[ ] Don't know	*(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?
[ ] Yes	[ ] No	[ ] Don't know	*(3) Are there any known problems or repairs needed?
[ ] Yes	[ ] No	[ ] Don't know	(4) During your ownership, has the source provided an adequate year-round supply of potable water? If no, please explain.
[ ] Yes	[ ] No	[ ] Don't know	*(5) Are there any water treatment systems for the property? If yes, are they [ ]Leased [ ]Owned
[ ] Yes	[ ] No	[ ] Don't know	*(6) Are there any water rights for the property associated with its domestic water supply, such as a water right permit, certificate, or claim?
[ ] Yes	[ ] No	[ ] Don't know	(a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed?

(b) If yes, has all or any portion of the water right not been used for five or more successive years? (If yes, please explain.)
. . . . . .

B. Irrigation Water

[ ] Yes	[ ] No	[ ] Don't know	(1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim?
[ ] Yes	[ ] No	[ ] Don't know	*(a) If yes, has all or any portion of the water right not been used for five or more successive years?
[ ] Yes	[ ] No	[ ] Don't know	*(b) If so, is the certificate available? (If yes, please attach a copy.)
[ ] Yes	[ ] No	[ ] Don't know	(c) If so, has the water right permit, certificate, or claim been assigned, transferred, or changed? If so, explain:

. . . . . .

[ ] Yes [ ] No [ ] Don't know (2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies water to the property:
. . . . . .

C. Outdoor Sprinkler System

[ ] Yes [ ] No [ ] Don't know (1) Is there an outdoor sprinkler system for the property?

[ ] Yes [ ] No [ ] Don't know (2) If yes, are there any defects in the system? . . . . . .

[ ] Yes [ ] No [ ] Don't know *(3) If yes, is the sprinkler system connected to irrigation water?

3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served by:
[ ] Public sewer system,
[ ] On-site sewage system (including pipes, tanks, drainfields, and all other component parts)
[ ] Other disposal system, please describe:
. . . . . .

[ ] Yes [ ] No [ ] Don't know B. If public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.
. . . . . .

[ ] Yes [ ] No [ ] Don't know C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

D. If the property is connected to an on-site sewage system:

[ ] Yes [ ] No [ ] Don't know *(1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?

(2) When was it last pumped:
. . . . . .

[ ] Yes [ ] No [ ] Don't know *(3) Are there any defects in the operation of the on-site sewage system?

[ ] Don't know (4) When was it last inspected?
. . . . . .
By whom: . . . . . .

[ ] Don't know (5) For how many bedrooms was the on-site sewage system approved?
. . . . . bedrooms

[ ] Yes [ ] No [ ] Don't know E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? If no, please explain: .

[ ] Yes [ ] No [ ] Don't know *F. Have there been any changes or repairs to the on-site sewage system?

[ ] Yes [ ] No [ ] Don't know G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.
. . . . . .

[ ] Yes [ ] No [ ] Don't know H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? If yes, please explain.

. . . . . .

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

4. STRUCTURAL

[ ] Yes [ ] No [ ] Don't know *A. Has the roof leaked?

[ ] Yes [ ] No [ ] Don't know *B. Has the basement flooded or leaked?

[ ] Yes [ ] No [ ] Don't know *C. Have there been any conversions, additions, or remodeling?

[ ] Yes [ ] No [ ] Don't know *(1) If yes, were all building permits obtained?

[ ] Yes [ ] No [ ] Don't know *(2) If yes, were all final inspections obtained?

[ ] Yes [ ] No [ ] Don't know D. Do you know the age of the house? If yes, year of original construction:

. . . . . .

[ ] Yes [ ] No [ ] Don't know *E. Has there been any settling, slippage, or sliding of the property or its improvements?

[ ] Yes [ ] No [ ] Don't know *F. Are there any defects with the following: (If yes, please check applicable items and explain.)

❑ Foundations	❑ Decks	❑ Exterior Walls
❑ Chimneys	❑ Interior Walls	❑ Fire Alarm
❑ Doors	❑ Windows	❑ Patio
❑ Ceilings	❑ Slab Floors	❑ Driveways
❑ Pools	❑ Hot Tub	❑ Sauna
❑ Sidewalks	❑ Outbuildings	❑ Fireplaces
❑ Garage Floors	❑ Walkways	❑ Siding
❑ Other	❑ Wood Stoves	

[ ] Yes [ ] No [ ] Don't know *G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed? .

[ ] Yes [ ] No [ ] Don't know H. During your ownership, has the property had any wood destroying organism or pest infestation?

[ ] Yes [ ] No [ ] Don't know I. Is the attic insulated?

[ ] Yes [ ] No [ ] Don't know J. Is the basement insulated?

5. SYSTEMS AND FIXTURES

*A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.

[ ] Yes [ ] No [ ] Don't know Electrical system, including wiring, switches, outlets, and service

[ ] Yes [ ] No [ ] Don't know Plumbing system, including pipes, faucets, fixtures, and toilets

[ ] Yes [ ] No [ ] Don't know Hot water tank

[ ] Yes [ ] No [ ] Don't know Garbage disposal

[ ] Yes [ ] No [ ] Don't know Appliances

[ ] Yes [ ] No [ ] Don't know Sump pump

[ ] Yes [ ] No [ ] Don't know Heating and cooling systems

[ ] Yes	[ ] No	[ ] Don't know	Security system
			[ ] Owned [ ] Leased
			Other . . . . .
			*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)
[ ] Yes	[ ] No	[ ] Don't know	Security system . . . . .
[ ] Yes	[ ] No	[ ] Don't know	Tanks (type): . . . . .
[ ] Yes	[ ] No	[ ] Don't know	Satellite dish . . . . .
			Other: . . . . .
			6. HOMEOWNERS' ASSOCIATION/ COMMON INTERESTS
[ ] Yes	[ ] No	[ ] Don't know	A. Is there a Homeowners' Association? Name of Association and contact information for an officer, director, employee, or other authorized agent, if any, who may provide the association's financial statements, minutes, bylaws, fining policy, and other information that is not publicly available:
			. . . . .
[ ] Yes	[ ] No	[ ] Don't know	B. Are there regular periodic assessments: $ . . . . . per [ ] Month [ ] Year [ ] Other . . . . .
[ ] Yes	[ ] No	[ ] Don't know	*C. Are there any pending special assessments?
[ ] Yes	[ ] No	[ ] Don't know	*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?
			7. ENVIRONMENTAL
[ ] Yes	[ ] No	[ ] Don't know	*A. Have there been any drainage problems on the property?
[ ] Yes	[ ] No	[ ] Don't know	*B. Does the property contain fill material?
[ ] Yes	[ ] No	[ ] Don't know	*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?
[ ] Yes	[ ] No	[ ] Don't know	D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?
[ ] Yes	[ ] No	[ ] Don't know	*E. Are there any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?
[ ] Yes	[ ] No	[ ] Don't know	*F. Has the property been used for commercial or industrial purposes?
[ ] Yes	[ ] No	[ ] Don't know	*G. Is there any soil or groundwater contamination?
[ ] Yes	[ ] No	[ ] Don't know	*H. Are there transmission poles, transformers, or other utility equipment installed, maintained, or buried on the property?
[ ] Yes	[ ] No	[ ] Don't know	*I. Has the property been used as a legal or illegal dumping site?

[ ] Yes	[ ] No	[ ] Don't know	*J. Has the property been used as an illegal drug manufacturing site?
[ ] Yes	[ ] No	[ ] Don't know	*K. Are there any radio towers in the area that may cause interference with telephone reception?

8. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

[ ] Yes	[ ] No	[ ] Don't know	*A. Did you make any alterations to the home? If yes, please describe the alterations: . . . . .
[ ] Yes	[ ] No	[ ] Don't know	*B. Did any previous owner make any alterations to the home? If yes, please describe the alterations: . . . . .
[ ] Yes	[ ] No	[ ] Don't know	*C. If alterations were made, were permits or variances for these alterations obtained?

9. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

[ ] Yes	[ ] No	[ ] Don't know	*Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE . . . . . SELLER . . . . . SELLER . . . . . .

NOTICE TO THE BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.

B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.

C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.

D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.

E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE . . . . . BUYER . . . . . BUYER . . . . . .

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction.

Sec. 3. RCW 64.06.040 and 1996 c 301 s 4 are each amended to read as follows:

(1) If, after the date that a seller of residential real property completes a real property transfer disclosure statement, the seller becomes aware of additional information, or an adverse change occurs which makes any of the disclosures made inaccurate, the seller shall amend the real property transfer disclosure statement, and deliver the amendment to the buyer. No amendment shall be required, however, if the seller takes whatever corrective action is necessary so that the accuracy of the disclosure is restored, or the adverse change is corrected, at least three business days prior to the closing date. Unless the corrective action is completed by the seller prior to the closing date, the buyer shall have the right to exercise one of the following two options: (a) Approving and accepting the amendment, or (b) rescinding the agreement of purchase and sale of the property within three business days after receiving the amended real property transfer disclosure statement. Acceptance or recision shall be subject to the same procedures described in RCW 64.06.030. If the closing date provided in the purchase and sale agreement is scheduled to occur within the three-business-day rescission period provided for in this section, the closing date shall be extended until the expiration of the three-business-day rescission period. The buyer shall have no right of rescission if the seller takes whatever action is necessary so that the accuracy of the disclosure is restored at least three business days prior to the closing date.

(2) In the event any act, occurrence, or agreement arising or becoming known after the closing of a residential real property transfer causes a real property transfer disclosure statement to be inaccurate in any way, the seller of such property shall have no obligation to amend the disclosure statement, and the buyer shall not have the right to rescind the transaction under this chapter.

(3) If the seller in a residential real property transfer fails or refuses to provide to the prospective buyer a real property transfer disclosure statement as required under this chapter, the prospective buyer's right of rescission under this section shall apply until the earlier of three business days after receipt of the real property transfer disclosure statement or the date the transfer has closed, unless the buyer has otherwise waived the right of rescission in writing. Closing is deemed to occur when the buyer has paid the purchase price, or down payment, and the conveyance document, including a deed or real estate contract, from the seller has been delivered and recorded. After closing, the seller's obligation to deliver the real property transfer disclosure statement and the buyer's rights and remedies under this chapter shall terminate.

(4) Failure of a homeowners' association or its officers, directors, employees, or authorized agents to provide requested information in part 8 of the disclosure statement form in RCW 64.06.015 or part 6 of the disclosure statement form in RCW 64.06.020 does not constitute a seller's failure or refusal to provide a real property transfer disclosure statement under subsection (3) of this section.

Passed by the Senate March 12, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 17, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 131

[Substitute Senate Bill 6019]

EMPLOYEE WELLNESS PROGRAMS

AN ACT Relating to employee wellness programs; and amending RCW 48.21.045, 48.44.023, and 48.46.066.

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

Sec. 1. RCW 48.21.045 and 2008 c 143 s 6 are each amended to read as follows:

(1)(a) An insurer offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude an insurer from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. An insurer offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed

under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.21.130, 48.21.140, 48.21.141, 48.21.142, 48.21.144, 48.21.146, 48.21.160 through 48.21.197, 48.21.200, 48.21.220, 48.21.225, 48.21.230, 48.21.235, 48.21.244, 48.21.250, 48.21.300, 48.21.310, or 48.21.320.

(2) Nothing in this section shall prohibit an insurer from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The insurer shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

(i) Geographic area;

(ii) Family size;

(iii) Age; and

(iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The insurer shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs. Up to a twenty percent variance may be allowed for small employers that develop and implement a wellness program or activities that directly improve employee wellness. Employers shall document program activities with the carrier and may, after three years of implementation, request a reduction in premiums based on improved employee health and wellness. While carriers may review the employer's claim history when making a determination regarding whether the employer's wellness program has improved employee health, the carrier may not use maternity or prevention services claims to deny the employer's request. Carriers may consider issues such as improved productivity or a reduction in absenteeism due to illness if submitted by the employer for consideration. Interested employers may also work with the carrier to develop a wellness program and a means to track improved employee health.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

(i) Changes to the enrollment of the small employer;

(ii) Changes to the family composition of the employee;

(iii) Changes to the health benefit plan requested by the small employer; or

(iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all small groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by an insurer in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) An insurer shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) An insurer may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) An insurer must offer coverage to all eligible employees of a small employer and their dependents. An insurer may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. An insurer may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

(7) As used in this section, "health benefit plan," "small employer," "adjusted community rate," and "wellness activities" mean the same as defined in RCW 48.43.005.

Sec. 2. RCW 48.44.023 and 2008 c 143 s 7 are each amended to read as follows:

(1)(a) A health care services contractor offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude a contractor from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A contractor offering a health benefit plan under this subsection shall clearly disclose all covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.44.225, 48.44.240, 48.44.245, 48.44.290, 48.44.300, 48.44.310, 48.44.320, 48.44.325, 48.44.330, 48.44.335, 48.44.344, 48.44.360, 48.44.400, 48.44.440, 48.44.450, and 48.44.460.

(2) Nothing in this section shall prohibit a health care service contractor from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the

commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The contractor shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

(i) Geographic area;

(ii) Family size;

(iii) Age; and

(iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The contractor shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs. Up to a twenty percent variance may be allowed for small employers that develop and implement a wellness program or activities that directly improve employee wellness. Employers shall document program activities with the carrier and may, after three years of implementation, request a reduction in premiums based on improved employee health and wellness. While carriers may review the employer's claim history when making a determination regarding whether the employer's wellness program has improved employee health, the carrier may not use maternity or prevention services claims to deny the employer's request. Carriers may consider issues such as improved productivity or a reduction in absenteeism due to illness if submitted by the employer for consideration. Interested employers may also work with the carrier to develop a wellness program and a means to track improved employee health.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

(i) Changes to the enrollment of the small employer;

(ii) Changes to the family composition of the employee;

(iii) Changes to the health benefit plan requested by the small employer; or

(iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions

of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a contractor in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A contractor shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A contractor may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) A contractor must offer coverage to all eligible employees of a small employer and their dependents. A contractor may not offer coverage to only certain individuals or dependents in a small employer group or to only part of the group. A contractor may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

Sec. 3. RCW 48.46.066 and 2008 c 143 s 8 are each amended to read as follows:

(1)(a) A health maintenance organization offering any health benefit plan to a small employer, either directly or through an association or member-governed group formed specifically for the purpose of purchasing health care, may offer and actively market to the small employer a health benefit plan featuring a limited schedule of covered health care services. Nothing in this subsection shall preclude a health maintenance organization from offering, or a small employer from purchasing, other health benefit plans that may have more comprehensive benefits than those included in the product offered under this subsection. A health maintenance organization offering a health benefit plan under this subsection shall clearly disclose all the covered benefits to the small employer in a brochure filed with the commissioner.

(b) A health benefit plan offered under this subsection shall provide coverage for hospital expenses and services rendered by a physician licensed under chapter 18.57 or 18.71 RCW but is not subject to the requirements of RCW 48.46.275, 48.46.280, 48.46.285, 48.46.350, 48.46.355, 48.46.375, 48.46.440, 48.46.480, 48.46.510, 48.46.520, and 48.46.530.

(2) Nothing in this section shall prohibit a health maintenance organization from offering, or a purchaser from seeking, health benefit plans with benefits in excess of the health benefit plan offered under subsection (1) of this section. All forms, policies, and contracts shall be submitted for approval to the commissioner, and the rates of any plan offered under this section shall be reasonable in relation to the benefits thereto.

(3) Premium rates for health benefit plans for small employers as defined in this section shall be subject to the following provisions:

(a) The health maintenance organization shall develop its rates based on an adjusted community rate and may only vary the adjusted community rate for:

(i) Geographic area;

(ii) Family size;

(iii) Age; and

(iv) Wellness activities.

(b) The adjustment for age in (a)(iii) of this subsection may not use age brackets smaller than five-year increments, which shall begin with age twenty

and end with age sixty-five. Employees under the age of twenty shall be treated as those age twenty.

(c) The health maintenance organization shall be permitted to develop separate rates for individuals age sixty-five or older for coverage for which medicare is the primary payer and coverage for which medicare is not the primary payer. Both rates shall be subject to the requirements of this subsection (3).

(d) The permitted rates for any age group shall be no more than four hundred twenty-five percent of the lowest rate for all age groups on January 1, 1996, four hundred percent on January 1, 1997, and three hundred seventy-five percent on January 1, 2000, and thereafter.

(e) A discount for wellness activities shall be permitted to reflect actuarially justified differences in utilization or cost attributed to such programs. Up to a twenty percent variance may be allowed for small employers that develop and implement a wellness program or activities that directly improve employee wellness. Employers shall document program activities with the carrier and may, after three years of implementation, request a reduction in premiums based on improved employee health and wellness. While carriers may review the employer's claim history when making a determination regarding whether the employer's wellness program has improved employee health, the carrier may not use maternity or prevention services claims to deny the employer's request. Carriers may consider issues such as improved productivity or a reduction in absenteeism due to illness if submitted by the employer for consideration. Interested employers may also work with the carrier to develop a wellness program and a means to track improved employee health.

(f) The rate charged for a health benefit plan offered under this section may not be adjusted more frequently than annually except that the premium may be changed to reflect:

(i) Changes to the enrollment of the small employer;

(ii) Changes to the family composition of the employee;

(iii) Changes to the health benefit plan requested by the small employer; or

(iv) Changes in government requirements affecting the health benefit plan.

(g) Rating factors shall produce premiums for identical groups that differ only by the amounts attributable to plan design, with the exception of discounts for health improvement programs.

(h) For the purposes of this section, a health benefit plan that contains a restricted network provision shall not be considered similar coverage to a health benefit plan that does not contain such a provision, provided that the restrictions of benefits to network providers result in substantial differences in claims costs. A carrier may develop its rates based on claims costs due to network provider reimbursement schedules or type of network. This subsection does not restrict or enhance the portability of benefits as provided in RCW 48.43.015.

(i) Adjusted community rates established under this section shall pool the medical experience of all groups purchasing coverage, including the small group participants in the health insurance partnership established in RCW 70.47A.030. However, annual rate adjustments for each small group health benefit plan may vary by up to plus or minus four percentage points from the overall adjustment of a carrier's entire small group pool, such overall adjustment to be approved by the commissioner, upon a showing by the carrier, certified by a member of the

American academy of actuaries that: (i) The variation is a result of deductible leverage, benefit design, or provider network characteristics; and (ii) for a rate renewal period, the projected weighted average of all small group benefit plans will have a revenue neutral effect on the carrier's small group pool. Variations of greater than four percentage points are subject to review by the commissioner, and must be approved or denied within sixty days of submittal. A variation that is not denied within sixty days shall be deemed approved. The commissioner must provide to the carrier a detailed actuarial justification for any denial within thirty days of the denial.

(j) For health benefit plans purchased through the health insurance partnership established in chapter 70.47A RCW:

(i) Any surcharge established pursuant to RCW 70.47A.030(2)(e) shall be applied only to health benefit plans purchased through the health insurance partnership; and

(ii) Risk adjustment or reinsurance mechanisms may be used by the health insurance partnership program to redistribute funds to carriers participating in the health insurance partnership based on differences in risk attributable to individual choice of health plans or other factors unique to health insurance partnership participation. Use of such mechanisms shall be limited to the partnership program and will not affect small group health plans offered outside the partnership.

(4) Nothing in this section shall restrict the right of employees to collectively bargain for insurance providing benefits in excess of those provided herein.

(5)(a) Except as provided in this subsection, requirements used by a health maintenance organization in determining whether to provide coverage to a small employer shall be applied uniformly among all small employers applying for coverage or receiving coverage from the carrier.

(b) A health maintenance organization shall not require a minimum participation level greater than:

(i) One hundred percent of eligible employees working for groups with three or less employees; and

(ii) Seventy-five percent of eligible employees working for groups with more than three employees.

(c) In applying minimum participation requirements with respect to a small employer, a small employer shall not consider employees or dependents who have similar existing coverage in determining whether the applicable percentage of participation is met.

(d) A health maintenance organization may not increase any requirement for minimum employee participation or modify any requirement for minimum employer contribution applicable to a small employer at any time after the small employer has been accepted for coverage.

(e) Minimum participation requirements and employer premium contribution requirements adopted by the health insurance partnership board under RCW 70.47A.110 shall apply only to the employers and employees who purchase health benefit plans through the health insurance partnership.

(6) A health maintenance organization must offer coverage to all eligible employees of a small employer and their dependents. A health maintenance organization may not offer coverage to only certain individuals or dependents in

a small employer group or to only part of the group. A health maintenance organization may not modify a health plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements or otherwise, to restrict or exclude coverage or benefits for specific diseases, medical conditions, or services otherwise covered by the plan.

Passed by the Senate March 9, 2009.
Passed by the House April 8, 2009.
Approved by the Governor April 17, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 132

[Substitute House Bill 1010]

BIOFUEL—DEFINITION

AN ACT Relating to the definition of a biofuel; and amending RCW 19.112.010 and 19.112.110.

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

Sec. 1. RCW 19.112.010 and 2007 c 309 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) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas that is used alone or in combination with gasoline or other petroleum products for use as a fuel in self-propelled motor vehicles.

(2) "Alternative fuel" means all products or energy sources used to propel motor vehicles, other than conventional gasoline, diesel, or reformulated gasoline. Alternative fuel includes, but is not limited to, liquefied petroleum gas, liquefied natural gas, compressed natural gas, biodiesel fuel, E85 motor fuel, fuels containing seventy percent or more by volume of alcohol fuel, fuels that are derived from biomass, hydrogen fuel, anhydrous ammonia fuel, nonhazardous motor fuel, or electricity, excluding onboard electric generation.

(3) "Biodiesel fuel" means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet the registration requirements for fuels and fuel additives established by the federal environmental protection agency and standards established by the American society of testing and materials.

(4) "Diesel" means special fuel as defined in RCW 82.38.020, and diesel fuel dyed in accordance with the regulations in 26 C.F.R. Sec. 48.4082-1T as of October 24, 2005.

(5) "Director" means the director of agriculture.

(6) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.

(7) "Motor fuel" means any liquid product used for the generation of power in an internal combustion engine used for the propulsion of a motor vehicle upon the highways of this state, and any biodiesel fuel. Motor fuels containing ethanol may be marketed if either (a) the base motor fuel meets the applicable

standards before the addition of the ethanol or (b) the resultant blend meets the applicable standards after the addition of the ethanol.

(8) "Nonhazardous motor fuel" means any fuel of a type distributed for use in self-propelled motor vehicles that does not contain a hazardous liquid as defined in RCW 19.122.020.

(9) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal environmental protection agency in 40 C.F.R. Part 79 (2008) and meets the requirements of American society of testing and materials specification D 975.

Sec. 2. RCW 19.112.110 and 2006 c 338 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 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 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 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 each adopt rules, in coordination with each other, for enforcing and carrying out the purposes of this section.

Passed by the House February 23, 2009.
Passed by the Senate April 9, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 133

[Engrossed House Bill 1053]
RAFFLE TICKET PRICES

AN ACT Relating to raffle ticket prices; and amending RCW 9.46.0277.

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

Sec. 1. RCW 9.46.0277 and 1995 2nd sp.s. c 4 s 1 are each amended to read as follows:

"Raffle," as used in this chapter, means a game in which tickets bearing an individual number are sold for not more than ((~~twenty-five~~)) one hundred dollars each and in which a prize or prizes are awarded on the basis of a drawing from the tickets by the person or persons conducting the game, when the game is conducted by a bona fide charitable or nonprofit organization, no person other than a bona fide member of the organization takes any part in the management or operation of the game, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting the game.

Passed by the House February 27, 2009.
Passed by the Senate April 8, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 134

[Substitute House Bill 1303]

CHILD MORTALITY REVIEWS

AN ACT Relating to child mortality review; and amending RCW 70.05.170.

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

Sec. 1. RCW 70.05.170 and 1993 c 41 s 1 are each amended to read as follows:

(1)(a) The legislature finds that the mortality rate in Washington state among infants and children less than eighteen years of age is unacceptably high, and that such mortality may be preventable. The legislature further finds that, through the performance of child mortality reviews, preventable causes of child mortality can be identified and addressed, thereby reducing the infant and child mortality in Washington state.

(b) It is the intent of the legislature to encourage the performance of child death reviews by local health departments by providing necessary legal protections to the families of children whose deaths are studied, local health department officials and employees, and health care professionals participating in child mortality review committee activities.

(2) As used in this section, "child mortality review" means a process authorized by a local health department as such department is defined in RCW 70.05.010 for examining factors that contribute to deaths of children less than eighteen years of age. The process may include a systematic review of medical, clinical, and hospital records; home interviews of parents and caretakers of children who have died; analysis of individual case information; and review of this information by a team of professionals in order to identify modifiable medical, socioeconomic, public health, behavioral, administrative, educational, and environmental factors associated with each death.

(3) Local health departments are authorized to conduct child mortality reviews. In conducting such reviews, the following provisions shall apply:

(a) All medical records, reports, and statements procured by, furnished to, or maintained by a local health department pursuant to chapter 70.02 RCW for purposes of a child mortality review are confidential insofar as the identity of an individual child and his or her adoptive or natural parents is concerned. Such records may be used solely by local health departments for the purposes of the

review. This section does not prevent a local health department from publishing statistical compilations and reports related to the child mortality review, if such compilations and reports do not identify individual cases and sources of information.

(b) Any records or documents supplied or maintained for the purposes of a child mortality review are not subject to discovery or subpoena in any administrative, civil, or criminal proceeding related to the death of a child reviewed. This provision shall not restrict or limit the discovery or subpoena from a health care provider of records or documents maintained by such health care provider in the ordinary course of business, whether or not such records or documents may have been supplied to a local health department pursuant to this section.

(c) Any summaries or analyses of records, documents, or records of interviews prepared exclusively for purposes of a child mortality review are not subject to discovery, subpoena, or introduction into evidence in any administrative, civil, or criminal proceeding related to the death of a child reviewed.

(d) No local health department official or employee, and no members of technical committees established to perform case reviews of selected child deaths may be examined in any administrative, civil, or criminal proceeding as to the existence or contents of documents assembled, prepared, or maintained for purposes of a child mortality review.

(e) This section shall not be construed to prohibit or restrict any person from reporting suspected child abuse or neglect under chapter 26.44 RCW nor to limit access to or use of any records, documents, information, or testimony in any civil or criminal action arising out of any report made pursuant to chapter 26.44 RCW.

(4) The department shall assist local health departments to collect the reports of any child mortality reviews conducted by local health departments and assist with entering the reports into a database to the extent that the data is not protected under subsection (3) of this section. Notwithstanding subsection (3) of this section, the department shall respond to any requests for data from the database to the extent permitted for health care information under chapter 70.02 RCW. In addition, the department shall provide technical assistance to local health departments and child death review coordinators conducting child mortality reviews and encourage communication among child death review teams. The department shall conduct these activities using only federal and private funding.

Passed by the House March 5, 2009.
Passed by the Senate April 9, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 135

[House Bill 1257]

DEFERRED PROSECUTION FILES—TREATMENT PLAN

AN ACT Relating to deferred prosecution files; and amending RCW 10.05.060.

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

Sec. 1. RCW 10.05.060 and 1994 c 275 s 17 are each amended to read as follows:

If the report recommends treatment, the court shall examine the treatment plan. If it approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the person's court docket showing that the person has been accepted for deferred prosecution. A copy of the treatment plan shall be ((~~attached to the docket, which shall then be removed from the regular court dockets and filed in a special court deferred prosecution file~~)) filed with the court. If the charge be one that an abstract of the docket showing the charge, the date of the violation for which the charge was made, and the date of petitioner's acceptance is required to be sent to the department of licensing, an abstract shall be sent, and the department of licensing shall make an entry of the charge and of the petitioner's acceptance for deferred prosecution on the department's driving record of the petitioner. The entry is not a conviction for purposes of Title 46 RCW. Upon receipt of the abstract of the docket, the department shall issue the petitioner a probationary license in accordance with RCW 46.20.355, and the petitioner's driver's license shall be on probationary status for five years from the date of the violation that gave rise to the charge. The department shall maintain the record for ten years from date of entry of the order granting deferred prosecution.

Passed by the House February 27, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 136

[Substitute House Bill 1271]

VETERINARY DRUGS—ADMINISTRATION AND DISPENSATION

AN ACT Relating to dispensing and administration of drugs by registered or licensed veterinary personnel; and amending RCW 18.92.013.

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

Sec. 1. RCW 18.92.013 and 2007 c 235 s 5 are each amended to read as follows:

(1) A veterinarian legally prescribing drugs may delegate to a registered veterinary medication clerk ((~~or a licensed veterinary technician~~)), while under the veterinarian's direct supervision, certain nondiscretionary functions defined by the board and used in the ((~~dispensing~~)) preparing of legend and nonlegend drugs (except controlled substances as defined in or under chapter 69.50 RCW) associated with the practice of veterinary medicine. A veterinarian legally prescribing drugs may delegate to a licensed veterinary technician, while under the veterinarian's indirect supervision, certain nondiscretionary functions defined by the board and used in the preparing of legend drugs, nonlegend drugs, and controlled substances associated with the practice of veterinary medicine. Upon final approval of the packaged prescription following a direct physical inspection of the packaged prescription for proper formulation, packaging, and

labeling by the veterinarian, the veterinarian may delegate the delivery of the prescription to a registered veterinary medication clerk or licensed veterinary technician, while under the veterinarian's indirect supervision. Dispensing of drugs by veterinarians, licensed veterinary technicians, and registered veterinary medication clerks shall meet the applicable requirements of chapters 18.64, 69.40, 69.41, and 69.50 RCW and is subject to inspection by the board of pharmacy investigators.

(2) A licensed veterinary technician may administer legend drugs under chapter 69.41 RCW and controlled substances under chapter 69.50 RCW under indirect supervision of a veterinarian.

(3) For the purposes of this section:

(a) "Direct supervision" means the veterinarian is on the premises and is quickly and easily available; and

(b) "Indirect supervision" means the veterinarian is not on the premises but has given written or oral instructions for the delegated task.

Passed by the House February 23, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 137

[House Bill 1273]

RAFFLES—CITIES, COUNTIES, TOWNS

AN ACT Relating to allowing counties, cities, and towns to conduct raffles under certain terms and conditions; and amending RCW 9.46.0209.

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

Sec. 1. RCW 9.46.0209 and 2007 c 452 s 1 are each amended to read as follows:

(1)(a) "Bona fide charitable or nonprofit organization," as used in this chapter, means:

(i) Any organization duly existing under the provisions of chapter 24.12, 24.20, or 24.28 RCW, any agricultural fair authorized under the provisions of chapters 15.76 or 36.37 RCW, or any nonprofit corporation duly existing under the provisions of chapter 24.03 RCW for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, athletic or agricultural purposes only, or any nonprofit organization, whether incorporated or otherwise, when found by the commission to be organized and operating for one or more of the aforesaid purposes only, all of which in the opinion of the commission have been organized and are operated primarily for purposes other than the operation of gambling activities authorized under this chapter; or

(ii) Any corporation which has been incorporated under Title 36 U.S.C. and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

(b) An organization defined under (a) of this subsection must:

(i) Have been organized and continuously operating for at least twelve calendar months immediately preceding making application for any license to operate a gambling activity, or the operation of any gambling activity authorized by this chapter for which no license is required;

(ii) Have not less than fifteen bona fide active members each with the right to an equal vote in the election of the officers, or board members, if any, who determine the policies of the organization in order to receive a gambling license; and

(iii) Demonstrate to the commission that it has made significant progress toward the accomplishment of the purposes of the organization during the twelve consecutive month period preceding the date of application for a license or license renewal. The fact that contributions to an organization do not qualify for charitable contribution deduction purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the internal revenue code of 1954, as amended, shall constitute prima facie evidence that the organization is not a bona fide charitable or nonprofit organization for the purposes of this section.

(c) Any person, association or organization which pays its employees, including members, compensation other than is reasonable therefor under the local prevailing wage scale shall be deemed paying compensation based in part or whole upon receipts relating to gambling activities authorized under this chapter and shall not be a bona fide charitable or nonprofit organization for the purposes of this chapter.

(2) For the purposes of RCW 9.46.0315 and 9.46.110, a bona fide nonprofit organization also includes:

(a) A credit union organized and operating under state or federal law. All revenue less prizes and expenses received from raffles conducted by credit unions must be devoted to purposes authorized under this section for charitable and nonprofit organizations; and

(b) A group of executive branch state employees that:

(i) Has requested and received revocable approval from the agency's chief executive official, or such official's designee, to conduct one or more raffles in compliance with this section;

(ii) Conducts a raffle solely to raise funds for either the state combined fund drive, created under RCW 41.04.033; an entity approved to receive funds from the state combined fund drive; or a charitable or benevolent entity, including but not limited to a person or family in need, as determined by a majority vote of the approved group of employees. No person or other entity may receive compensation in any form from the group for services rendered in support of this purpose;

(iii) Promptly provides such information about the group's receipts, expenditures, and other activities as the agency's chief executive official or designee may periodically require, and otherwise complies with this section and RCW 9.46.0315; and

(iv) Limits the participation in the raffle such that raffle tickets are sold only to, and winners are determined only from, the employees of the agency.

(3) For the purposes of RCW 9.46.0277, a bona fide nonprofit organization also includes a county, city, or town, provided that all revenue less prizes and

expenses from raffles conducted by the county, city, or town must be used for community activities or tourism promotion activities.

Passed by the House February 23, 2009.
Passed by the Senate April 9, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 138

[House Bill 1281]

VICTIM STATEMENTS—OFFENDER POSTSENTENCE RELEASE

AN ACT Relating to the rights of victims, survivors, and witnesses of crimes to be heard before the indeterminate sentence review board and clemency and pardons board; amending RCW 9.95.420, 9.95.420, 9.94A.885, and 7.69.030; adding a new section to chapter 7.69 RCW; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 7.69 RCW to read as follows:

(1) The legislature recognizes the significant concerns that many victims, survivors of victims, and witnesses of crimes have when offenders are considered for postsentence release from confinement. Therefore, it is the intent of the legislature to ensure that victims, survivors of victims, and witnesses of crimes are afforded the opportunity to make a statement that will be considered prior to the granting of postsentence release from confinement for any offender under the jurisdiction of the indeterminate sentence review board or its successor, or by the governor regarding an application for pardon or commutation of sentence.

(2) Victims, survivors of victims, and witnesses of crimes have the following rights:

(a) With respect to victims, survivors of victims, and witnesses of crimes, to present a statement to the indeterminate sentence review board or its successor, in person or by representation, via audio or videotape or other electronic means, or in writing, prior to the granting of parole or community custody release for any offender under the board's jurisdiction.

(b) With respect to victims and survivors of victims, to present a statement to the clemency and pardons board in person, via audio or videotape or other electronic means, or in writing, at any hearing conducted regarding an application for pardon or commutation of sentence.

Sec. 2. RCW 9.95.420 and 2007 c 363 s 2 are each amended to read as follows:

(1)(a) Except as provided in (c) of this subsection, before the expiration of the minimum term, as part of the end of sentence review process under RCW 72.09.340, 72.09.345, and where appropriate, 72.09.370, the department shall conduct, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(b) The board may contract for an additional, independent examination, subject to the standards in this section.

(c) If at the time the sentence is imposed by the superior court the offender's minimum term has expired or will expire within one hundred twenty days of the sentencing hearing, the department shall conduct, within ninety days of the offender's arrival at a department of corrections facility, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(2) The board shall impose the conditions and instructions provided for in RCW 9.94A.720. The board shall consider the department's recommendations and may impose conditions in addition to those recommended by the department. The board may impose or modify conditions of community custody following notice to the offender.

(3)(a) Except as provided in (b) of this subsection, no later than ninety days before expiration of the minimum term, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(b) If at the time the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival at a department of correction's facility, then no later than one hundred twenty days after the offender's arrival at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for the victims of any crimes for which the offender has been convicted to present ((~~oral, video, written, or in-person testimony to the board~~)) statements as set forth in section 1 of this act. The procedures for victim

input shall be developed by rule. To facilitate victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record are forwarded as part of the judgment and sentence.

Sec. 3. RCW 9.95.420 and 2008 c 231 s 44 are each amended to read as follows:

(1)(a) Except as provided in (c) of this subsection, before the expiration of the minimum term, as part of the end of sentence review process under RCW 72.09.340, 72.09.345, and where appropriate, 72.09.370, the department shall conduct, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(b) The board may contract for an additional, independent examination, subject to the standards in this section.

(c) If at the time the sentence is imposed by the superior court the offender's minimum term has expired or will expire within one hundred twenty days of the sentencing hearing, the department shall conduct, within ninety days of the offender's arrival at a department of corrections facility, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(2) The board shall impose the conditions and instructions provided for in RCW 9.94A.704. The board shall consider the department's recommendations and may impose conditions in addition to those recommended by the department. The board may impose or modify conditions of community custody following notice to the offender.

(3)(a) Except as provided in (b) of this subsection, no later than ninety days before expiration of the minimum term, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(b) If at the time the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival at a department of correction's facility, then no later than one hundred twenty days after the offender's arrival at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is

more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for the victims of any crimes for which the offender has been convicted to present ((~~oral, video, written, or in-person testimony to the board~~)) statements as set forth in section 1 of this act. The procedures for victim input shall be developed by rule. To facilitate victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record are forwarded as part of the judgment and sentence.

Sec. 4. RCW 9.94A.885 and 1999 c 323 s 3 are each amended to read as follows:

(1) The clemency and pardons board shall receive petitions from individuals, organizations, and the department for review and commutation of sentences and pardoning of offenders in extraordinary cases, and shall make recommendations thereon to the governor.

(2) The board shall receive petitions from individuals or organizations for the restoration of civil rights lost by operation of state law as a result of convictions for federal offenses or out-of-state felonies. The board may issue certificates of restoration limited to the elective rights to vote and to engage in political office. Any certifications granted by the board must be filed with the secretary of state to be effective. In all other cases, the board shall make recommendations to the governor.

(3) The board shall not recommend that the governor grant clemency under subsection (1) of this section until a public hearing has been held on the petition. The prosecuting attorney of the county where the conviction was obtained shall be notified at least thirty days prior to the scheduled hearing that a petition has been filed and the date and place at which the hearing on the petition will be held. The board may waive the thirty-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. A copy of the petition shall be sent to the prosecuting attorney. The prosecuting attorney shall make reasonable efforts to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation, of the date and place of the hearing. Information regarding victims, survivors of victims, or witnesses receiving this notice are confidential and shall not be available to the offender. The board shall consider ((~~written, oral, audio, or videotaped statements regarding the petition received, personally or by representation, from the individuals who receive notice pursuant to this section~~)) statements presented as set forth in section 1 of this act. This subsection is intended solely for the guidance of the board. Nothing in this section is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person.

Sec. 5. RCW 7.69.030 and 2008 c 286 s 16 are each amended to read as follows:

There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights, which apply to any criminal court and/or juvenile court proceeding:

(1) With respect to victims of violent or sex crimes, to receive, at the time of reporting the crime to law enforcement officials, a written statement of the rights of crime victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county;

(2) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved;

(3) To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

(4) To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;

(5) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;

(6) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;

(7) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;

(8) To be provided with appropriate employer intercession services to ensure that employers of victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearance;

(9) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance. Victims of domestic violence, sexual assault, or stalking, as defined in RCW 49.76.020, shall be notified of their right to reasonable leave from employment under chapter 49.76 RCW;

(10) With respect to victims of violent and sex crimes, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any

unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the crime victim;

(11) With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;

(12) With respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor;

(13) To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution;

(14) With respect to victims and survivors of victims, to present a statement personally or by representation, at the sentencing hearing for felony convictions; and

(15) With respect to victims and survivors of victims, to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment((~~; and~~

~~(16) With respect to victims and survivors of victims, to present a statement in person, via audio or videotape, in writing or by representation at any hearing conducted regarding an application for pardon or commutation of sentence~~)).

NEW SECTION. **Sec. 6.** Section 2 of this act expires August 1, 2009.

NEW SECTION. **Sec. 7.** Section 3 of this act takes effect August 1, 2009.

Passed by the House February 27, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 139

[House Bill 1324]

PEACE OFFICER CERTIFICATION—PSYCHOLOGICAL EXAMINATIONS

AN ACT Relating to psychological examinations for peace officer certification; and amending RCW 43.101.095.

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

Sec. 1. RCW 43.101.095 and 2008 c 74 s 8 are each amended to read as follows:

(1) As a condition of continuing employment as peace officers, all Washington peace officers: (a) Shall timely obtain certification as peace officers, or timely obtain certification or exemption therefrom, by meeting all requirements of RCW 43.101.200, as that section is administered under the rules of the commission, as well by meeting any additional requirements under this chapter; and (b) shall maintain the basic certification as peace officers under this chapter.

(2)(a) As a condition of continuing employment for any applicant that has been offered a conditional offer of employment as a fully commissioned peace officer or a reserve officer after July 24, 2005, including any person whose certification has lapsed as a result of a break of more than twenty-four consecutive months in the officer's service as a fully commissioned peace officer or reserve officer, the applicant shall successfully pass a psychological examination and a polygraph or similar test as administered by the county, city, or state law enforcement agency that complies with the following requirements:

(i) The psychological examination shall be administered by a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW((~~. The examination shall consist of, at a minimum, a standardized clinical test that is widely used as an objective clinical screening tool for personality and psychosocial disorders. The test that is used and the conditions under which the test is administered, scored, and interpreted must comply with accepted psychological~~)) in compliance with standards established in rules of the commission. ((~~Additional tests may be administered at the option of the employing law enforcement agency.~~))

(ii) The polygraph examination or similar assessment shall be administered by an experienced polygrapher who is a graduate of a polygraph school accredited by the American polygraph association.

(b) The employing county, city, or state law enforcement agency may require that each peace officer or reserve officer who is required to take a psychological examination and a polygraph or similar test pay a portion of the testing fee based on the actual cost of the test or four hundred dollars, whichever is less. County, city, and state law enforcement agencies may establish a payment plan if they determine that the peace officer or reserve officer does not readily have the means to pay for his or her portion of the testing fee.

(3) The commission shall certify peace officers who have satisfied, or have been exempted by statute or by rule from, the basic training requirements of RCW 43.101.200 on or before January 1, 2002. Thereafter, the commission may revoke certification pursuant to this chapter.

(4) The commission shall allow a peace officer to retain status as a certified peace officer as long as the officer: (a) Timely meets the basic law enforcement training requirements, or is exempted therefrom, in whole or in part, under RCW 43.101.200 or under rule of the commission; (b) meets or is exempted from any other requirements under this chapter as administered under the rules adopted by the commission; (c) is not denied certification by the commission under this chapter; and (d) has not had certification revoked by the commission.

(5) As a prerequisite to certification, as well as a prerequisite to pursuit of a hearing under RCW 43.101.155, a peace officer must, on a form devised or adopted by the commission, authorize the release to the commission of his or her personnel files, termination papers, criminal investigation files, or other files, papers, or information that are directly related to a certification matter or decertification matter before the commission.

(6) The commission is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with employment by the commission or peace officer certification under this chapter.

Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited.

(7) For a national criminal history records check, the commission shall require fingerprints be submitted and searched through the Washington state patrol identification and criminal history section. The Washington state patrol shall forward the fingerprints to the federal bureau of investigation.

Passed by the House February 23, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 140

[Substitute Senate Bill 5151]

COURT COMMISSIONERS—CRIMINAL CASES

AN ACT Relating to the appointment of court commissioners to assist with criminal cases; and amending RCW 2.24.010.

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

Sec. 1. RCW 2.24.010 and 1990 c 191 s 1 are each amended to read as follows:

(1) There may be appointed in each county or judicial district, by the judges of the superior court having jurisdiction therein, one or more court commissioners for said county or judicial district. Each such commissioner shall be a citizen of the United States and shall hold the office during the pleasure of the judges making the appointment.

(2)(a) There may be appointed in counties with a population of more than four hundred thousand, by the presiding judge of the superior court having jurisdiction therein, one or more attorneys to act as criminal commissioners to assist the superior court in disposing of adult criminal cases. Such criminal commissioners shall have power, authority, and jurisdiction, concurrent with the superior court and the judges thereof, in adult criminal cases, to preside over arraignments, preliminary appearances, initial extradition hearings, and noncompliance proceedings pursuant to RCW 9.94A.6333; accept pleas if authorized by local court rules; appoint counsel; make determinations of probable cause; set, amend, and review conditions of pretrial release; set bail; set trial and hearing dates; authorize continuances; and accept waivers of the right to speedy trial.

(b) The county legislative authority must approve the creation of criminal commissioner positions.

Passed by the Senate March 4, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 141

[Senate Bill 5413]

ASSAULT OF LAW ENFORCEMENT OFFICER—SPECIAL ALLEGATION—SENTENCING

AN ACT Relating to assault of a law enforcement officer or other employee of a law enforcement agency; reenacting and amending RCW 9.94A.533; adding a new section to chapter 9.94A RCW; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 9.94A RCW to read as follows:

In a criminal case where:

(1) The defendant has been convicted of assaulting 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 as provided under RCW 9A.36.031; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant intentionally committed the assault with what appears to be a firearm;

the court shall make a finding of fact of the special allegation, or if a jury trial 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 2008 c 276 s 301 and 2008 c 219 s 3 are each reenacted and 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(4);

(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(4);

(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.605. 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.

(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 (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 (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(4);

(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 section 1 of this act.

Passed by the Senate March 6, 2009.

Passed by the House April 8, 2009.

Approved by the Governor April 20, 2009.

Filed in Office of Secretary of State April 20, 2009.

CHAPTER 142

[Engrossed Senate Bill 5581]

MOTOR VEHICLES—SUNSCREENING DEVICES

AN ACT Relating to sunscreening devices; amending RCW 46.37.430; and adding a new section to chapter 46.04 RCW.

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

Sec. 1. RCW 46.37.430 and 2007 c 168 s 1 are each amended to read as follows:

(1)(a) No person may sell any ((~~new~~)) motor vehicle as specified in this title, nor may any ((~~new~~)) motor vehicle as specified in this title be registered unless such vehicle is equipped with safety glazing material of a type that meets or exceeds federal standards((~~, or if there are none, standards approved by the Washington state patrol~~)) under 49 C.F.R. Sec. 571.205.

(b) The foregoing provisions apply to all passenger-type motor vehicles, including passenger buses and school buses, but in respect to trucks, including truck tractors, the requirements as to safety glazing material apply to all glazing material used in doors, windows, and windshields in the drivers' compartments of such vehicles except as provided by subsection (4) of this section.

(c) The safety glazing material that is manufactured and installed in accordance with federal standards shall not be etched or otherwise permanently altered if the safety glazing material is installed in the windshield or any other window located in the motor vehicle passenger compartment, except for the etching of the vehicle identification number if:

(i) The maximum height of the letters or numbers do not exceed one-half inch; and

(ii) The etched vehicle identification number is not located in a position that interferes with the vision of any occupant of the motor vehicle.

(2) ((~~The term~~)) For the purposes of this section:

(a) "Light transmission" means the ratio of the amount of total visible light, expressed in percentages, that is allowed to pass through the sunscreening or coloring material to the amount of total visible light falling on the motor vehicle window.

(b) "Net film screening" means the total sunscreening or coloring material applied to the window that includes both the material applied by the manufacturer during the safety glazing and any film sunscreening or coloring material applied after the vehicle is manufactured.

(c) "Reflectance" means the ratio of the amount of total light, expressed in percentages, that is reflected outward by the sunscreening or coloring material to the amount of total light falling on the motor vehicle window.

(d) "Safety glazing materials" means glazing materials so constructed, treated, or combined with other materials as to reduce substantially, in comparison with ordinary sheet glass or plate glass, the likelihood of injury to persons by objects from exterior sources or by these safety glazing materials when they may be cracked or broken.

(3) The director of licensing shall not register any motor vehicle which is subject to the provisions of this section unless it is equipped with an approved type of safety glazing material, and he or she shall suspend the registration of

any motor vehicle so subject to this section which the director finds is not so equipped until it is made to conform to the requirements of this section.

(4) No person may sell or offer for sale, nor may any person operate a motor vehicle registered in this state which is equipped with, any camper manufactured after May 23, 1969, unless such camper is equipped with safety glazing material of a type conforming to rules adopted ((~~by the state patrol~~)) under 49 C.F.R. Sec. 571.205 wherever glazing materials are used in outside windows and doors.

(5) No film sunscreening or coloring material that reduces light transmittance to any degree may be applied to the surface of the safety glazing material in a motor vehicle unless it meets the following standards for such material:

(a) The maximum level of net film sunscreening ((~~material~~)) to be applied to any window, except the windshield, shall have a total reflectance of thirty-five percent or less, ((~~plus or minus three percent,~~)) and a light transmission of ((~~thirty-five~~)) twenty-four percent or more, ((~~plus or minus three percent, when measured against clear glass resulting in a minimum of twenty-four percent light transmission on AS-2 glazing~~)) where the vehicle is equipped with outside rearview mirrors on both the right and left. Installation of more than a single sheet of film sunscreening material to any window is prohibited. ((~~The same maximum levels of film sunscreen material may be applied to windows to the immediate right and left of the driver on~~))

(b) Hearses, collector vehicles, limousines and passenger buses used to transport persons for compensation, ambulances, rescue squad vehicles, any other emergency medical vehicle licensed under RCW 18.73.130 that is used to transport patients, and any vehicle((~~s~~)) identified by the manufacturer as ((~~multi-use, multipurpose, or other similar designation. All windows to the rear of the driver on such vehicles~~)) a truck, motor home, or multipurpose passenger vehicle as defined in 49 C.F.R. Sec. 571.3, may have net film sunscreening ((~~material~~)) applied on any window to the rear of the driver that has less than ((~~thirty-five~~)) twenty-four percent light transmittance, if the light reflectance is thirty-five percent or less and the vehicle is equipped with outside rearview mirrors on both the right and left.

(c) A person or business tinting windows for profit who tints windows within restricted areas of the glazing system shall supply a sticker to be affixed to the driver's door post, in the area adjacent to the manufacturer's identification tag. Installation of this sticker certifies that the glazing application meets this chapter's standards for light transmission, reflectance, and placement requirements. Stickers must be no smaller than three-quarters of an inch by one and one-half inches, and no larger than two inches by two and one-half inches. The stickers must be of sufficient quality to endure exposure to harsh climate conditions. The business name and state tax identification number of the installer must be clearly visible on the sticker.

((~~(b)~~)) (d) A greater degree of light reduction is permitted on all windows and the top six inches of windshields of a vehicle operated by or carrying as a passenger a person who possesses a written verification from a licensed physician that the operator or passenger must be protected from exposure to sunlight for physical or medical reasons.

((~~(c) Windshield application.~~)) (e) A greater degree of light reduction is permitted ((~~on the top six-inch area of a vehicle's~~)) along the top edge of the

windshield as long as the product is transparent and does not extend into the AS-1 portion of the windshield or extend more than six inches from the top of the windshield. Clear film sunscreening material that reduces or eliminates ultraviolet light may be applied to windshields.

((~~(d)~~)) (f) When film sunscreening material is applied to any window except the windshield, outside mirrors on both the left and right sides shall be located so as to reflect to the driver a view of the roadway, through each mirror, a distance of at least two hundred feet to the rear of the vehicle.

((~~(e)~~)) (g) The following types of film sunscreening material are not permitted:

(i) Mirror finish products;

(ii) Red, gold, yellow, or black material; or

(iii) Film sunscreening material that is in liquid preapplication form and brushed or sprayed on.

((~~Nothing in this section prohibits~~))

(6) Subsection (5) of this section does not prohibit:

(a) The use of shaded or heat-absorbing safety glazing material in which the shading or heat-absorbing characteristics have been applied at the time of manufacture of the safety glazing material and which meet federal standards ((~~and the standards of the state patrol~~)) for such safety glazing materials.

((~~(6)~~)) (b) The use and placement of federal, state, or local certificates or decals on any window as required by applicable laws or regulations. However, any such certificate or decal must be of a size and placed on the motor vehicle so as not to impair the ability of the driver to safely operate the motor vehicle.

(c) Sunscreening devices to be applied to any window behind the driver provided that the devices reduce the driver's area of vision uniformly and by no more than fifty percent, as measured on a horizontal plane. If sunscreening devices are applied to the rear window, the vehicle must be equipped with outside rearview mirrors on both the left and right.

(d) Recreational products, such as toys, cartoon characters, stuffed animals, signs, and any other vision-reducing article or material to be applied to or placed in windows behind the driver provided that they do not interfere, in their size or position, with the driver's ability to see other vehicles, persons, or objects.

(7) It is a traffic infraction for any person to operate a vehicle for use on the public highways of this state, if the vehicle is equipped with film sunscreening or coloring material in violation of this section.

((~~(7)~~)) (8) Owners of vehicles with film sunscreening material applied to windows to the rear of the driver, prior to June 7, 1990, must comply with the requirements of this section and RCW 46.37.435 by July 1, 1993.

((~~(8)~~)) (9) The side and rear windows of law enforcement vehicles are exempt from the requirements of subsection (5) of this section. However, when law enforcement vehicles are sold to private individuals the film sunscreening or coloring material must comply with the requirements of subsection (5) of this section or documentation must be provided to the buyer stating that the vehicle windows must comply with the requirements of subsection (5) of this section before operation of the vehicle.

NEW SECTION. **Sec. 2.** A new section is added to chapter 46.04 RCW to read as follows:

"Collector vehicle" means any motor vehicle that is more than thirty years old.

Passed by the Senate March 3, 2009.
Passed by the House April 8, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 143

[Substitute Senate Bill 5677]

DAIRY NUTRIENT MANAGEMENT PROGRAM

AN ACT Relating to the dairy nutrient management program; amending RCW 90.64.010; adding a new section to chapter 90.64 RCW; repealing RCW 90.64.015, 90.64.140, and 90.64.160; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 90.64 RCW to read as follows:

The director of agriculture may enter at all reasonable times in or upon dairy farms for the purpose of inspecting and investigating conditions relating to the pollution of any waters of the state.

If the director of agriculture or the director's duly appointed agent is denied access to a dairy farm, he or she may apply to a court of competent jurisdiction for a search warrant authorizing access to the property and facilities at a reasonable time for purposes of conducting tests and inspections, taking samples, and examining records. To show that access is denied, the director of agriculture shall file with the court an affidavit or declarations containing a description of his or her attempts to notify and locate the owner or the owner's agent and to secure consent. Upon application, the court may issue a search warrant for the purposes requested.

Sec. 2. RCW 90.64.010 and 1998 c 262 s 2 are each amended to read as follows:

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

(1) "Advisory and oversight committee" means a balanced committee of agency, dairy farm, and interest group representatives convened to provide oversight and direction to the dairy nutrient management program.

(2) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(3) "Catastrophic" means a tornado, hurricane, earthquake, flood, or other extreme condition that causes an overflow from a required waste retention structure.

(4) "Certification" means:

(a) The acknowledgment by a local conservation district that a dairy producer has constructed or otherwise put in place the elements necessary to implement his or her dairy nutrient management plan; and

(b) The acknowledgment by a dairy producer that he or she is managing dairy nutrients as specified in his or her approved dairy nutrient management plan.

(5) "Chronic" means a series of wet weather events that precludes the proper operation of a dairy nutrient management system that is designed for the current herd size.

(6) "Conservation commission" or "commission" means the conservation commission under chapter 89.08 RCW.

(7) "Conservation districts" or "district" means a subdivision of state government organized under chapter 89.08 RCW.

(8) "Concentrated dairy animal feeding operation" means a dairy animal feeding operation subject to regulation under this chapter which the director designates under RCW 90.64.020 or meets the following criteria:

(a) Has more than seven hundred mature dairy cows, whether milked or dry cows, that are confined; or

(b) Has more than two hundred head of mature dairy cattle, whether milked or dry cows, that are confined and either:

(i) From which pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or

(ii) From which pollutants are discharged directly into surface or ground waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(9) "Dairy animal feeding operation" means a lot or facility where the following conditions are met:

(a) Dairy animals that have been, are, or will be stabled or confined and fed for a total of forty-five days or more in any twelve-month period; and

(b) Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more dairy animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single dairy animal feeding operation if they adjoin each other or if they use a common area for land application of wastes.

(10) "Dairy farm" means any farm that is licensed to produce milk under chapter 15.36 RCW.

(11) "Dairy nutrient" means any organic waste produced by dairy cows or a dairy farm operation.

(12) "Dairy nutrient management plan" means a plan meeting the requirements established under RCW 90.64.026.

(13) ((~~"Dairy nutrient management technical assistance team" means one or more professional engineers and local conservation district employees convened to serve one of four distinct geographic areas in the state.~~

~~(14)~~)) "Dairy producer" means a person who owns or operates a dairy farm.

(((~~(15)~~))) (14) "Department" means the department of ecology under chapter 43.21A RCW.

(((~~(16)~~))) (15) "Director" means the director of the department of ecology, or his or her designee.

(((~~(17)~~))) (16) "Upset" means an exceptional incident in which there is an unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the dairy. An upset does not include noncompliance to the extent caused by operational

error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(((~~(18)~~))) (17) "Violation" means the following acts or omissions:

(a) A discharge of pollutants into the waters of the state, except those discharges that are due to a chronic or catastrophic event, or to an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40 C.F.R. Sec. 122.41, and that occur when:

(i) A dairy producer has a current national pollutant discharge elimination system permit with a wastewater system designed, operated, and maintained for the current herd size and that contains all process-generated wastewater plus average annual precipitation minus evaporation plus contaminated storm water runoff from a twenty-five year, twenty-four hour rainfall event for that specific location, and the dairy producer has complied with all permit conditions, including dairy nutrient management plan conditions for appropriate land application practices; or

(ii) A dairy producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a dairy nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the dairy producer's current herd size, and is approved and certified under RCW 90.64.026;

(b) Failure to register as required under RCW 90.64.017; ((~~or~~))

(c)(i) Until July 1, 2011, failure to keep for a period of three years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates, unless otherwise required by law; and

(ii) Beginning July 1, 2011, failure to keep for a period of five years all records necessary to show that applications of nutrients to the land were within acceptable agronomic rates;

(d) The lack of an approved dairy nutrient management plan by July 1, 2002; or

(((~~(d)~~))) (e) The lack of a certified dairy nutrient management plan for a dairy farm after December 31, 2003.

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

(1) RCW 90.64.015 (Environmental excellence program agreements—Effect on chapter) and 1997 c 381 s 29;

(2) RCW 90.64.140 (Technical assistance teams—Standards and specifications for dairy nutrient management plans) and 1998 c 262 s 10; and

(3) RCW 90.64.160 (Grants for dairy producers—Statement of environmental benefits—Development of outcome-focused performance measures) and 2001 c 227 s 4.

Passed by the Senate March 9, 2009.

Passed by the House April 8, 2009.

Approved by the Governor April 20, 2009.

Filed in Office of Secretary of State April 20, 2009.

CHAPTER 144

[Substitute Senate Bill 5705]

SPECIAL FLOOD CONTROL DISTRICTS—VOTING RIGHTS

AN ACT Relating to voting rights in special districts; amending RCW 85.38.105 and 29A.04.330; and adding a new section to chapter 85.38 RCW.

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

Sec. 1. RCW 85.38.105 and 1991 c 349 s 2 are each amended to read as follows:

(1) The owner of land located in a special district who is a qualified voter of the special district shall receive two votes at any election. This section does not apply to special flood control districts consisting of three or more counties.

(2) If multiple undivided interests, other than community property interests, exist in a lot or parcel and no person owns a majority undivided interest, the owners of undivided interests at least equal to a majority interest may designate in writing:

(a) Which owner is eligible to vote and may cast two votes; or

(b) Which two owners are eligible to vote and may cast one vote each.

(3) If land is owned as community property, each spouse is entitled to one vote if both spouses otherwise qualify to vote, unless one spouse designates in writing that the other spouse may cast both votes.

(4) A corporation, partnership, or governmental entity shall designate:

(a) A natural person to cast its two votes; or

(b) Two natural persons to each cast one of its votes.

(5) Except as provided in RCW 85.08.025 and 86.09.377, no owner of land may cast more than two votes or have more than two votes cast for him or her in a special district election.

NEW SECTION. **Sec. 2.** A new section is added to chapter 85.38 RCW to read as follows:

All registered voters within a special flood control district consisting of three or more counties are qualified voters in special flood control district elections.

Sec. 3. RCW 29A.04.330 and 2006 c 344 s 3 are each amended to read as follows:

(1) All city, town, and district general elections shall be held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd-numbered years.

This section shall not apply to:

(a) Elections for the recall of any elective public officer;

(b) Public utility districts, conservation districts, or district elections at which the ownership of property within those districts is a prerequisite to voting, all of which elections shall be held at the times prescribed in the laws specifically applicable thereto;

(c) Consolidation proposals as provided for in RCW 28A.315.235 and nonhigh capital fund aid proposals as provided for in chapter 28A.540 RCW;

(d) Special flood control districts consisting of three or more counties.

(2) The county auditor, as ex officio supervisor of elections, upon request in the form of a resolution of the governing body of a city, town, or district, presented to the auditor prior to the proposed election date, may call a special

election in such city, town, or district, and for the purpose of such special election he or she may combine, unite, or divide precincts. Except as provided in subsection ((~~(3)~~)) (4) of this section, such a special election shall be held on one of the following dates as decided by the governing body:

(a) The first Tuesday after the first Monday in February;

(b) The second Tuesday in March;

(c) The fourth Tuesday in April;

(d) The third Tuesday in May;

(e) The day of the primary election as specified by RCW 29A.04.311; or

(f) The first Tuesday after the first Monday in November.

(3) A resolution calling for a special election on a date set forth in subsection (2)(a) through (d) of this section must be presented to the county auditor at least fifty-two days prior to the election date. A resolution calling for a special election on a date set forth in subsection (2)(e) or (f) of this section must be presented to the county auditor at least eighty-four days prior to the election date.

(4) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29A.56 RCW, the date on which a special election may be called under subsection (2) of this section during the month of that primary is the date of the presidential primary.

(5) In addition to subsection (2)(a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God, except that no special election may be held between the first day for candidates to file for public office and the last day to certify the returns of the general election other than as provided in subsection (2)(e) and (f) of this section. Such special election shall be conducted and notice thereof given in the manner provided by law.

(6) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections.

Passed by the Senate March 11, 2009.
Passed by the House April 8, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 145

[Substitute Senate Bill 5839]
IRRIGATION DISTRICTS—ADMINISTRATION

AN ACT Relating to the administration of irrigation districts; amending RCW 58.17.310, 87.03.460, 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:

Sec. 1. RCW 58.17.310 and 1990 c 194 s 1 are each amended to read as follows:

(1) Whenever a city, town, or county receives an application for the approval of a plat of a subdivision that lies in whole or in part in an irrigation

district organized pursuant to chapter 87.03 RCW, the responsible administrator shall give written notice of the application, including a legal description of the short subdivision and a location map, to the irrigation district. The irrigation district shall, after receiving the notice, submit to the responsible administrator who furnished the notice a statement with any information or conditions for approval that the irrigation district deems to be necessary regarding the proposed division's effect upon the structural integrity, including lateral support, of the irrigation district facilities, other risk exposures, and the safety of the public and irrigation district.

(2) In addition to any other requirements imposed by the provisions of this chapter, the legislative authority of any city, town, or county shall not approve a short plat or final plat, as defined in RCW 58.17.020, for any subdivision, short subdivision, lot, tract, parcel, or site which lies in whole or in part in an irrigation district organized pursuant to chapter 87.03 RCW unless there has been provided an irrigation water right-of-way for each parcel of land in such district. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site lies within land within the district classified as irrigable, completed irrigation water distribution facilities for such land may be required by the irrigation district by resolution, bylaw, or rule of general applicability as a condition for approval of the short plat or final plat by the legislative authority of the city, town, or county. Rights-of-way shall be evidenced by the respective plats submitted for final approval to the appropriate legislative authority. In addition, if the subdivision, short subdivision, lot, tract, parcel, or site to be platted is wholly or partially within an irrigation district of two hundred thousand acres or more and has been previously platted by the United States bureau of reclamation as a farm unit in the district, the legislative authority shall not approve for such land a short plat or final plat as defined in RCW 58.17.020 without the approval of the irrigation district and the administrator or manager of the project of the bureau of reclamation, or its successor agency, within which that district lies. Compliance with the requirements of this section together with all other applicable provisions of this chapter shall be a prerequisite, within the expressed purpose of this chapter, to any sale, lease, or development of land in this state.

Sec. 2. RCW 87.03.460 and 2007 c 469 s 13 are each amended to read as follows:

(1) In addition to their reasonable expenses in accordance with chapter 42.24 RCW, the directors shall each receive ((~~an amount for attending meetings and while performing other services for the district. The amount shall be fixed by resolution and entered in the minutes of the proceedings of the board. It shall not exceed~~)) ninety dollars for each day or portion thereof spent by a director for such actual attendance at official meetings of the district, or in performance of other official services or duties on behalf of the district. The total amount of such additional compensation received by a director may not exceed eight thousand six hundred forty dollars in a calendar year. The board shall fix the compensation of the secretary and all other employees.

(2) Any director 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 secretary as provided in this section. The waiver, to be effective, must be filed any time after the director's election

and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

(3) 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 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.

(4) A person holding office as commissioner for two or more special purpose districts shall 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.

Sec. 3. RCW 89.12.050 and 1963 c 3 s 2 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:

((~~(1)~~)) (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.

((~~(2)~~)) (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.

((~~(3)~~)) (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.

((~~(4)~~)) (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.

NEW SECTION. **Sec. 4.** A new section is added to chapter 87.03 RCW to read as follows:

(1) An irrigation district may enter into any contract or agreement with, or form a separate legal entity with, one or more of the entities or utilities specified in subsection (3) of this section for any of the following purposes:

(a) Purchasing and selling electric power; and

(b) Developing or owning, or both, electric power generating or transmitting facilities, or both, including, but not limited to, facilities for generating or transmitting electric power generated by wind.

(2) The contract or agreement may provide:

(a) For purchasing the capability of a project to produce or transmit electric power, in addition to actual output of a project;

(b) For making payments whether or not a project is completed, operative, or operating, and notwithstanding the suspension, interruption, interference, reduction, or curtailment of output or use of a project or the use, power, and energy contracted for or agreed to;

(c) That payments are not subject to reduction, whether by offset or otherwise; and

(d) That performance is not conditioned upon performance or nonperformance of any party or entity.

(3) Pursuant to authority granted under this section, irrigation districts may contract or enter into agreements with one or more:

(a) Agencies of the United States government;

(b) States;

(c) Municipalities;

(d) Public utility districts;

(e) Irrigation districts;

(f) Joint operating agencies;

(g) Rural electric cooperatives;

(h) Mutual corporations or associations;

(i) Investor-owned utilities; or

(j) Associations or legal entities composed of any such entities or utilities.

Passed by the Senate March 7, 2009.
Passed by the House April 8, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 146

[Substitute Senate Bill 5987]

DEPARTMENT OF CORRECTIONS—TRAINING

AN ACT Relating to department of corrections training; amending RCW 43.101.220; adding a new section to chapter 43.10 RCW; 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 that all corrections personnel employed by the Washington department of corrections are prepared

to carry out the demands of their position that they are likely to encounter during their daily duties. The protection of the public, department employees, and inmates are a primary reason to ensure that everyone is adequately trained and knowledgeable in routine and emergency procedures.

To best carry out this mission it is necessary for the Washington state department of corrections to have the authority, discretion, and ability to design and conduct mandatory training that best meets the needs of its changing offender population.

Sec. 2. RCW 43.101.220 and 2007 c 382 s 1 are each amended to read as follows:

(1) The corrections personnel of the state and all counties and municipal corporations initially employed on or after January 1, 1982, shall engage in basic corrections training which complies with standards adopted by the commission. The training shall be successfully completed during the first six months of employment of the personnel, unless otherwise extended or waived by the commission, and shall be requisite to the continuation of employment.

(2) The commission shall provide the training required in this section, together with facilities, supplies, materials, and the room and board for noncommuting attendees.

(3)(a) Subsections (1) and (2) of this section do not apply to the Washington state department of corrections prisons division. The Washington state department of corrections is responsible for identifying training standards, designing curricula and programs, and providing the training for those corrections personnel employed by it. In doing so, the secretary of the department of corrections shall consult with staff development experts and correctional professionals both inside and outside of the agency, to include soliciting input from labor organizations.

(b) The commission and the department of corrections share the responsibility of developing and defining training standards and providing training for community corrections officers employed within the community corrections division of the department of corrections.

NEW SECTION. **Sec. 3.** A new section is added to chapter 43.10 RCW to read as follows:

(1) All new corrections personnel employed by the Washington state department of corrections shall, within a period to be determined by the secretary of the department of corrections, successfully complete core training requirements prescribed or obtain a waiver or extension of the core training requirements from the secretary.

(2) Within a period to be determined by the secretary of the Washington state department of corrections after completion of the core training requirements of this section, corrections personnel employed by the department shall successfully complete all remaining requirements for career level certification prescribed by the secretary applicable to their position or rank, or obtain a waiver or extension of the career level training requirements from the secretary.

(3) The secretary of the department of corrections is responsible for assuring that the training needs of the corrections personnel are met by the department's training program. Once a year, the secretary is responsible for conducting an

assessment of the training programs for the corrections personnel employed by the department.

Passed by the Senate March 10, 2009.
Passed by the House April 7, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 147

[Senate Bill 5989]

GREENHOUSE GAS EMISSIONS PERFORMANCE STANDARD

AN ACT Relating to the greenhouse gas emissions performance standard under chapter 80.80 RCW; and amending RCW 80.80.060.

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

Sec. 1. RCW 80.80.060 and 2007 c 307 s 8 are each amended to read as follows:

(1) No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040.

(2) In order to enforce the requirements of this chapter, the commission shall review in a general rate case or as provided in subsection (5) of this section any long-term financial commitment entered into by an electrical company after June 30, 2008, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040.

(3) In determining whether a long-term financial commitment is for baseload electric generation, the commission shall consider the design of the power plant and its intended use, based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the commission determines is relevant under the circumstances.

(4) Upon application by an electric utility, the commission may provide a case-by-case exemption from the greenhouse gases emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) Upon application by an electrical company, the commission shall determine whether the company's proposed decision to acquire electric generation or enter into a power purchase agreement for electricity complies with the greenhouse gases emissions performance standard established under RCW 80.80.040((~~, whether the company has a need for the resource, and whether the specific resource selected is appropriate. The commission shall take into consideration factors such as the company's forecasted loads, need for energy, power plant technology, expected costs, and other associated investment decisions~~)). The commission shall not decide in a proceeding under this subsection (5) issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for

decision in a general rate case or other proceeding for recovery of the resource or contract costs. ((~~A proceeding under this subsection (5) shall be conducted pursuant to chapter 34.05 RCW (part IV). The commission shall adopt rules to provide that the schedule for a proceeding under this subsection takes into account both (a) the needs of the parties to the proposed resource acquisition or power purchase agreement for timely decisions that allow transactions to be completed; and (b) the procedural rights to be provided to parties in chapter 34.05 RCW (part IV), including intervention, discovery, briefing, and hearing.~~))

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with ((~~the~~)) a long-term financial commitment, including operating and maintenance costs, depreciation, taxes, and cost of invested capital. The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs. For the purpose of this subsection (6) only, the term "long-term financial commitment" also includes an electric company's ownership or power purchase agreement with a term of five or more years associated with an eligible renewable resource as defined in RCW 19.285.030.

(7) The commission shall consult with the department to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040. The department shall report to the commission whether baseload electric generation will comply with the greenhouse gases emissions performance standard for the duration of the period the baseload electric generation is supplied to the electrical company.

(8) The commission shall adopt rules for the enforcement of this section with respect to electrical companies and adopt procedural rules for approving costs incurred by an electrical company under subsection (4) of this section.

(9) The commission shall adopt rules necessary to implement this section by December 31, 2008.

Passed by the Senate March 2, 2009.
Passed by the House April 8, 2009.
Approved by the Governor April 20, 2009.
Filed in Office of Secretary of State April 20, 2009.

CHAPTER 148

[House Bill 1492]

INDEPENDENT YOUTH HOUSING PROGRAM

AN ACT Relating to the independent youth housing program; and amending RCW 43.63A.305 and 43.63A.307.

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

Sec. 1. RCW 43.63A.305 and 2007 c 316 s 3 are each amended to read as follows:

(1) The independent youth housing program is created in the department to provide housing stipends to eligible youth to be used for independent housing. In developing a plan for the design, implementation, and operation of the independent youth housing program, the department shall:

(a) Adopt policies, requirements, and procedures necessary to administer the program;

(b) Contract with one or more eligible organizations described under RCW 43.185A.040 to provide services and conduct administrative activities as described in subsection (3) of this section;

(c) Establish eligibility criteria for youth to participate in the independent youth housing program, giving priority to youth who have been dependents of the state for at least one year;

(d) Refer interested youth to the designated subcontractor organization administering the program in the area in which the youth intends to reside;

(e) Develop a method for determining the amount of the housing stipend, first and last month's rent, and security deposit, where applicable, to be dedicated to participating youth. The method for determining a housing stipend must take into account a youth's age, the youth's total income from all sources, the fair market rent for the area in which the youth lives or intends to live, and a variety of possible living situations for the youth. The amount of housing stipends must be adjusted, by a method and formula established by the department, to promote the successful transition for youth to complete housing self-sufficiency over time;

(f) Ensure that the independent youth housing program is integrated and aligned with other state rental assistance and case management programs operated by the department, as well as case management and supportive services programs, including the independent living program, the transitional living program, and other related programs offered by the department of social and health services; and

(g) Consult with the department of social and health services and other stakeholders involved with dependent youth, homeless youth, and homeless young adults, as appropriate.

(2) The department of social and health services shall collaborate with the department in implementing and operating the independent youth housing program including, but not limited to, the following:

(a) Refer potential eligible youth to the department before the youth's eighteenth birthday, if feasible, to include an indication, if known, of where the youth plans to reside after aging out of foster care;

(b) Provide information to all youth aged fifteen or older, who are dependents of the state under chapter 13.34 RCW, about the independent youth housing program, encouraging dependents nearing their eighteenth birthday to consider applying for enrollment in the program;

(c) Encourage organizations participating in the independent living program and the transitional living program to collaborate with independent youth housing program providers whenever possible to capitalize on resources and provide the greatest amount and variety of services to eligible youth;

(d) Annually provide to the department data reflecting changes in the percentage of youth aging out of the state dependency system each year who are eligible for state assistance, as well as any other data and performance measures that may assist the department to measure program success; and

(e) Annually, beginning by December 31, 2007, provide to the appropriate committees of the legislature and the interagency council on homelessness as described under RCW 43.185C.170 recommendations of strategies to reach the goals described in RCW 43.63A.311(2)(g).

(3) Under the independent youth housing program, subcontractor organizations shall:

(a) Use moneys awarded to the organizations for housing stipends, security deposits, first and last month's rent stipends, case management program costs, and administrative costs. When subcontractor organizations determine that it is necessary to assist participating youth in accessing and maintaining independent housing, subcontractor organizations may also use moneys awarded to pay for professional mental health services and tuition costs for court-ordered classes and programs;

(i) Administrative costs for each subcontractor organization may not exceed twelve percent of the estimated total annual grant amount to the subcontractor organization;

(ii) All housing stipends, security deposits, and first and last month's rent stipends must be payable only to a landlord or housing manager of any type of independent housing;

(b) Enroll eligible youth who are referred by the department and who choose to reside in their assigned service area;

(c) Enter eligible youth program participants into the homeless client management information system as described in RCW 43.185C.180;

(d) Monitor participating youth's housing status;

(e) Evaluate participating youth's eligibility and compliance with department policies and procedures at least twice a year;

(f) Assist participating youth to develop or update an independent living plan focused on obtaining and retaining independent housing or collaborate with a case manager with whom the youth is already involved to ensure that the youth has an independent living plan;

(g) Educate participating youth on tenant rights and responsibilities;

(h) Provide support to participating youth in the form of general case management and information and referral services, when necessary, or collaborate with a case manager with whom the youth is already involved to ensure that the youth is receiving the case management and information and referral services needed;

(i) Connect participating youth, when possible, with individual development account programs, other financial literacy programs, and other programs that are designed to help young people acquire economic independence and self-sufficiency, or collaborate with a case manager with whom the youth is already involved to ensure that the youth is receiving information and referrals to these programs, when appropriate;

(j) Submit expenditure and performance reports, including information related to the performance measures in RCW 43.63A.311, to the department on a time schedule determined by the department; and

(k) Provide recommendations to the department regarding program improvements and strategies that might assist the state to reach its goals as described in RCW 43.63A.311(2)(g).

Sec. 2. RCW 43.63A.307 and 2007 c 316 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) "Department" means the department of community, trade, and economic development.

(2) "Eligible youth" means an individual who:

(a) On or after September 1, 2006, is at least eighteen, was a dependent of the state under chapter 13.34 RCW ((~~in the month~~)) at any time during the four-month period before his or her eighteenth birthday, and has not yet reached the age of twenty-three;

(b) Except as provided in RCW 43.63A.309(2)(a), has a total income from all sources, except for temporary sources that include, but are not limited to, overtime wages, bonuses, or short-term temporary assignments, that does not exceed fifty percent of the area median income;

(c) Is not receiving services under RCW 74.13.031(10)(b);

(d) Complies with other eligibility requirements the department may establish.

(3) "Fair market rent" means the fair market rent in each county of the state, as determined by the United States department of housing and urban development.

(4) "Independent housing" means a housing unit that is not owned by or located within the home of the eligible youth's biological parents or any of the eligible youth's former foster care families or dependency guardians. "Independent housing" may include a unit in a transitional or other supportive housing facility.

(5) "Individual development account" or "account" means an account established by contract between a low-income individual and a sponsoring organization for the benefit of the low-income individual and funded through periodic contributions by the low-income individual that are matched with contributions by or through the sponsoring organization.

(6) "Subcontractor organization" means an eligible organization described under RCW 43.185A.040 that contracts with the department to administer the independent youth housing program.

Passed by the House March 4, 2009.
Passed by the Senate April 8, 2009.
Approved by the Governor April 21, 2009.
Filed in Office of Secretary of State April 22, 2009.

CHAPTER 149

[Engrossed House Bill 1311]

REVERSE MORTGAGE LENDING

AN ACT Relating to reverse mortgage lending; amending RCW 31.04.015 and 31.04.115; and adding new sections to chapter 31.04 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) "FHA-approved reverse mortgage" means a "home equity conversion mortgage" or other reverse mortgage product guaranteed or insured by the federal department of housing and urban development.

(2) "Owner-occupied residence" is the borrower's residence and includes a life estate property the legal title for which is held in the name of the borrower in a reverse mortgage transaction or in the name of a trust, provided the occupant of the property is the beneficiary of that trust.

(3) "Proprietary reverse mortgage loan" is any reverse mortgage loan product that is not a home equity conversion mortgage loan or other federally guaranteed or insured loan.

(4) "Reverse mortgage broker or lender" means a licensee under the Washington state consumer loan act, chapter 31.04 RCW, or a person exempt from licensing pursuant to federal law.

(5) "Reverse mortgage loan" means a nonrecourse consumer credit obligation in which:

(a) A mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the borrower's dwelling;

(b) Any principal, interest, or shared appreciation or equity is due and payable, other than in the case of default, only after:

(i) The consumer dies;

(ii) The dwelling is transferred; or

(iii) The consumer ceases to occupy the dwelling as a dwelling; and

(c) The broker or lender is licensed under Washington state law or exempt from licensing under federal law.

NEW SECTION. **Sec. 2.** (1) For purposes of sections 1 through 9 of this act, in addition to any other requirements, licensees must comply with the following requirements before offering proprietary reverse mortgage loans:

(a) Maintain an irrevocable standby letter of credit approved by the director from a financial institution approved by the director in favor of the licensee in an amount necessary to fund all reverse mortgage loan requirements anticipated over the next twelve months for loans then on the licensee's books and those expected to be made over the next twelve months or three million dollars, whichever is greater. The initial term of the letter of credit must be at least two years.

(b) The financial institution that provides the letter of credit as required in (a) of this subsection may not be affiliated with the licensee.

(c) A licensee with a rating of either 4A1 or 5A1 from Dun & Bradstreet credit services for three consecutive years is exempt from the requirements set forth in (a) of this subsection.

(2) The licensee shall maintain a minimum capital of ten million dollars.

(3) A licensee may rely on the capital of its parent to satisfy the requirement of subsection (2) of this section. However, for any year in which a licensee seeks to so rely, it shall provide to the director a certified financial statement of the parent showing a net worth of at least one hundred million dollars as of the close of its most recent fiscal year and a binding written commitment from the

parent to the licensee to make a minimum of ten million dollars available to the licensee as a capital contribution in connection with its reverse mortgage lending program.

(4) Subsections (2) and (3) of this section do not apply to a licensee that:

(a) Only originates proprietary reverse mortgage loans the proceeds of which are fully disbursed at the loan closing; or

(b) Only originates proprietary reverse mortgage loans that are sold into the secondary market to an investor with either a 4A1 or 5A1 rating from Dun & Bradstreet credit services. A licensee that makes such a sale shall obtain a written commitment to purchase the loans from the investor prior to closing and shall arrange for the delivery of the loans to the investor within ten days of the loan closing.

NEW SECTION. **Sec. 3.** The department of financial institutions has specific authority to develop rules regarding the interpretation and implementation of this section. A proprietary reverse mortgage loan must comply with all of the following requirements:

(1) For the purposes of this section prepayment, in whole or in part, or the refinancing of a reverse mortgage loan, is permitted without penalty at any time during the term of the reverse mortgage loan. For the purposes of this section, penalty does not include any fees, payments, or other charges, not including interest, that would have otherwise been due upon the reverse mortgage being due and payable. However, when a reverse mortgage lender has paid or waived all of the usual fees or costs associated with a reverse mortgage loan, a prepayment penalty may be imposed, provided the penalty does not exceed the total amount of the usual fees or costs that were initially absorbed or waived by the reverse mortgage lender. A mortgagee may not impose a prepayment penalty under this subsection if the prepayment is caused by the occurrence of the death of the borrowers. A borrower must be provided prior written notice of any permissible prepayment penalty under this section;

(2) A reverse mortgage loan may provide for a fixed or adjustable interest rate or combination thereof, including compound interest, and may also provide for interest that is contingent on the value of the property upon execution of the loan or at maturity, or on changes in value between closing and maturity;

(3) The lender shall pay a late charge to the borrower for any late advance. If the lender does not mail or electronically transfer a scheduled monthly advance to the borrower on the first business day of the month, or within five business days of the date the lender receives the request, or such other regularly scheduled contractual date, the late charge is ten percent of the entire amount that should have been paid to the borrower for that month or as a result of that request. For each additional day that the lender fails to make the advance, the lender shall pay interest on the late advance at the interest rate stated in the loan documents. If the loan documents provide for an adjustable interest rate, the rate in effect when the late charge first accrues is used. Any late charge is paid from the lender's funds and may not be added to the unpaid principal balance. Additionally, the lender forfeits the right to interest and a monthly servicing fee for any months in which the advance has not been timely made. This section does not affect the department of financial institution's ability to impose other sanctions to protect consumers of reverse mortgage loans;

(4) The reverse mortgage loan may become due and payable upon the occurrence of any one of the following events:

(a) The home securing the loan is sold or title to the home is otherwise transferred;

(b) All borrowers cease occupying the home as a principal residence, except as provided in subsection (5) of this section; or

(c) A defaulting event occurs which is specified in the loan documents;

(5) Repayment of the reverse mortgage loan is subject to the following additional conditions:

(a) Temporary absences from the home not exceeding one hundred eighty consecutive days do not cause the mortgage to become due and payable;

(b) Extended absences from the home exceeding one hundred eighty consecutive days, but less than one year, do not cause the mortgage to become due and payable if the borrower has taken prior action that secures and protects the home in a manner satisfactory to the lender, as specified in the loan documents;

(c) The lender's right to collect reverse mortgage loan proceeds is subject to the applicable statute of limitations for written loan contracts. Notwithstanding any other provision of law, the statute of limitations shall commence on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement; and

(d) Using conspicuous, bold sixteen-point or larger type, the lender shall disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable, and that ends when repayment in full is made;

(6) The first page of any deed of trust securing a reverse mortgage loan must contain the following statement in sixteen-point boldface type: "This deed of trust secures a reverse mortgage loan;"

(7) A lender or any other party that participates in the origination of a reverse mortgage loan shall not require an applicant for a reverse mortgage to purchase an annuity, insurance, or another product as a condition of obtaining a reverse mortgage loan. A reverse mortgage lender or a broker arranging a reverse mortgage loan shall not:

(a) Offer an annuity to the borrower prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement;

(b) Refer the borrower to anyone for the purchase of an annuity prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement; or

(c) Provide marketing information or annuity sales leads to anyone regarding the prospective borrower or borrower, or receive any compensation for such an annuity sale or referral;

(8)(a) A lender or any other party that participates in the origination of a reverse mortgage loan shall maintain safeguards, acceptable to the department of financial institutions, to ensure that individuals offering reverse mortgage loans do not provide reverse mortgage borrowers with any other financial or insurance products and that individuals participating in the origination of a reverse mortgage loan have no ability or incentive to provide the borrower with any other financial or insurance product;

(b) The borrower shall not be required, directly or indirectly, as a condition of obtaining a reverse mortgage under this section, to purchase any other financial or insurance products;

(9) Prior to accepting a final and complete application for a reverse mortgage loan or assessing any fees, a lender shall refer the prospective borrower to an independent housing counseling agency approved by the federal department of housing and urban development for counseling. The counseling must meet the standards and requirements established by the federal department of housing and urban development for reverse mortgage counseling. The lender shall provide the borrower with a list of at least five independent housing counseling agencies approved by the federal department of housing and urban development, including at least two agencies that can provide counseling by telephone. Telephone counseling is only available at the borrower's request;

(10) A lender shall not accept a final and complete application for a reverse mortgage loan from a prospective applicant or assess any fees upon a prospective applicant without first receiving a certification from the applicant or the applicant's authorized representative that the applicant has received counseling from an agency as described in subsection (9) of this section. The certification must be signed by the borrower and the agency counselor, and must include the date of the counseling and the names, addresses, and telephone numbers of both the counselor and the borrower. Electronic facsimile copy of the housing counseling certification satisfies the requirements of this subsection. The lender shall maintain the certification in an accurate, reproducible, and accessible format for the term of the reverse mortgage;

(11) A reverse mortgage loan may not be made for a Washington state resident unless that resident is a minimum of sixty years of age as of the date of execution of the loan; and

(12) Except for the initial disbursement of moneys to the closing agent, advances by the lender to the borrower must be issued directly to the borrower, or his or her legal representative, and not to an intermediary or third party.

NEW SECTION. **Sec. 4.** The borrower in a proprietary reverse mortgage transaction has the same right to rescind the transaction as provided in the truth in lending act, Regulation Z, 12 C.F.R. Sec. 226.

NEW SECTION. **Sec. 5.** (1) This section does not apply to a home equity conversion mortgage or other federally administered reverse mortgage product. A proprietary reverse mortgage loan product may not be offered without preapproval by the department of financial institutions.

(2) The director may make rules regarding the preapproval process, and may require any documentation, information, standards, or data deemed necessary by the director. The director may disapprove any proprietary reverse mortgage loan products that contain or incorporate by reference any inconsistent, ambiguous, or misleading provisions or terms, or exceptions and conditions which unreasonably or deceptively affect the reverse mortgage contract. Additional grounds for disapproval may include, without limitation, the existence in the proprietary product of any benefits provided to the borrower that are contrary to public policy.

NEW SECTION. **Sec. 6.** (1) A proprietary reverse mortgage loan application may not be taken by a lender unless the loan applicant has received

from the lender the following plain language statement in conspicuous bold sixteen-point type or larger, advising the prospective borrower about counseling prior to obtaining the reverse mortgage loan within three business days of receipt of the completed loan application:

"Important notice to reverse mortgage loan applicant

A reverse mortgage is a complex financial transaction that provides a means of using the equity you have built up in your home, or the value of your home, as a way to access home equity.

If you decide to obtain a reverse mortgage loan, you will sign binding legal documents that will have important legal, tax, and financial implications for you and your estate.

It is very important for you to understand the terms of the reverse mortgage and its effect. Before entering into this transaction, you are required by law to consult with an independent loan counselor. A list of approved counselors will be provided to you by the lender or broker. You may also want to discuss your decision with family members or others on whom you rely for financial advice."

(2) As part of the disclosure required under this section, the lender or servicer shall provide an annual, or more frequent, disclosure statement to the borrower, providing details of the loan advances, balance, other terms, and the name and telephone number of the lender's employee or agent who has been specifically designated to respond to inquiries concerning reverse mortgage loans.

(3) In addition to any other loan documentation or disclosure, prior to execution of the loan and at the end of the loan term, the lender may either obtain an independent appraisal of the property value or use the current year's tax assessment valuation of the property. Copies of these appraisals must be timely provided to the borrower within five days of the borrower's written request, provided the borrower has paid for the appraisal.

NEW SECTION. **Sec. 7.** (1) In addition to any other remedies, if a lender defaults on any of the reverse mortgage loan terms and fails to cure an actual default after notice as specified in the loan documents, the borrower, or the borrower's estate, is entitled to treble damages.

(2) An arrangement, transfer, or lien subject to this chapter is not invalidated solely because of the failure of a lender to comply with any provision of this chapter. However, this section does not preclude the application of any other existing civil remedies provided by law.

(3) A violation of federal legal requirements for an FHA-approved reverse mortgage as defined in section 1(1) of this act constitutes a violation of this chapter.

NEW SECTION. **Sec. 8.** (1) To the extent that implementation of this section does not conflict with federal law resulting in the loss of federal funding, proprietary reverse mortgage loan advances made to a borrower must be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(2) Undisbursed reverse mortgage funds must be treated as equity in the borrower's home and not as proceeds from a loan, resources, or assets for the

purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(3) This section applies to any law or program relating to payments, allowances, benefits, or services provided on a means-tested basis by this state including, but not limited to, optional state supplements to the federal supplemental security income program, low-income energy assistance, property tax relief, general assistance, and medical assistance only to the extent this section does not conflict with Title 19 of the federal social security act.

NEW SECTION. **Sec. 9.** The director of the department of financial institutions may take the necessary steps to ensure that this act is implemented on its effective date.

NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act may be known and cited as the Washington state reverse mortgage act.

NEW SECTION. **Sec. 11.** Sections 1 through 10 of this act are each added to chapter 31.04 RCW and codified with the subchapter heading of "reverse mortgage lending."

Sec. 12. RCW 31.04.015 and 2001 c 81 s 1 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

(1) "Person" includes individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

(2) "License" means a single license issued under the authority of this chapter with respect to a single place of business.

(3) "Licensee" means a person to whom one or more licenses have been issued.

(4) "Director" means the director of financial institutions.

(5) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.

(6) "Add-on method" means the method of precomputing interest payable on a loan whereby the interest to be earned is added to the principal balance and the total plus any charges allowed under this chapter is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(7) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding for the time outstanding with each payment applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of the principal until paid in full. In using such method, interest shall not be payable in advance nor compounded, except that on a loan secured by real estate, a licensee may collect at the time of the loan closing up to but not exceeding forty-five days of prepaid interest. The prohibition on compounding interest does not apply to reverse mortgage loans made in accordance with the Washington state reverse mortgage act. The

director may adopt by rule a more detailed explanation of the meaning and use of this method.

(8) "Applicant" means a person applying for a license under this chapter.

(9) "Borrower" means any person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan.

(10) "Loan" means a sum of money lent at interest or for a fee or other charge and includes both open-end and closed-end loan transactions.

(11) "Loan originator" means a person employed, either directly or indirectly, or retained as an independent contractor by a licensee, to make or assist a person in applying to obtain a loan.

(12) "Making a loan" means closing a loan in a person's name, or advancing, offering to advance, or making a commitment to advance funds to a borrower for a loan.

(13) "Mortgage broker" means the same as defined in RCW 19.146.010, except that for purposes of this chapter, a licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a mortgage broker in the same loan transaction.

(14) "Officer" means an official appointed by the company for the purpose of making business decisions or corporate decisions.

(15) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership; company; association or corporation; or a limited liability company, and the owner of a sole proprietorship.

(16) "Senior officer" means an officer of a licensee at the vice president level or above.

(17) "Third party service provider" means any person other than the licensee or a mortgage broker who provides goods or services to the licensee or borrower in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, real estate brokers or salespersons, title insurance companies and agents, appraisers, structural and pest inspectors, or escrow companies.

Sec. 13. RCW 31.04.115 and 1994 c 92 s 168 are each amended to read as follows:

(1) As used in this section, "open-end loan" means an agreement between a licensee and a borrower that expressly states that the loan is made in accordance with this chapter and that provides that:

(a) A licensee may permit the borrower to obtain advances of money from the licensee from time to time, or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(b) The amount of each advance and permitted charges and costs are debited to the borrower's account, and payments and other credits are credited to the same account;

(c) The charges are computed on the unpaid principal balance, or balances, of the account from time to time; and

(d) The borrower has the privilege of paying the account in full at any time without prepayment penalty or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

(2)(a) Interest charges on an open-end loan shall not exceed twenty-five percent per annum computed in each billing cycle by any of the following methods:

(((~~(a)~~))) (i) By converting the annual rate to a daily rate, and multiplying the daily rate by the daily unpaid principal balance of the account, in which case each daily rate is determined by dividing the annual rate by three hundred sixty-five;

(((~~(b)~~))) (ii) By multiplying a monthly rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the monthly rate is one-twelfth of the annual rate, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(((~~(c)~~))) (iii) By converting the annual rate to a daily rate, and multiplying the daily rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the daily rate is determined by dividing the annual rate by three hundred sixty-five, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle.

For all of the methods of computation specified in this subsection (2)(a), the billing cycle shall be monthly, and the unpaid principal balance on any day shall be determined by adding to the balance unpaid, as of the beginning of that day, all advances and other permissible amounts charged to the borrower, and deducting all payments and other credits made or received that day. A billing cycle is considered monthly if the closing date of the cycle is on the same date each month, or does not vary by more than four days from that date.

(b) Reverse mortgage loans made in accordance with the Washington state reverse mortgage act are not subject to the interest charge computation restrictions or billing cycle requirements in this section.

(3) In addition to the charges permitted under subsection (2) of this section, the licensee may contract for and receive an annual fee, payable each year in advance, for the privilege of opening and maintaining an open-end loan account. Except as prohibited or limited by this section, the licensee may also contract for and receive on an open-end loan any additional charge permitted by this chapter on other loans, subject to the conditions and restrictions otherwise pertaining to those charges.

(4)(a) If credit life or credit disability insurance is provided, the additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for the insurance, at the rate approved by the insurance commissioner to the entire outstanding balances in the borrower's open-end loan account, or so much thereof as the insurance covers using any of the methods specified in subsection (2)(a) of this section for the calculation of interest charges; and

(b) The licensee shall not cancel credit life or disability insurance written in connection with an open-end loan because of delinquency of the borrower in the making of the required minimum payments on the loan, unless one or more of the payments is past due for a period of ninety days or more; and the licensee shall advance to the insurer the amounts required to keep the insurance in force during that period, which amounts may be debited to the borrower's account.

(5) A security interest in real or personal property may be taken to secure an open-end loan. Any such security interest may be retained until the open-end account is terminated. The security interest shall be promptly released if (a) there has been no outstanding balance in the account for twelve months and the borrower either does not have or surrenders the unilateral right to create a new outstanding balance; or (b) the account is terminated at the borrower's request and paid in full.

(6) The licensee may from time to time increase the rate of interest being charged on the unpaid principal balance of the borrower's open-end loans if the licensee mails or delivers written notice of the change to the borrower at least thirty days before the effective date of the increase unless the increase has been earlier agreed to by the borrower. However, the borrower may choose to terminate the open-end account and the licensee shall allow the borrower to repay the unpaid balance incurred before the effective date of the rate increase upon the existing open-end loan account terms and interest rate unless the borrower incurs additional debt on or after the effective date of the rate increase or otherwise agrees to the new rate.

(7) The licensee shall deliver a copy of the open-end loan agreement to the borrower at the time the open-end account is created. The agreement must contain the name and address of the licensee and of the principal borrower, and must contain such specific disclosures as may be required by rule of the director. In adopting the rules the director shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal consumer credit protection act.

(8) Except in the case of an account that the licensee deems to be uncollectible, or with respect to which delinquency collection procedures have been instituted, the licensee shall deliver to the borrower at the end of each billing cycle in which there is an outstanding balance of more than one dollar in the account, or with respect to which interest is imposed, a periodic statement in the form required by the director. In specifying such form the director shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal consumer credit protection act.

Passed by the House March 3, 2009.
Passed by the Senate April 8, 2009.
Approved by the Governor April 21, 2009.
Filed in Office of Secretary of State April 22, 2009.

CHAPTER 150

[Substitute House Bill 1565]

DOMESTIC INSURERS—BUSINESS CONTINUITY PLANS

AN ACT Relating to business continuity plans for domestic insurers; amending RCW 48.07.160, 48.07.170, 48.07.180, 48.07.190, and 48.07.200; adding new sections to chapter 48.07 RCW; and providing an effective date.

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

Sec. 1. RCW 48.07.160 and 1963 c 195 s 25 are each amended to read as follows:

It is desirable for the general welfare and in particular for the welfare of insurance beneficiaries, policyholders, claimants, subscribers, and others that the

business of domestic insurers be continued notwithstanding the event of a local, state, or national emergency. The purpose of this section ((~~and~~)), RCW 48.07.170 through 48.07.200, and section 6 of this act is to facilitate the continued operation of domestic insurers in the event that a local, state, or national emergency is ((~~caused by an attack on the United States which is~~)) so disruptive of normal business and commerce ((~~in this state~~)) as to make it impossible or impracticable for a domestic insurer to conduct its business in accord with applicable provisions of law, its bylaws, or its charter. When used in this section ((~~and~~)), RCW 48.07.170 through 48.07.200, and section 6 of this act the word "insurer" ((~~includes a fraternal benefit society~~)) means the same as defined in RCW 48.01.053.

Sec. 2. RCW 48.07.170 and 1963 c 195 s 26 are each amended to read as follows:

The board of directors of any domestic insurer may at any time adopt emergency bylaws, subject to repeal or change by action of those having power to adopt regular bylaws for such insurer, which shall be operative during such a local, state, or national emergency and which may, notwithstanding any different provisions of the regular bylaws, or of the applicable statutes, or of such insurer's charter, make any provision that may be reasonably necessary for the operation of such insurer during the period of such emergency.

Sec. 3. RCW 48.07.180 and 1963 c 195 s 27 are each amended to read as follows:

In the event that the board of directors of a domestic insurer has not adopted emergency bylaws, the following provisions shall become effective upon the occurrence of such a local, state, or national emergency as ((~~above~~)) described in this chapter:

(1) Three directors shall constitute a quorum for the transaction of business at all meetings of the board.

(2) Any vacancy in the board may be filled by a majority of the remaining directors, though less than a quorum, or by a sole remaining director.

(3) If there are no surviving directors, but at least three vice presidents of such insurer survive, the three vice presidents with the longest term of service shall be the directors and shall possess all of the powers of the previous board of directors and such powers as are granted ((~~herein~~)) in this chapter or by subsequently enacted legislation. By majority vote, such emergency board of directors may elect other directors. If there are not at least three surviving vice presidents, the commissioner or duly designated person exercising the powers of the commissioner shall appoint three persons as directors who shall include any surviving vice presidents and who shall possess all of the powers of the previous board of directors and such powers as are granted ((~~herein~~)) in this chapter or by subsequently enacted legislation, and these persons by majority vote may elect other directors.

Sec. 4. RCW 48.07.190 and 1963 c 195 s 28 are each amended to read as follows:

At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a local, state, or national emergency and in the event of the death or incapacity of the president, the secretary, or the treasurer of such insurer, such officers, or any of them, shall be succeeded in the office by the

person named or described in a succession list adopted by the board of directors. Such list may be on the basis of named persons or position titles, shall establish the order of priority and may prescribe the conditions under which the powers of the office shall be exercised.

Sec. 5. RCW 48.07.200 and 1963 c 195 s 29 are each amended to read as follows:

At any time the board of directors of a domestic insurer may, by resolution, provide that in the event of such a local, state, or national emergency the principal office and place of business of such insurer shall be at such location as is named or described in the resolution. Such resolution may provide for alternate locations and establish an order of preference.

NEW SECTION. **Sec. 6.** A new section is added to chapter 48.07 RCW to read as follows:

Each domestic insurer must create and maintain a written business continuity plan identifying procedures relating to a local, state, or national emergency or significant business disruption.

NEW SECTION. **Sec. 7.** A new section is added to chapter 48.07 RCW to read as follows:

After considering relevant standards adopted by the national association of insurance commissioners, other states, and other regulatory authorities that regulate financial institutions, the commissioner shall adopt, by rule, standards for insurers and insurance producers to follow for business continuity planning.

NEW SECTION. **Sec. 8.** This act takes effect January 1, 2011.

Passed by the House March 10, 2009.
Passed by the Senate April 8, 2009.
Approved by the Governor April 21, 2009.
Filed in Office of Secretary of State April 22, 2009.

CHAPTER 151

[Substitute House Bill 1323]
WORKFORCE AND ECONOMIC DEVELOPMENT

AN ACT Relating to coordinating workforce and economic development; amending RCW 43.330.090, 50.38.050, 28B.50.030, 28C.18.010, 28C.18.060, 28C.18.080, 43.162.020, and 43.330.080; adding a new section to chapter 28B.50 RCW; adding a new section to chapter 28C.18 RCW; and creating a new section.

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

Sec. 1. RCW 43.330.090 and 2007 c 228 s 201 are each amended to read as follows:

(1) The department shall work with private sector organizations, industry and ((~~cluster~~)) sector associations, federal agencies, state agencies that use a ((~~cluster-based~~)) sector-based approach to service delivery, local governments, local associate development organizations, and higher education and training institutions in the development of industry ((~~cluster-based~~)) sector-based strategies to diversify the economy, facilitate technology transfer and diffusion, and increase value-added production. The industry ((~~clusters~~)) sectors targeted by the department may include, but are not limited to, aerospace, agriculture, food processing, forest products, marine services, health and biomedical,

software, digital and interactive media, transportation and distribution, and microelectronics. The department shall, on a continuing basis, evaluate the potential return to the state from devoting additional resources to an industry ((~~cluster-based~~)) sector-based approach to economic development and identifying and assisting additional ((~~clusters~~)) sectors. ((~~The department shall use information gathered in each service delivery region in formulating its industry cluster-based strategies and shall assist local communities in identifying regional industry clusters and developing industry cluster-based strategies.~~))

(2) The department's sector-based strategies shall include, but not be limited to, cluster-based strategies that focus on assisting regional industry sectors and related firms and institutions that meet the definition of an industry cluster in this section and based on criteria identified by the working group established in this chapter.

(3)(a) The department shall promote, market, and encourage growth in the production of films and videos, as well as television commercials within the state; to this end the department is directed to assist in the location of a film and video production studio within the state.

(b) The department may, in carrying out its efforts to encourage film and video production in the state, solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local, or other governmental entities, as well as private sources, and may expend the same or any income therefrom for the encouragement of film and video production. All revenue received for such purposes shall be deposited into the film and video promotion account created in RCW 43.330.092.

(((~~(3)~~))) (4) In assisting in the development of regional and statewide industry cluster-based strategies, the department's activities shall include, but are not limited to:

(a) Facilitating regional focus group discussions and conducting studies to identify industry clusters, appraise the current information linkages within a cluster, and identify issues of common concern within a cluster;

(b) Supporting industry and cluster associations, publications of association and cluster directories, and related efforts to create or expand the activities of industry and cluster associations;

(c) Administering a competitive grant program to fund economic development activities designed to further regional cluster growth. In administering the program, the department shall work with an industry cluster advisory committee with equal representation from the economic development commission, the workforce training and education coordinating board, the state board for community and technical colleges, the employment security department, business, and labor.

(i) The industry cluster advisory committee shall recommend criteria for evaluating applications for grant funds and recommend applicants for receipt of grant funds. Criteria shall include not duplicating the purpose or efforts of industry skill panels.

(ii) Applicants must include organizations from at least two counties and participants from the local business community. Eligible organizations include, but are not limited to, local governments, economic development councils, chambers of commerce, federally recognized Indian tribes, workforce development councils, and educational institutions.

(iii) Applications must evidence financial participation of the partner organizations.

(iv) Eligible activities include the formation of cluster economic development partnerships, research and analysis of economic development needs of the cluster, the development of a plan to meet the economic development needs of the cluster, and activities to implement the plan.

(v) Priority shall be given to applicants ((~~which~~)) that complement industry skill panels and will use the grant funds to build linkages and joint projects((~~, to develop common resources and common training, and to develop common research and development projects or facilities~~)).

(((~~(v)~~))) (vi) The maximum amount of a grant is one hundred thousand dollars.

(((~~(vi)~~))) (vii) A maximum of one hundred thousand dollars total can go to King, Pierce, Kitsap, and Snohomish counties combined.

(((~~(vii)~~))) (viii) No more than ten percent of funds received for the grant program may be used by the department for administrative costs.

(((~~(4)~~))) (5) As used in ((~~subsection (3) of this section~~)) this chapter, "industry cluster" means a geographic concentration of ((~~interdependent competitive firms that do business with each other. "Industry cluster" also includes firms that sell inside and outside of the geographic region as well as support firms that supply raw materials, components, and business services~~)) interconnected companies in a single industry, related businesses in other industries, including suppliers and customers, and associated institutions, including government and education.

Sec. 2. RCW 50.38.050 and 1993 c 62 s 5 are each amended to read as follows:

The department shall have the following duties:

(1) Oversight and management of a statewide comprehensive labor market and occupational supply and demand information system, including development of a five-year employment forecast for state and labor market areas;

(2) Produce local labor market information packages for the state's counties, including special studies and job impact analyses in support of state and local employment, training, education, and job creation programs, especially activities that prevent job loss, reduce unemployment, and create jobs;

(3) Coordinate with the office of financial management and the office of the forecast council to improve employment estimates by enhancing data on corporate officers, improving business establishment listings, expanding sample for employment estimates, and developing business entry/exit analysis relevant to the generation of occupational and economic forecasts; ((~~and~~))

(4) In cooperation with the office of financial management, produce long-term industry and occupational employment forecasts. These forecasts shall be consistent with the official economic and revenue forecast council biennial economic and revenue forecasts; and

(5) Analyze labor market and economic data, including the use of input-output models, for the purpose of identifying industry clusters and strategic industry clusters that meet the criteria identified by the working group convened by the economic development commission and the workforce training and education coordinating board under chapter 43.330 RCW.

Sec. 3. RCW 28B.50.030 and 2007 c 277 s 301 are each amended to read as follows:

As used in this chapter, unless the context requires otherwise, the term:

(1) "System" shall mean the state system of community and technical colleges, which shall be a system of higher education.

(2) "Board" shall mean the workforce training and education coordinating board.

(3) "College board" shall mean the state board for community and technical colleges created by this chapter.

(4) "Director" shall mean the administrative director for the state system of community and technical colleges.

(5) "District" shall mean any one of the community and technical college districts created by this chapter.

(6) "Board of trustees" shall mean the local community and technical college board of trustees established for each college district within the state.

(7) "Occupational education" shall mean that education or training that will prepare a student for employment that does not require a baccalaureate degree, and education and training leading to an applied baccalaureate degree.

(8) "K-12 system" shall mean the public school program including kindergarten through the twelfth grade.

(9) "Common school board" shall mean a public school district board of directors.

(10) "Community college" shall include those higher education institutions that conduct education programs under RCW 28B.50.020.

(11) "Technical college" shall include those higher education institutions with the sole mission of conducting occupational education, basic skills, literacy programs, and offering on short notice, when appropriate, programs that meet specific industry needs. The programs of technical colleges shall include, but not be limited to, continuous enrollment, competency-based instruction, industry-experienced faculty, curriculum integrating vocational and basic skills education, and curriculum approved by representatives of employers and labor. For purposes of this chapter, technical colleges shall include Lake Washington Vocational-Technical Institute, Renton Vocational-Technical Institute, Bates Vocational-Technical Institute, Clover Park Vocational Institute, and Bellingham Vocational-Technical Institute.

(12) "Adult education" shall mean all education or instruction, including academic, vocational education or training, basic skills and literacy training, and "occupational education" provided by public educational institutions, including common school districts for persons who are eighteen years of age and over or who hold a high school diploma or certificate. However, "adult education" shall not include academic education or instruction for persons under twenty-one years of age who do not hold a high school degree or diploma and who are attending a public high school for the sole purpose of obtaining a high school diploma or certificate, nor shall "adult education" include education or instruction provided by any four year public institution of higher education.

(13) "Dislocated forest product worker" shall mean a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her

skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business' services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(14) "Forest products worker" shall mean a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries assigned the major group standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment. The commissioner may adopt rules further interpreting these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in RCW 50.29.025(3).

(15) "Dislocated salmon fishing worker" means a finfish products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(16) "Salmon fishing worker" means a worker in the finfish industry affected by 1994 or future salmon disasters. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries involved in the commercial and recreational harvesting of finfish including buying and processing finfish. The commissioner may adopt rules further interpreting these definitions.

(17) "Rural natural resources impact area" means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets three of the five criteria set forth in subsection (18) of this section;

(b) A nonmetropolitan county with a population of less than forty thousand in the 1990 decennial census, that meets two of the five criteria as set forth in subsection (18) of this section; or

(c) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets three of the five criteria set forth in subsection (18) of this section.

(18) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area of which any part is ten miles or more from an urbanized area is considered nonurbanized. A zip code totally surrounded by zip codes qualifying as nonurbanized under this definition is also considered nonurbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

(19) "Applied baccalaureate degree" means a baccalaureate degree awarded by a college under RCW 28B.50.810 for successful completion of a program of study that is:

(a) Specifically designed for individuals who hold an associate of applied science degree, or its equivalent, in order to maximize application of their technical course credits toward the baccalaureate degree; and

(b) Based on a curriculum that incorporates both theoretical and applied knowledge and skills in a specific technical field.

(20) "Qualified institutions of higher education" means:

(a) Washington public community and technical colleges;

(b) Private career schools that are members of an accrediting association recognized by rule of the higher education coordinating board for the purposes of chapter 28B.92 RCW; and

(c) Washington state apprenticeship and training council-approved apprenticeship programs.

(21) "Center of excellence" means a community or technical college designated by the college board as a statewide leader in industry-specific, community and technical college workforce education and training.

NEW SECTION. **Sec. 4.** A new section is added to chapter 28B.50 RCW to read as follows:

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

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

It is the role of centers of excellence to employ strategies to: Create educational efficiencies; build a diverse, competitive workforce for strategic industries; maintain an institutional reputation for innovation and responsiveness; develop innovative curriculum and means of delivering education and training; act as brokers of information and resources related to

community and technical college education and training for a targeted industry; and serve as partners with workforce development councils, associate development organizations, and other workforce and economic development organizations.

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

Sec. 5. RCW 28C.18.010 and 2008 c 103 s 2 are each amended to read as follows:

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

(1) "Board" means the workforce training and education coordinating board.

(2) "Director" means the director of the workforce training and education coordinating board.

(3) "Training system" means programs and courses of secondary vocational education, technical college programs and courses, community college vocational programs and courses, private career school and college programs and courses, employer-sponsored training, adult basic education programs and courses, programs and courses funded by the federal workforce investment act, programs and courses funded by the federal vocational act, programs and courses funded under the federal adult education act, publicly funded programs and courses for adult literacy education, and apprenticeships, and programs and courses offered by private and public nonprofit organizations that are representative of communities or significant segments of communities and provide job training or adult literacy services.

(4) "Workforce skills" means skills developed through applied learning that strengthen and reinforce an individual's academic knowledge, critical thinking, problem solving, and work ethic and, thereby, develop the employability, occupational skills, and management of home and work responsibilities necessary for economic independence.

(5) "Vocational education" means organized educational programs offering a sequence of courses which are directly related to the preparation or retraining of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. Such term also includes applied technology education.

(6) "Adult basic education" means instruction designed to achieve mastery of skills in reading, writing, oral communication, and computation at a level sufficient to allow the individual to function effectively as a parent, worker, and citizen in the United States, commensurate with that individual's actual ability level, and includes English as a second language and preparation and testing service for the general education development exam.

(7) "Industry skill panel" means a regional partnership of business, labor, and education leaders that identifies skill gaps in a key economic cluster and

enables the industry and public partners to respond to and be proactive in addressing workforce skill needs.

(8) "Workforce development council" means a local workforce investment board as established in P.L. 105-220 Sec. 117.

Sec. 6. RCW 28C.18.060 and 2008 c 212 s 2 are each amended to read as follows:

The board, in cooperation with the operating agencies of the state training system and private career schools and colleges, shall:

(1) Concentrate its major efforts on planning, coordination evaluation, policy analysis, and recommending improvements to the state's training system;

(2) Advocate for the state training system and for meeting the needs of employers and the workforce for workforce education and training;

(3) Establish and maintain an inventory of the programs of the state training system, and related state programs, and perform a biennial assessment of the vocational education, training, and adult basic education and literacy needs of the state; identify ongoing and strategic education needs; and assess the extent to which employment, training, vocational and basic education, rehabilitation services, and public assistance services represent a consistent, integrated approach to meet such needs;

(4) Develop and maintain a state comprehensive plan for workforce training and education, including but not limited to, goals, objectives, and priorities for the state training system, and review the state training system for consistency with the state comprehensive plan. In developing the state comprehensive plan for workforce training and education, the board shall use, but shall not be limited to: Economic, labor market, and populations trends reports in office of financial management forecasts; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome, net-impact and cost-benefit evaluations; the needs of employers as evidenced in formal employer surveys and other employer input; and the needs of program participants and workers as evidenced in formal surveys and other input from program participants and the labor community;

(5) In consultation with the higher education coordinating board, review and make recommendations to the office of financial management and the legislature on operating and capital facilities budget requests for operating agencies of the state training system for purposes of consistency with the state comprehensive plan for workforce training and education;

(6) Provide for coordination among the different operating agencies and components of the state training system at the state level and at the regional level;

(7) Develop a consistent and reliable database on vocational education enrollments, costs, program activities, and job placements from publicly funded vocational education programs in this state;

(8)(a) Establish standards for data collection and maintenance for the operating agencies of the state training system in a format that is accessible to use by the board. The board shall require a minimum of common core data to be collected by each operating agency of the state training system;

(b) Develop requirements for minimum common core data in consultation with the office of financial management and the operating agencies of the training system;

(9) Establish minimum standards for program evaluation for the operating agencies of the state training system, including, but not limited to, the use of common survey instruments and procedures for measuring perceptions of program participants and employers of program participants, and monitor such program evaluation;

(10) Every two years administer scientifically based outcome evaluations of the state training system, including, but not limited to, surveys of program participants, surveys of employers of program participants, and matches with employment security department payroll and wage files. Every five years administer scientifically based net-impact and cost-benefit evaluations of the state training system;

(11) In cooperation with the employment security department, provide for the improvement and maintenance of quality and utility in occupational information and forecasts for use in training system planning and evaluation. Improvements shall include, but not be limited to, development of state-based occupational change factors involving input by employers and employees, and delineation of skill and training requirements by education level associated with current and forecasted occupations;

(12) Provide for the development of common course description formats, common reporting requirements, and common definitions for operating agencies of the training system;

(13) Provide for effectiveness and efficiency reviews of the state training system;

(14) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between institutions of the state training system, and encourage articulation agreements for programs encompassing two years of secondary workforce education and two years of postsecondary workforce education;

(15) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between private training institutions and institutions of the state training system;

(16) Develop policy objectives for the workforce investment act, P.L. 105-220, or its successor; develop coordination criteria for activities under the act with related programs and services provided by state and local education and training agencies; and ensure that entrepreneurial training opportunities are available through programs of each local workforce investment board in the state;

(17) Make recommendations to the commission of student assessment, the state board of education, and the superintendent of public instruction, concerning basic skill competencies and essential core competencies for K-12 education. Basic skills for this purpose shall be reading, writing, computation, speaking, and critical thinking, essential core competencies for this purpose shall be English, math, science/technology, history, geography, and critical thinking. The board shall monitor the development of and provide advice concerning secondary curriculum which integrates vocational and academic education;

(18) Establish and administer programs for marketing and outreach to businesses and potential program participants;

(19) Facilitate the location of support services, including but not limited to, child care, financial aid, career counseling, and job placement services, for students and trainees at institutions in the state training system, and advocate for support services for trainees and students in the state training system;

(20) Facilitate private sector assistance for the state training system, including but not limited to: Financial assistance, rotation of private and public personnel, and vocational counseling;

(21) Facilitate the development of programs for school-to-work transition that combine classroom education and on-the-job training, including entrepreneurial education and training, in industries and occupations without a significant number of apprenticeship programs;

(22) Include in the planning requirements for local workforce investment boards a requirement that the local workforce investment boards specify how entrepreneurial training is to be offered through the one-stop system required under the workforce investment act, P.L. 105-220, or its successor;

(23) Encourage and assess progress for the equitable representation of racial and ethnic minorities, women, and people with disabilities among the students, teachers, and administrators of the state training system. Equitable, for this purpose, shall mean substantially proportional to their percentage of the state population in the geographic area served. This function of the board shall in no way lessen more stringent state or federal requirements for representation of racial and ethnic minorities, women, and people with disabilities;

(24) Participate in the planning and policy development of governor set-aside grants under P.L. 97-300, as amended;

(25) Administer veterans' programs, licensure of private vocational schools, the job skills program, and the Washington award for vocational excellence;

(26) Allocate funding from the state job training trust fund;

(27) Work with the director of community, trade, and economic development and the economic development commission to ensure coordination ((~~between~~)) among workforce training priorities, the long-term economic development strategy of the economic development commission, and ((~~that department's~~)) economic development and entrepreneurial development efforts, including but not limited to assistance to industry clusters;

(28) Conduct research into workforce development programs designed to reduce the high unemployment rate among young people between approximately eighteen and twenty-four years of age. In consultation with the operating agencies, the board shall advise the governor and legislature on policies and programs to alleviate the high unemployment rate among young people. The research shall include disaggregated demographic information and, to the extent possible, income data for adult youth. The research shall also include a comparison of the effectiveness of programs examined as a part of the research conducted in this subsection in relation to the public investment made in these programs in reducing unemployment of young adults. The board shall report to the appropriate committees of the legislature by November 15, 2008, and every two years thereafter. Where possible, the data reported to the legislative committees should be reported in numbers and in percentages;

(29) Adopt rules as necessary to implement this chapter.

The board may delegate to the director any of the functions of this section.

Sec. 7. RCW 28C.18.080 and 1997 c 369 s 5 are each amended to read as follows:

(1) The state comprehensive plan for workforce training and education shall be updated every two years and presented to the governor and the appropriate legislative policy committees. Following public hearings, the legislature shall, by concurrent resolution, approve or recommend changes to the initial plan and the updates. The plan shall then become the state's workforce training policy unless legislation is enacted to alter the policies set forth in the plan.

(2) The comprehensive plan shall include workforce training role and mission statements for the workforce development programs of operating agencies represented on the board and sufficient specificity regarding expected actions by the operating agencies to allow them to carry out actions consistent with the comprehensive plan.

(3) Operating agencies represented on the board shall have operating plans for their workforce development efforts that are consistent with the comprehensive plan and that provide detail on implementation steps they will take to carry out their responsibilities under the plan. Each operating agency represented on the board shall provide an annual progress report to the board.

(4) The comprehensive plan shall include recommendations to the legislature and the governor on the modification, consolidation, initiation, or elimination of workforce training and education programs in the state.

(5) The comprehensive plan shall ((~~address how the state's workforce development system will meet the needs of employers hiring for industrial projects of statewide significance~~)) identify the strategic industry clusters targeted by the workforce development system. In identifying the strategic clusters, the board shall consult with the economic development commission to identify clusters that meet the criteria identified by the working group convened by the economic development commission and the workforce training and education coordinating board under RCW 43.330.280.

(6) The board shall report to the appropriate legislative policy committees by December 1st of each year on its progress in implementing the comprehensive plan and on the progress of the operating agencies in meeting their obligations under the plan.

NEW SECTION. **Sec. 8.** A new section is added to chapter 28C.18 RCW to read as follows:

(1) Workforce development councils, in partnership with local elected officials, shall develop and maintain a local unified plan for the workforce development system including, but not limited to, the local plan required by P.L. 105-220, Title I. The unified plan shall include a strategic plan that assesses local employment opportunities and skill needs, the present and future workforce, the current workforce development system, information on financial resources, diversity, goals, objectives, and strategies for the local workforce development system, and a system-wide financial strategy for implementing the plan. Local workforce development councils shall submit their strategic plans to the board for review and to the governor for approval.

(2) The strategic plan shall clearly articulate the connection between workforce and economic development efforts in the local area including the area

industry clusters and the strategic clusters the community is targeting for growth. The plan shall include, but is not limited to:

(a) Data on current and projected employment opportunities in the local area;

(b) Identification of workforce investment needs of existing businesses and businesses considering location in the region, with special attention to industry clusters;

(c) Identification of educational, training, employment, and support service needs of jobseekers and workers in the local area, including individuals with disabilities and other underrepresented talent sources;

(d) Analysis of the industry demand, potential labor force supply, and educational, employment, and workforce support available to businesses and jobseekers in the region; and

(e) Collaboration with associate development organizations in regional planning efforts involving combined strategies around workforce development and economic development policies and programs. Combined planning efforts shall include, but not be limited to, assistance to industry clusters in the area.

(3) The board shall work with workforce development councils to develop implementation and funding strategies for purposes of this section.

Sec. 9. RCW 43.162.020 and 2007 c 232 s 4 are each amended to read as follows:

The Washington state economic development commission shall:

(1) Concentrate its major efforts on planning, coordination, evaluation, policy analysis, and recommending improvements to the state's economic development system using, but not limited to, the "Next Washington" plan and the global competitiveness council recommendations;

(2) Develop and maintain on a biennial basis a state comprehensive plan for economic development, including but not limited to goals, objectives, and priorities for the state economic development system; identify the elements local associate development organizations must include in their countywide economic development plans; and review the state system for consistency with the state comprehensive plan. <u>The plan shall include the industry clusters in the state and the strategic clusters targeted by the commission for economic development efforts. The commission shall consult with the workforce training and education coordinating board and include labor market and economic information by the employment security department in developing the list of clusters and strategic clusters that meet the criteria identified by the working group convened by the economic development commission and the workforce training and education coordinating board under chapter 43.330 RCW.</u> In developing the state comprehensive plan for economic development, the commission shall use, but may not be limited to: Economic, labor market, and populations trend reports in office of financial management forecasts; the annual state economic climate report prepared by the economic climate council; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome evaluations; the needs of industry associations, industry clusters, businesses, and employees as evidenced in formal surveys and other input;

(3) Establish and maintain an inventory of the programs of the state economic development system and related state programs; perform a biennial

assessment of the ongoing and strategic economic development needs of the state; and assess the extent to which the economic development system and related programs represent a consistent, coordinated, efficient, and integrated approach to meet such needs; and

(4) Produce a biennial report to the governor and the legislature on progress by the commission in coordinating the state's economic development system and meeting the other obligations of this chapter, as well as include recommendations for any statutory changes necessary to enhance operational efficiencies or improve coordination.

The commission may delegate to the executive director any of the functions of this section.

Sec. 10. RCW 43.330.080 and 2007 c 249 s 2 are each amended to read as follows:

The department shall contract with county-designated associate development organizations to increase the support for and coordination of community and economic development services in communities or regional areas. The organizations contracted with in each community or regional area shall be broadly representative of community and economic interests. The organization shall be capable of identifying key economic and community development problems, developing appropriate solutions, and mobilizing broad support for recommended initiatives. The contracting organization shall work with and include local governments, local chambers of commerce, workforce development councils, port districts, labor groups, institutions of higher education, community action programs, and other appropriate private, public, or nonprofit community and economic development groups. The scope of services delivered under these contracts shall include two broad areas of work:

(1) Direct assistance, including business planning, to companies who need support to stay in business, expand, or relocate to Washington from out of state or other countries. Assistance includes:

(a) Working with the appropriate partners, including but not limited to, local governments, workforce development ((~~organizations~~)) councils, port districts, community and technical colleges and higher education institutions, export assistance providers, the Washington manufacturing services, the Washington state quality award((,)) council, small business assistance programs, and other federal, state, and local programs to facilitate the alignment of planning efforts and the seamless delivery of business support services in the county;

(b) Providing information on state and local permitting processes, tax issues, and other essential information for operating, expanding, or locating a business in Washington;

(c) Marketing Washington and local areas as excellent locations to expand or relocate a business and positioning Washington as a globally competitive place to grow business, which may include developing and executing regional plans to attract companies from out of state;

(d) Working with businesses on site location and selection assistance;

(e) Providing business retention and expansion services, including business outreach and monitoring efforts to identify and address challenges and opportunities faced by businesses; and

(f) ((~~Participate [Participating]~~)) Participating in economic development system-wide discussions regarding gaps in business start-up assistance in Washington; and

(2) Support for regional economic research and regional planning efforts to implement target industry sector strategies and other economic development strategies, including cluster-based strategies, that support increased living standards and increase foreign direct investment throughout Washington. Activities include:

(a) Participation in regional planning efforts with workforce development councils involving ((~~combined~~)) coordinated strategies around workforce development and economic development policies and programs. Coordinated planning efforts shall include, but not be limited to, assistance to industry clusters in the region;

(b) Participation between the contracting organization ((~~shall participate with~~)) and the state board for community and technical colleges as created in RCW 28B.50.050, and any community and technical colleges in providing for the coordination of the job skills training program and the customized training program within its region;

(((~~(b)~~))) (c) Collecting and reporting data as specified by the contract with the department for statewide systemic analysis. The department shall consult with the Washington state economic development commission in the establishment of such uniform data as is needed to conduct a statewide systemic analysis of the state's economic development programs and expenditures. In cooperation with other local, regional, and state planning efforts, contracting organizations may provide insight into the needs of target industry clusters, business expansion plans, early detection of potential relocations or layoffs, training needs, and other appropriate economic information;

(((~~(c)~~))) (d) In conjunction with other governmental jurisdictions and institutions, participate in the development of a countywide economic development plan, consistent with the state comprehensive plan for economic development developed by the Washington state economic development commission.

NEW SECTION. **Sec. 11.** By December 15, 2010, the workforce training and education coordinating board, the economic development commission, the department of community, trade, and economic development, the employment security department, and the state board for community and technical colleges shall provide a written progress report to the appropriate committees of the legislature on concrete actions taken, individually and collectively, to achieve the intent and objectives of this act. The report must include a description of:

(1) Direct services or funding provided to regional industry clusters by state agencies;

(2) Centers of excellence designated and funded;

(3) Industry clusters and strategic industry clusters identified in state and local strategic plans;

(4) How the analysis of labor market and economic data was used to identify clusters;

(5) How associate development organizations and workforce development councils are jointly planning and delivering services to companies and the workforce at regional and local levels;

(6) How workforce training priorities, the state's long-term economic development strategy, and entrepreneurial development efforts are being coordinated; and

(7) Quantitative and qualitative outcomes that have resulted from these actions.

Passed by the House March 5, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 21, 2009.
Filed in Office of Secretary of State April 22, 2009.

CHAPTER 152

[House Bill 1375]

FOSTER CARE CITIZEN REVIEW BOARDS—ELIMINATION

AN ACT Relating to eliminating foster care citizen review boards; amending RCW 13.34.210; reenacting and amending RCW 13.34.138; and repealing RCW 13.70.003, 13.70.010, 13.70.020, 13.70.030, 13.70.040, 13.70.050, 13.70.060, 13.70.070, 13.70.080, 13.70.090, 13.70.100, 13.70.110, 13.70.120, 13.70.130, 13.70.140, and 13.70.150.

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

Sec. 1. RCW 13.34.138 and 2007 c 413 s 8 and 2007 c 410 s 1 are each reenacted and amended to read as follows:

(1) ((~~Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW,~~)) The status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first. The purpose of the hearing shall be to review the progress of the parties and determine whether court supervision should continue.

(a) The initial review hearing shall be an in-court review and shall be set six months from the beginning date of the placement episode or no more than ninety days from the entry of the disposition order, whichever comes first. The requirements for the initial review hearing, including the in-court review requirement, shall be accomplished within existing resources.

(b) The initial review hearing may be a permanency planning hearing when necessary to meet the time frames set forth in RCW 13.34.145 (1)(a) or 13.34.134.

(2)(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) Prior to the child returning home, the department must complete the following:

(i) Identify all adults residing in the home and conduct background checks on those persons;

(ii) Identify any persons who may act as a caregiver for the child in addition to the parent with whom the child is being placed and determine whether such persons are in need of any services in order to ensure the safety of the child, regardless of whether such persons are a party to the dependency. The

department or supervising agency may recommend to the court and the court may order that placement of the child in the parent's home be contingent on or delayed based on the need for such persons to engage in or complete services to ensure the safety of the child prior to placement. If services are recommended for the caregiver, and the caregiver fails to engage in or follow through with the recommended services, the department or supervising agency must promptly notify the court; and

(iii) Notify the parent with whom the child is being placed that he or she has an ongoing duty to notify the department or supervising agency of all persons who reside in the home or who may act as a caregiver for the child both prior to the placement of the child in the home and subsequent to the placement of the child in the home as long as the court retains jurisdiction of the dependency proceeding or the department is providing or monitoring either remedial services to the parent or services to ensure the safety of the child to any caregivers.

Caregivers may be required to engage in services under this subsection solely for the purpose of ensuring the present and future safety of a child who is a ward of the court. This subsection does not grant party status to any individual not already a party to the dependency proceeding, create an entitlement to services or a duty on the part of the department or supervising agency to provide services, or create judicial authority to order the provision of services to any person other than for the express purposes of this section or RCW 13.34.025 or if the services are unavailable or unsuitable or the person is not eligible for such services.

(c) If the child is not returned home, the court shall establish in writing:

(i) Whether the agency is making reasonable efforts to provide services to the family and eliminate the need for placement of the child. If additional services, including housing assistance, are needed to facilitate the return of the child to the child's parents, the court shall order that reasonable services be offered specifying such services;

(ii) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(iii) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(iv) Whether the services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances;

(v) Whether there is a continuing need for placement;

(vi) Whether the child is in an appropriate placement which adequately meets all physical, emotional, and educational needs;

(vii) Whether preference has been given to placement with the child's relatives;

(viii) Whether both in-state and, where appropriate, out-of-state placements have been considered;

(ix) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(x) Whether terms of visitation need to be modified;

(xi) Whether the court-approved long-term permanent plan for the child remains the best plan for the child;

(xii) Whether any additional court orders need to be made to move the case toward permanency; and

(xiii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(d) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

(3)(a) In any case in which the court orders that a dependent child may be returned to or remain in the child's home, the in-home placement shall be contingent upon the following:

(i) The compliance of the parents with court orders related to the care and supervision of the child, including compliance with an agency case plan; and

(ii) The continued participation of the parents, if applicable, in available substance abuse or mental health treatment if substance abuse or mental illness was a contributing factor to the removal of the child.

(b) The following may be grounds for removal of the child from the home, subject to review by the court:

(i) Noncompliance by the parents with the agency case plan or court order;

(ii) The parent's inability, unwillingness, or failure to participate in available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect; or

(iii) The failure of the parents to successfully and substantially complete available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect.

(c) In a pending dependency case in which the court orders that a dependent child may be returned home and that child is later removed from the home, the court shall hold a review hearing within thirty days from the date of removal to determine whether the permanency plan should be changed, a termination petition should be filed, or other action is warranted. The best interests of the child shall be the court's primary consideration in the review hearing.

(4) The court's ability to order housing assistance under RCW 13.34.130 and this section is: (a) Limited to cases in which homelessness or the lack of adequate and safe housing is the primary reason for an out-of-home placement; and (b) subject to the availability of funds appropriated for this specific purpose.

(5) The court shall consider the child's relationship with siblings in accordance with RCW 13.34.130(3).

Sec. 2. RCW 13.34.210 and 2003 c 227 s 8 are each amended to read as follows:

If, upon entering an order terminating the parental rights of a parent, there remains no parent having parental rights, the court shall commit the child to the custody of the department or to a licensed child-placing agency willing to accept custody for the purpose of placing the child for adoption. If an adoptive home has not been identified, the department or agency shall place the child in a licensed foster home, or take other suitable measures for the care and welfare of the child. The custodian shall have authority to consent to the adoption of the child consistent with chapter 26.33 RCW, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary

surgical and other medical treatment for the child, and to consent to such other matters as might normally be required of the parent of the child.

If a child has not been adopted within six months after the date of the order and a guardianship of the child under RCW 13.34.231 or chapter 11.88 RCW, or a permanent custody order under chapter 26.10 RCW, has not been entered by the court, the court shall review the case every six months until a decree of adoption is entered ((~~except for those cases which are reviewed by a citizen review board under chapter 13.70 RCW~~)). The supervising agency shall take reasonable steps to ensure that the child maintains relationships with siblings as provided in RCW 13.34.130(3) and shall report to the court the status and extent of such relationships.

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

(1) RCW 13.70.003 (Substitute care of children—Citizen review board system—Purpose—Application of administrative procedures and standards) and 2000 c 122 s 36 & 1989 1st ex.s. c 17 s 1;

(2) RCW 13.70.010 (Definitions) and 1991 c 127 s 3 & 1989 1st ex.s. c 17 s 3;

(3) RCW 13.70.020 (Role of supreme court—Procedures) and 1989 1st ex.s. c 17 s 4;

(4) RCW 13.70.030 (Composition of board—Quorum) and 1989 1st ex.s. c 17 s 5;

(5) RCW 13.70.040 (Guidelines for appointment to boards) and 1989 1st ex.s. c 17 s 6;

(6) RCW 13.70.050 (Training programs for board members) and 1989 1st ex.s. c 17 s 7;

(7) RCW 13.70.060 (Confidentiality requirements) and 1989 1st ex.s. c 17 s 8;

(8) RCW 13.70.070 (Board access to records) and 1989 1st ex.s. c 17 s 9;

(9) RCW 13.70.080 (Review of case—Employee duties) and 1989 1st ex.s. c 17 s 10;

(10) RCW 13.70.090 (Board—Powers and duties—Immunity) and 1989 1st ex.s. c 17 s 11;

(11) RCW 13.70.100 (Child in substitute care—No dependency petition—Procedures—Review) and 1993 c 505 s 2 & 1989 1st ex.s. c 17 s 12;

(12) RCW 13.70.110 (Child in substitute care under dependency proceeding—Procedures—Review) and 2000 c 122 s 37, 1991 c 127 s 5, & 1989 1st ex.s. c 17 s 13;

(13) RCW 13.70.120 (Board recommendations) and 1989 1st ex.s. c 17 s 14;

(14) RCW 13.70.130 (Funds from public and private sources) and 2005 c 282 s 29 & 1989 1st ex.s. c 17 s 15;

(15) RCW 13.70.140 (Review by court) and 2000 c 122 s 38, 1993 c 505 s 4, & 1989 1st ex.s. c 17 s 16; and

(16) RCW 13.70.150 (Indian children—Local Indian child welfare advisory committee may serve as citizen review board) and 1991 c 127 s 1.

Passed by the House February 23, 2009.
Passed by the Senate April 7, 2009.

Approved by the Governor April 21, 2009.
Filed in Office of Secretary of State April 22, 2009.

CHAPTER 153

[House Bill 1380]

COUNTY AUTHORITY—LEASE WITH OPTION TO PURCHASE

AN ACT Relating to county authority to lease with an option to purchase; and amending RCW 36.34.205.

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

Sec. 1. RCW 36.34.205 and 1998 c 278 s 10 are each amended to read as follows:

In accordance with RCW 35.42.010 through 35.42.220, a county with a population of ((~~one million~~)) six hundred thousand or more may lease space and provide for the leasing of such space through leases with an option to purchase and the acquisition of buildings erected upon land owned by the county upon the expiration of lease of such land. For the purposes of this section, "building," as defined in RCW 35.42.020 shall be construed to include any building or buildings used as part of, or in connection with, the operation of the county. The authority conferred by this section is in addition to and not in lieu of any other provision authorizing counties to lease property.

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CHAPTER 154

[Substitute House Bill 1435]

CIGARETTE AND TOBACCO PRODUCTS LICENSES—ADMINISTRATION

AN ACT Relating to licensing administration for cigarettes and tobacco products; and amending RCW 82.24.510, 82.24.550, 82.26.060, 82.26.150, 82.26.180, 82.26.190, 82.26.210, and 82.26.220.

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

Sec. 1. RCW 82.24.510 and 2001 c 235 s 8 are each amended to read as follows:

(1) The licenses issuable under this chapter are as follows:

(a) A wholesaler's license.

(b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The ((~~department of revenue~~)) board shall adopt rules regarding the regulation of the licenses. The ((~~department of revenue~~)) board may refrain from the issuance of any license under this chapter if the ((~~department~~)) board has reasonable cause to believe that the applicant has wilfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the ((~~department~~)) board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of

reviewing an application for a wholesaler's license or retailer's license and for considering the denial, suspension, or revocation of any such license, the ((~~department~~)) board may consider ((~~criminal convictions of the applicant related to the selling of cigarettes~~)) any prior criminal conduct of the applicant, including an administrative violation history record with the board and a criminal history record information check within the previous five years, in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The ((~~department~~)) board may, in its discretion, grant or refuse the wholesaler's license or retailer's license, subject to the provisions of RCW 82.24.550.

(3) No person may qualify for a wholesaler's license or a retailer's license under this section without first undergoing a criminal background check. The background check shall be performed by the ((~~liquor control~~)) board and must disclose any criminal ((~~convictions related to the selling of cigarettes~~)) conduct within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. A person who possesses a valid license on July 22, 2001, is subject to this subsection and subsection (2) of this section beginning on the date of the person's master license expiration, and thereafter. If the applicant or licensee also has a license issued under chapter 66.24 or 82.26 RCW, the background check done under the authority of chapter 66.24 or 82.26 RCW satisfies the requirements of this section.

(4) Each such license shall expire on the master license expiration date, and each such license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the ((~~department of revenue~~)) board made pursuant thereto.

(5) Each license and any other evidence of the license that the board requires must be exhibited in each place of business for which it is issued and in the manner required for the display of a master license.

Sec. 2. RCW 82.24.550 and 2005 c 180 s 19 are each amended to read as follows:

(1) The board shall enforce the provisions of this chapter. The board may adopt, amend, and repeal rules necessary to enforce and administer the provisions of this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer the provisions of this chapter. The ((~~department has full power and authority to~~)) board may revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee to comply with any of the provisions of this chapter.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the ((~~department~~)) board. The ((~~department~~)) board, upon finding that the licensee has failed to comply with any provision of this chapter or any rule adopted under this chapter, shall, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and, in the case of a second or further offense, shall suspend the license or licenses for a period of not less than ninety consecutive business days nor more than twelve months, and, in

the event the ((~~department~~)) board finds the licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.26 RCW to a person whose license or licenses have been suspended or revoked under this section shall also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may ((~~apply~~)) reapply to the ((~~department~~)) board at the expiration of one year ((~~for a reinstatement~~)) from the date of revocation of the license or licenses. The license or licenses may be ((~~reinstated~~)) approved by the ((~~department~~)) board if it appears to the satisfaction of the ((~~department~~)) board that the licensee will comply with the provisions of this chapter and the rules adopted under this chapter.

(6) A person whose license has been suspended or revoked shall not sell cigarettes or tobacco products or permit cigarettes or tobacco products to be sold during the period of such suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form whatever.

(7) Any determination and order by the ((~~department~~)) board, and any order of suspension or revocation by the ((~~department~~)) board of the license or licenses issued under this chapter, or refusal to reinstate a license or licenses after revocation shall be reviewable by an appeal to the superior court of Thurston county. The superior court shall review the order or ruling of the ((~~department~~)) board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon ((~~the department and~~)) the board.

(8) If the board makes an initial decision to deny a license or renewal, or suspend or revoke a license, the applicant may request a hearing subject to the applicable provisions under Title 34 RCW.

(9) For purposes of this section, "tobacco products" has the same meaning as in RCW 82.26.010.

Sec. 3. RCW 82.26.060 and 2005 c 180 s 4 are each amended to read as follows:

(1) Every distributor shall keep at each place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made.

(2) These records shall show the names and addresses of purchasers, the inventory of all tobacco products, and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. All invoices and other records required by this section to be kept shall be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the tobacco products contained therein, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, board, or any of its agents or employees,

are denied free access or are hindered or interfered with in making such examination, the registration certificate issued under RCW 82.32.030 of the distributor at such premises shall be subject to revocation, and any licenses issued under this chapter or chapter 82.24 RCW are subject to suspension or revocation, by the department or board.

Sec. 4. RCW 82.26.150 and 2005 c 180 s 11 are each amended to read as follows:

(1) The licenses issuable by the ((~~department~~)) board under this chapter are as follows:

(a) A distributor's license; and

(b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The ((~~department~~)) board may adopt rules regarding the regulation of the licenses. The ((~~department~~)) board may refuse to issue any license under this chapter if the ((~~department~~)) board has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the ((~~department~~)) board has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a distributor's license or retailer's license and for considering the denial, suspension, or revocation of any such license, the ((~~department~~)) board may consider criminal ((~~convictions~~)) conduct of the applicant ((~~related to the selling of tobacco products~~)), including an administrative violation history record with the board and a criminal history record information check within the previous five years, in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The ((~~department~~)) board may, in its discretion, issue or refuse to issue the distributor's license or retailer's license, subject to the provisions of RCW 82.26.220.

(3) No person may qualify for a distributor's license or a retailer's license under this section without first undergoing a criminal background check. The background check shall be performed by the board and must disclose any criminal ((~~convictions related to the selling of tobacco products~~)) conduct within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. If the applicant or licensee also has a license issued under chapter 66.24 or 82.24 RCW, the background check done under the authority of chapter 66.24 or 82.24 RCW satisfies the requirements of this section.

(4) Each license issued under this chapter shall expire on the master license expiration date. The license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the ((~~department~~)) board adopted pursuant to this chapter.

(5) Each license and any other evidence of the license ((~~as the department requires shall~~)) required under this chapter must be exhibited in ((~~the~~)) each place of business for which it is issued and in the manner required for the display of a master license.

Sec. 5. RCW 82.26.180 and 2005 c 180 s 15 are each amended to read as follows:

The ((~~department~~)) board shall compile and maintain a current record of the names of all distributors and retailers licensed under this chapter and the status of their license or licenses. The information must be updated on a monthly basis and published on the ((~~department's~~)) board's official internet web site. This information is not subject to the confidentiality provisions of RCW 82.32.330 and shall be disclosed to manufacturers, distributors, retailers, and the general public upon request.

Sec. 6. RCW 82.26.190 and 2005 c 180 s 16 are each amended to read as follows:

(1)(a) No person may engage in or conduct business as a distributor or retailer in this state after September 30, 2005, without a valid license issued ((~~by the department~~)) under this chapter. Any person who sells tobacco products to persons other than ultimate consumers or who meets the definition of distributor under RCW 82.26.010(3)(d) must obtain a distributor's license under this chapter. Any person who sells tobacco products to ultimate consumers must obtain a retailer's license under this chapter.

(b) A violation of this subsection (1) is punishable as a class C felony according to chapter 9A.20 RCW.

(2)(a) No person engaged in or conducting business as a distributor or retailer in this state may:

(i) Refuse to allow the department or the board, on demand, to make a full inspection of any place of business where any of the tobacco products taxed under this chapter are sold, stored, or handled, or otherwise hinder or prevent such inspection;

(ii) Make, use, or present or exhibit to the department or the board any invoice for any of the tobacco products taxed under this chapter that bears an untrue date or falsely states the nature or quantity of the goods invoiced; or

(iii) Fail to produce on demand of the department or the board all invoices of all the tobacco products taxed under this chapter within five years prior to such demand unless the person can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond the person's control.

(b) No person, other than a licensed distributor or retailer, may transport tobacco products for sale in this state for which the taxes imposed under this chapter have not been paid unless:

(i) Notice of the transportation has been given as required under RCW 82.26.140;

(ii) The person transporting the tobacco products actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of tobacco products being transported; and

(iii) The tobacco products are consigned to or purchased by a person in this state who is licensed under this chapter.

(c) A violation of this subsection (2) is a gross misdemeanor.

(3) Any person licensed under this chapter as a distributor, and any person licensed under this chapter as a retailer, shall not operate in any other capacity unless the additional appropriate license is first secured. A violation of this subsection (3) is a misdemeanor.

(4) The penalties provided in this section are in addition to any other penalties provided by law for violating the provisions of this chapter or the rules adopted under this chapter.

Sec. 7. RCW 82.26.210 and 2005 c 180 s 14 are each amended to read as follows:

A manufacturer that has manufacturer's representatives who sell or distribute the manufacturer's tobacco products in this state must provide the ((~~department~~)) board a list of the names and addresses of all such representatives and must ensure that the list provided to the ((~~department~~)) board is kept current. A manufacturer's representative is not authorized to distribute or sell tobacco products in this state unless the manufacturer that hired the representative has a valid distributor's license under this chapter and that manufacturer provides the ((~~department~~)) board a current list of all of its manufacturer's representatives as required by this section. A manufacturer's representative must carry a copy of the distributor's license of the manufacturer that hired the representative at all times when selling or distributing the manufacturer's tobacco products.

Sec. 8. RCW 82.26.220 and 2005 c 180 s 18 are each amended to read as follows:

(1) The board shall enforce this chapter. The board may adopt, amend, and repeal rules necessary to enforce and administer this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer this chapter. The ((~~department has full power and authority to~~)) board may revoke or suspend the distributor's or retailer's license of any distributor or retailer of tobacco products in the state upon sufficient cause showing a violation of this chapter or upon the failure of the licensee to comply with any of the rules adopted under it.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the ((~~department~~)) board. The ((~~department~~)) board, upon finding that the licensee has failed to comply with any provision of this chapter or of any rule adopted under it, shall, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and in the case of a second or further offense, suspend the license or licenses for a period of not less than ninety consecutive business days but not more than twelve months, and in the event the ((~~department~~)) board finds the licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.24 RCW to a person whose license or licenses have been suspended or revoked under this section shall also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may ((~~apply~~)) reapply to the ((~~department~~)) board at the expiration of one year ((~~for a reinstatement~~)) of the license or licenses. The license or licenses may be ((~~reinstated~~)) approved by the ((~~department~~)) board if it appears to the satisfaction of the ((~~department~~)) board that the licensee will comply with the provisions of this chapter and the rules adopted under it.

(6) A person whose license has been suspended or revoked shall not sell tobacco products or cigarettes or permit tobacco products or cigarettes to be sold

during the period of suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form.

(7) Any determination and order by the ((~~department~~)) board, and any order of suspension or revocation by the ((~~department~~)) board of the license or licenses issued under this chapter, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal to the superior court of Thurston county. The superior court shall review the order or ruling of the ((~~department~~)) board and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon ((~~the department and~~)) the board.

(8) If the board makes an initial decision to deny a license or renewal, or suspend or revoke a license, the applicant may request a hearing subject to the applicable provisions under Title 34 RCW.

Passed by the House March 10, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 21, 2009.
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CHAPTER 155

[Engrossed Substitute House Bill 1441]
MALT BEVERAGES—DISTRIBUTORS AND PRODUCERS—
CONTRACTUAL RELATIONSHIPS

AN ACT Relating to the contractual relationships between distributors and producers of malt beverages; and amending RCW 19.126.020, 19.126.030, 19.126.040, 19.126.060, and 19.126.080.

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

Sec. 1. RCW 19.126.020 and 2004 c 160 s 19 are each amended to read as follows:

The definitions ((~~set forth~~)) in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreement of distributorship" means any contract, agreement, commercial relationship, license, association, or any other arrangement, for a definite or indefinite period, between a supplier and distributor.

(2) "Brand" means any word, name, group of letters, symbol, or combination thereof, including the name of the brewer if the brewer's name is also a significant part of the product name, adopted and used by a supplier to identify a specific malt beverage product and to distinguish that product from other malt beverages produced by that supplier or other suppliers.

(3) "Distributor" means any person, including but not limited to a component of a supplier's distribution system constituted as an independent business, importing or causing to be imported into this state, or purchasing or causing to be purchased within this state, any malt beverage for sale or resale to retailers licensed under the laws of this state, regardless of whether the business of such person is conducted under the terms of any agreement with a malt beverage manufacturer.

((~~(3)~~)) (4) "Supplier" means any malt beverage manufacturer or importer who enters into or is a party to any agreement of distributorship with a wholesale distributor. "Supplier" does not include: (a) Any domestic brewery or

microbrewery licensed under RCW 66.24.240 and producing less than ((~~fifty~~)) two hundred thousand barrels of malt liquor annually; (b) any brewer or manufacturer of malt liquor producing less than ((~~fifty~~)) two hundred thousand barrels of malt liquor annually and holding a certificate of approval issued under RCW 66.24.270; or (c) any authorized representative of malt liquor manufacturers who holds an appointment from one or more malt liquor manufacturers which, in the aggregate, produce less than ((~~fifty~~)) two hundred thousand barrels of malt liquor.

(((~~4~~))) (5) "Malt beverage manufacturer" means every brewer, fermenter, processor, bottler, or packager of malt beverages located within or outside this state, or any other person, whether located within or outside this state, who enters into an agreement of distributorship for the resale of malt beverages in this state with any wholesale distributor doing business in the state of Washington.

(((~~5~~))) (6) "Importer" means any distributor importing beer into this state for sale to retailer accounts or for sale to other distributors designated as "subjobbers" for resale.

(((~~6~~))) (7) "Authorized representative" has the same meaning as "authorized representative" as defined in RCW 66.04.010.

(((~~7~~))) (8) "Person" means any natural person, corporation, partnership, trust, agency, or other entity, as well as any individual officers, directors, or other persons in active control of the activities of such entity.

(9) "Successor distributor" means any distributor who enters into an agreement, whether oral or written, to distribute a brand of malt beverages after the supplier with whom such agreement is made or the person from whom that supplier acquired the right to manufacture or distribute the brand has terminated, canceled, or failed to renew an agreement of distributorship, whether oral or written, with another distributor to distribute that same brand of malt beverages.

(10) "Terminated distributor" means a distributor whose agreement of distributorship with respect to a brand of malt beverages, whether oral or written, has been terminated, canceled, or not renewed.

(11) "Terminated distribution rights" means distribution rights with respect to a brand of malt beverages which are lost by a terminated distributor as a result of termination, cancellation, or nonrenewal of an agreement of distributorship for that brand.

Sec. 2. RCW 19.126.030 and 1984 c 169 s 3 are each amended to read as follows:

Suppliers are entitled to the following protections which ((~~shall be~~)) are deemed to be incorporated ((~~in the~~)) into every agreement of distributorship:

(1) Agreements between suppliers and wholesale distributors shall be in writing;

(2) A wholesale distributor shall maintain the financial and competitive capability necessary to achieve efficient and effective distribution of the supplier's products;

(3) A wholesale distributor shall maintain the quality and integrity of the supplier's product in the manner set forth by the supplier;

(4) A wholesale distributor shall exert its best efforts to sell the product of the supplier and shall merchandise such products in the stores of its retail customers as agreed between the wholesale distributor and supplier;

(5) The supplier may cancel or otherwise terminate any agreement with a wholesale distributor immediately and without notice if the reason for such termination is fraudulent conduct in any of the wholesale distributor's dealings with the supplier or its products, insolvency, the occurrence of an assignment for the benefit of creditors, bankruptcy, or suspension in excess of fourteen days or revocation of a license issued by the state liquor board;

(6) A wholesale distributor shall give the supplier prior written notice, of not less than ninety days, of any material change in its ownership or management and the supplier has the right to reasonable prior approval of any such change; and

(7) A wholesale distributor shall give the supplier prior written notice, of not less than ninety days, of the wholesale distributor's intent to cancel or otherwise terminate the distributorship agreement.

Sec. 3. RCW 19.126.040 and 1984 c 169 s 4 are each amended to read as follows:

Wholesale distributors are entitled to the following protections which ((~~shall be~~)) are deemed to be incorporated ((~~in the~~)) into every agreement of distributorship:

(1) Agreements between wholesale distributors and suppliers shall be in writing;

(2) A supplier shall give the wholesale distributor at least sixty days prior written notice of the supplier's intent to cancel or otherwise terminate the agreement, unless such termination is based on a reason set forth in RCW 19.126.030(5) or results from a supplier acquiring the right to manufacture or distribute a particular brand and electing to have that brand handled by a different distributor. The notice shall state all the reasons for the intended termination or cancellation. Upon receipt of notice, the wholesale distributor shall have sixty days in which to rectify any claimed deficiency. If the deficiency is rectified within this sixty-day period, the proposed termination or cancellation is null and void and without legal effect;

(3) ((~~The wholesale distributor is entitled to compensation for the laid in cost of inventory and liquidated damages measured on the fair market price of the business as provided for in the agreement for any termination of the agreement by the supplier other than termination for cause, for failure to live up to the terms and conditions of the agreement, or any reason set forth in RCW 19.126.030(5); and~~

~~(4)~~)) The wholesale distributor may sell or transfer its business, or any portion thereof, including the agreement, to successors in interest upon prior approval of the transfer by the supplier. No supplier may unreasonably withhold or delay its approval of any transfer, including wholesaler's rights and obligations under the terms of the agreement, if the person or persons to be substituted meet reasonable standards imposed by the supplier.

(4) If an agreement of distributorship is terminated, canceled, or not renewed for any reason other than for cause, failure to live up to the terms and conditions of the agreement, or a reason set forth in RCW 19.126.030(5), the wholesale distributor is entitled to compensation from the successor distributor for the laid-in cost of inventory and for the fair market value of the terminated distribution rights. For purposes of this section, termination, cancellation, or nonrenewal of a distributor's right to distribute a particular brand constitutes

termination, cancellation, or nonrenewal of an agreement of distributorship whether or not the distributor retains the right to continue distribution of other brands for the supplier. In the case of terminated distribution rights resulting from a supplier acquiring the right to manufacture or distribute a particular brand and electing to have that brand handled by a different distributor, the affected distribution rights will not transfer until such time as the compensation to be paid to the terminated distributor has been finally determined by agreement or arbitration.

(5) When a terminated distributor is entitled to compensation under subsection (4) of this section, a successor distributor must compensate the terminated distributor for the fair market value of the terminated distributor's rights to distribute the brand, less any amount paid to the terminated distributor by a supplier or other person with respect to the terminated distribution rights for the brand. If the terminated distributor's distribution rights to a brand of malt beverages are divided among two or more successor distributors, each successor distributor must compensate the terminated distributor for the fair market value of the distribution rights assumed by that successor distributor, less any amount paid to the terminated distributor by a supplier or other person with respect to the terminated distribution rights assumed by the successor distributor. A terminated distributor may not receive total compensation under this subsection that exceeds the fair market value of the terminated distributor's distribution rights with respect to the affected brand. Nothing in this section shall be construed to require any supplier or other third person to make any payment to a terminated distributor.

(6) For purposes of this section, the "fair market value" of distribution rights as to a particular brand means the amount that a willing buyer would pay and a willing seller would accept for such distribution rights when neither is acting under compulsion and both have knowledge of all facts material to the transaction. "Fair market value" is determined as of the date on which the distribution rights are to be transferred in accordance with subsection (4) of this section.

(7) In the event the terminated distributor and the successor distributor do not agree on the fair market value of the affected distribution rights within thirty days after the terminated distributor is given notice of termination, the matter must be submitted to binding arbitration. Unless the parties agree otherwise, such arbitration must be conducted in accordance with the American arbitration association commercial arbitration rules with each party to bear its own costs and attorneys' fees.

(8) Unless the parties otherwise agree, or the arbitrator for good cause shown orders otherwise, an arbitration conducted pursuant to subsection (7) of this section must proceed as follows: (a) The notice of intent to arbitrate must be served within forty days after the terminated distributor receives notice of terminated distribution rights; (b) the arbitration must be conducted within ninety days after service of the notice of intent to arbitrate; and (c) the arbitrator or arbitrators must issue an order within thirty days after completion of the arbitration.

(9) In the event of a material change in the terms of an agreement of distribution, the revised agreement must be considered a new agreement for purposes of determining the law applicable to the agreement after the date of the

material change, whether or not the agreement of distribution is or purports to be a continuing agreement and without regard to the process by which the material change is effected.

Sec. 4. RCW 19.126.060 and 1984 c 169 s 6 are each amended to read as follows:

In any action or arbitration brought by a wholesale distributor or a supplier pursuant to this chapter, other than an arbitration to determine the compensation due to a terminated distributor under RCW 19.126.040(4), the prevailing party shall be awarded its reasonable attorney's fees and costs.

Sec. 5. RCW 19.126.080 and 1985 c 440 s 3 are each amended to read as follows:

A person injured by a violation of this chapter, other than a person seeking only a determination of the compensation due to a terminated distributor under RCW 19.126.040(4), may bring a civil action in a court of competent jurisdiction to enjoin further violations. Injunctive relief may be granted in an action brought under this chapter without the injured party being required to post bond if, in the opinion of the court, there exists a likelihood that the injured party will prevail on the merits.

Passed by the House March 5, 2009.
Passed by the Senate April 9, 2009.
Approved by the Governor April 21, 2009.
Filed in Office of Secretary of State April 22, 2009.

CHAPTER 156

[House Bill 1506]

FIREFIGHTERS—SURVIVOR BENEFITS

AN ACT Relating to benefits for the survivors of certain firefighters; amending RCW 41.18.080 and 41.18.100; and adding a new section to chapter 41.18 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 41.18 RCW to read as follows:

(1) Any retired firefighter married to a spouse ineligible for survivor benefits under RCW 41.18.040, 41.18.080, and 41.18.100 may choose an actuarially equivalent benefit adopted by the board that pays the retired firefighter a reduced retirement allowance, and upon death such portion of the retired firefighter's reduced retirement allowance as designated by the retired firefighter shall be continued throughout the life of the spouse.

(2) A retired firefighter who married a spouse ineligible for survivor benefits under RCW 41.18.040, 41.18.080, and 41.18.100 prior to the effective date of this section has one year after the effective date of this section to designate their spouse as a survivor beneficiary.

(3) The benefit provided to a child survivor beneficiary under RCW 41.18.040, 41.18.080, and 41.18.100 shall not be affected or reduced by the retired firefighter's selection of the actuarially reduced spousal survivor benefit provided by this section, and shall be equivalent to the amount payable as if the choice under subsection (1) of this section was not made.

(4)(a) Any retired firefighter who chose to receive a reduced retirement allowance under subsection (1) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection if:

(i) The retiree's survivor spouse designated in subsection (1) of this section predeceases the retiree; and

(ii) The retiree provides to the board proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree from the beginning of the month following the date of the beneficiary's death shall be the current monthly amount payable as if the selection under subsection (1) of this section was not made.

Sec. 2. RCW 41.18.080 and 2007 c 218 s 49 are each amended to read as follows:

Any firefighter who has completed his or her probationary period and has been permanently appointed, and sustains a disability not in the performance of his or her duty which renders him or her unable to continue his or her service, may request to be retired by filing a written request with his or her retirement board within sixty days from the date of his or her disability. The board may, upon such request being filed, consult such medical advice as it deems fit and proper. If the board finds the firefighter capable of performing his or her duties, it may refuse to recommend retirement and order the firefighter back to duty. If no request for retirement has been received after the expiration of sixty days from the date of his or her disability, the board may recommend retirement of the firefighter. The board shall give the firefighter a thirty-day written notice of its recommendation, and he or she shall be retired upon expiration of said notice. Upon retirement he or she shall receive a pension equal to fifty percent of his or her basic salary. For a period of ninety days following such disability the firefighter shall receive an allowance from the fund equal to his or her basic salary. He or she shall during said ninety days be provided with such medical, hospital, and nursing care as the board deems proper. No funds shall be expended for such disability if the board determines that the firefighter was gainfully employed or engaged for compensation in other than fire department duty when the disability occurred, or if such disability was the result of dissipation or abuse. Whenever any firefighter shall die as a result of a disability sustained not in the line of duty, his widow or her widower shall receive a monthly pension equal to one-third of his or her basic salary ((~~until remarried~~)); if such widow or widower has dependent upon her or him for support a child or children of such deceased firefighter, he or she shall receive an additional pension as follows: One child, one-eighth of the deceased's basic salary; two children, one-seventh; three or more children, one-sixth. If there be no widow or widower, monthly payments equal to one-third of the deceased firefighter's basic salary shall be made to his or her child or children. The widow or widower may elect at any time in writing to receive a cash settlement, and if the board after hearing finds it financially beneficial to the pension fund, he or she may receive the sum of five thousand dollars cash in lieu of all future monthly pension payments, and other benefits, including benefits to any child and/or children.

Sec. 3. RCW 41.18.100 and 2007 c 218 s 51 are each amended to read as follows:

In the event a firefighter is killed in the performance of duty, or in the event a firefighter retired on account of service connected disability shall die from any cause, his widow or her widower shall receive a monthly pension under one of the following applicable provisions: (1) If a firefighter is killed in the line of duty his widow or her widower shall receive a monthly pension equal to fifty percent of his or her basic salary at the time of his or her death; (2) if a firefighter who has retired on account of a service connected disability dies, his widow or her widower shall receive a monthly pension equal to the amount of the monthly pension such retired firefighter was receiving at the time of his or her death. If she or he at any time so elects in writing and the board after hearing finds it to be financially beneficial to the pension fund, he or she may receive in lieu of all future monthly pension and other benefits, including benefits to child or children, the sum of five thousand dollars in cash. If there be no widow or widower at the time of such firefighter's death or upon the widow's or widower's death the monthly pension benefits ((~~hereinabove~~)) provided for under this section shall be paid to and divided among his or her child or children share and share alike, until they reach the age of eighteen or are married, whichever occurs first. ((~~The widow's or widower's monthly pension benefit, including increased benefits to his or her children shall cease if and when he or she remarries: PROVIDED, That no~~)) A pension payable under the provisions of this section shall not be less than that specified under RCW 41.18.200.

Passed by the House February 23, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 21, 2009.
Filed in Office of Secretary of State April 22, 2009.

CHAPTER 157

[Substitute House Bill 1953]

DEPARTMENT OF FISH AND WILDLIFE—TRANSFER OF SERVICE CREDIT

AN ACT Relating to allowing department of fish and wildlife enforcement officers to transfer service credit; and adding a new section to chapter 41.26 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 41.26 RCW to read as follows:

(1) A member of plan 2 who was a member of the public employees' retirement system plan 2 or plan 3 while employed as an enforcement officer for the department of fish and wildlife has the option to make an election no later than December 31, 2009, filed in writing with the department of retirement systems, to transfer all service credit previously earned as an enforcement officer in the public employees' retirement system plan 2 or plan 3 to the law enforcement officers' and firefighters' retirement system plan 2. Service credit that a member elects to transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system under this section shall be transferred no earlier than June 30, 2014, and only after the member completes payment as provided in subsection (2) of this section.

(2)(a) A member who elects to transfer service credit under subsection (1) of this section shall make the payments required by this subsection prior to having service credit earned as an enforcement officer with the department of fish and wildlife under the public employees' retirement system plan 2 or plan 3 transferred to the law enforcement officers' and firefighters' retirement system plan 2.

(b) A member who elects to transfer service credit from the public employees' retirement system plan 2 under this subsection shall pay, for the applicable period of service, the difference between the contributions the employee paid to the public employees' retirement system plan 2 and the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and firefighters' retirement system plan 2, plus interest on this difference as determined by the director. This payment must be made no later than June 30, 2014, and must be made prior to retirement.

(c) A member who elects to transfer service credit from the public employees' retirement system plan 3 under this subsection shall transfer to the law enforcement officers' and firefighters' retirement system plan 2, for the applicable period of service, the full balance of the member's defined contribution account within plan 3 as of the effective date of the transfer. At no time will the member pay, for the applicable period of service, a sum less than the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and firefighters' retirement system plan 2, plus interest as determined by the director. This transfer and any additional payment, if necessary, must be made no later than June 30, 2014, and must be made prior to retirement.

(d) Upon completion of the payment required in (b) of this subsection, the department shall transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system plan 2: (i) All of the employee's applicable accumulated contributions plus interest and all of the applicable employer contributions plus interest; and (ii) all applicable months of service, as defined in RCW 41.26.030(14)(b), credited to the employee under this chapter for service as an enforcement officer with the department of fish and wildlife as though that service was rendered as a member of the law enforcement officers' and firefighters' retirement system plan 2.

(e) Upon completion of the payment required in (c) of this subsection, the department shall transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system plan 2: (i) All of the employee's applicable accumulated contributions plus interest and all of the applicable employer contributions plus interest; and (ii) all applicable months of service, as defined in RCW 41.26.030(14)(b), credited to the employee under this chapter for service as an enforcement officer with the department of fish and wildlife as though that service was rendered as a member of the law enforcement officers' and firefighters' retirement system plan 2.

(f) If a member who elected to transfer pursuant to this section dies or retires for disability prior to June 30, 2014, the member's benefit is calculated as follows:

(i) All of the applicable service credit, accumulated contributions, and interest is transferred to the law enforcement officers' and firefighters' retirement system plan 2 and used in the calculation of a benefit.

(ii) If a member's obligation under (b) or (c) of this subsection has not been paid in full at the time of death or disability retirement, the member, or in the case of death the surviving spouse or eligible minor children, have the following options:

(A) Pay the bill in full;

(B) If a continuing monthly benefit is chosen, have the benefit actuarially reduced to reflect the amount of the unpaid obligation under (b) or (c) of this subsection; or

(C) Continue to make payment against the obligation under (b) or (c) of this subsection, provided that payment in full is made no later than June 30, 2014.

(g) Upon transfer of service credit, contributions, and interest under this subsection, the employee is permanently excluded from membership in the public employees' retirement system for all service related to time served as an enforcement officer with the department of fish and wildlife under the public employees' retirement system plan 2 or plan 3.

Passed by the House March 6, 2009.
Passed by the Senate April 10, 2009.
Approved by the Governor April 21, 2009.
Filed in Office of Secretary of State April 22, 2009.

CHAPTER 158

[House Bill 1474]

BORDER COUNTY HIGHER EDUCATION OPPORTUNITY PROJECT

AN ACT Relating to the border county higher education opportunity project; and amending RCW 28B.76.685 and 28B.15.0139.

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

Sec. 1. RCW 28B.76.685 and 2003 c 159 s 2 are each amended to read as follows:

(1)(a) The border county higher education opportunity project is created. The purpose of the project is to allow Washington institutions of higher education that are located in counties on the Oregon border to implement tuition policies that correspond to Oregon policies. Under the border county project, Columbia Basin Community College, Clark College, Lower Columbia Community College, Grays Harbor Community College, and Walla Walla Community College may enroll students who reside in the bordering Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, and Washington at resident tuition rates.

(b) The Tri-Cities and Vancouver branches of Washington State University may enroll students who reside in the bordering Oregon counties of Columbia, Multnomah, Clatsop, Clackamas, Morrow, Umatilla, Union, Wallowa, and Washington for eight credits or less at resident tuition rates.

(2) Columbia Basin Community College, Clark College, Lower Columbia Community College, Grays Harbor Community College, and Walla Walla Community College may enroll students at resident tuition rates who:

(a) Are currently domiciled in Washington;

(b) Relocated to Washington from one of the thirteen counties identified in subsection (1)(a) of this section within the previous twelve months; and

(c) Were domiciled in one of the thirteen counties identified in subsection (1)(a) of this section for at least ninety days immediately before relocating to Washington.

(3) The Tri-Cities and Vancouver branches of Washington State University may enroll students for eight credits or less at resident tuition rates who:

(a) Are currently domiciled in Washington;

(b) Relocated to Washington from one of the nine counties identified in subsection (1)(b) of this section within the previous twelve months; and

(c) Were domiciled in one of the nine counties identified in subsection (1)(b) of this section for at least ninety days immediately before relocating to Washington.

(4) Washington institutions of higher education participating in the project shall give priority program enrollment to Washington residents.

Sec. 2. RCW 28B.15.0139 and 2003 c 159 s 4 are each amended to read as follows:

For the purposes of determining resident tuition rates, "resident student" includes a resident of Oregon, residing in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county, who meets the following conditions:

(1) The student is eligible to pay resident tuition rates under Oregon laws and has been domiciled in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county for at least ninety days immediately before enrollment at a community college located in Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, or Walla Walla county, Washington; ((~~or~~))

(2) The student is enrolled in courses located at the Tri-Cities or Vancouver branch of Washington State University for eight credits or less; or

(3) The student is currently domiciled in Washington and:

(a) Was eligible to pay resident tuition rates under Oregon laws; and

(b) Had been domiciled in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county for at least ninety days immediately before being domiciled in Washington.

Passed by the House March 5, 2009.

Passed by the Senate April 7, 2009.

Approved by the Governor April 21, 2009.

Filed in Office of Secretary of State April 22, 2009.

CHAPTER 159

[House Bill 1478]

VEHICLE REGISTRATION—DEPLOYED MILITARY PERSONNEL

AN ACT Relating to vehicle registrations for deployed military personnel; and amending RCW 46.16.006.

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

Sec. 1. RCW 46.16.006 and 1992 c 222 s 1 are each amended to read as follows:

(1) The term "registration year" for the purposes of chapters 46.16, 82.44, and 82.50 RCW means the effective period of a vehicle license issued by the department. Such year commences at 12:01 a.m. on the date of the calendar year designated by the department and ends at 12:01 a.m. on the same date of the next succeeding calendar year.

(a) If a vehicle license previously issued in this state has expired and is renewed with a different registered owner, a new registration year is deemed to commence upon the date the expired license is renewed in order that the renewed license be useable for a full twelve-month period.

(b) A new registration year is deemed to commence upon the date the expired license is renewed in order that the renewed license be useable for a full twelve months when the registered owner:

(i) Is a member of the United States armed forces;

(ii) Was stationed outside of Washington under military orders during the prior vehicle registration year; and

(iii) Provides the department a copy of the military orders.

(2) Each registration year may be divided into twelve registration months. Each registration month commences on the day numerically corresponding to the day of the calendar month on which the registration year begins, and terminates on the numerically corresponding day of the next succeeding calendar month.

(3) Where the term "last day of the month" is used in chapters 46.16, 82.44, and 82.50 RCW in lieu of a specified day of any calendar month it means the last day of such calendar month or months irrespective of the numerical designation of that day.

(4) If the final day of a registration year or month falls on a Saturday, Sunday, or legal holiday, such period extends through the end of the next business day.

Passed by the House February 23, 2009.
Passed by the Senate April 8, 2009.
Approved by the Governor April 21, 2009.
Filed in Office of Secretary of State April 22, 2009.

CHAPTER 160

[Engrossed Substitute House Bill 1512]

RAIL FREIGHT SERVICE—FUNDING

AN ACT Relating to funding rail freight service through grants; and amending RCW 47.76.250.

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

Sec. 1. RCW 47.76.250 and 1996 c 73 s 2 are each amended to read as follows:

(1) The essential rail assistance account is created in the state treasury. Moneys in the account may be appropriated only for the purposes specified in this section.

(2) Moneys appropriated from the account to the department of transportation may be used by the department or distributed by the department to cities, county rail districts, counties, economic development councils, ((~~and~~)) port districts, and privately or publicly owned railroads for the purpose of:

(a) Acquiring, rebuilding, rehabilitating, or improving rail lines;

(b) Purchasing or rehabilitating railroad equipment necessary to maintain essential rail service;

(c) Constructing railroad improvements to mitigate port access or mainline congestion;

(d) Construction of loading facilities to increase business on light density lines or to mitigate the impacts of abandonment;

(e) Preservation, including operation, of light density lines, as identified by the Washington state department of transportation, in compliance with this chapter; or

(f) Preserving rail corridors for future rail purposes by purchase of rights-of-way. The department shall first pursue transportation enhancement program funds, available under the federal surface transportation program, to the greatest extent practicable to preserve rail corridors. Purchase of rights-of-way may include track, bridges, and associated elements, and must meet the following criteria:

(i) The right-of-way has been identified and evaluated in the state rail plan prepared under this chapter;

(ii) The right-of-way may be or has been abandoned; and

(iii) The right-of-way has potential for future rail service.

(3) The department or the participating local jurisdiction is responsible for maintaining any right-of-way acquired under this chapter, including provisions for drainage management, fire and weed control, and liability associated with ownership.

(4) Nothing in this section impairs the reversionary rights of abutting landowners, if any, without just compensation.

(5) The department, cities, county rail districts, counties, and port districts may grant franchises to private railroads for the right to operate on lines acquired under this chapter.

(6) The department, cities, county rail districts, counties, and port districts may grant trackage rights over rail lines acquired under this chapter.

(7) If rail lines or rail rights-of-way are used by county rail districts, port districts, state agencies, or other public agencies for the purposes of rail operations and are later abandoned, the rail lines or rail rights-of-way cannot be used for any other purposes without the consent of the underlying fee title holder or reversionary rights holder, or until compensation has been made to the underlying fee title holder or reversionary rights holder.

(8) The department of transportation shall develop criteria for prioritizing freight rail projects that meet the minimum eligibility requirements for state assistance under RCW 47.76.240. The department shall develop criteria in

consultation with the Washington state freight rail policy advisory committee. Project criteria should consider the level of local financial commitment to the project as well as cost/benefit ratio. Counties, local communities, railroads, shippers, and others who benefit from the project should participate financially to the greatest extent practicable.

(9) Moneys received by the department from franchise fees, trackage rights fees, and loan payments shall be redeposited in the essential rail assistance account. Repayment of loans made under this section shall occur within a period not longer than fifteen years, as set by the department. The repayment schedule and rate of interest, if any, shall be determined before the distribution of the moneys.

(10) The state shall maintain a contingent interest in any equipment, property, rail line, or facility that has outstanding grants or loans. The owner may not use the line as collateral, remove track, bridges, or associated elements for salvage, or use it in any other manner subordinating the state's interest without permission from the department.

(11) ((~~Moneys distributed under this chapter should be provided as loans wherever practicable. Except as provided by section 3, chapter 73, Laws of 1996, for improvements on or to privately owned railroads, railroad property, or other private property, moneys distributed shall be provided solely as loans.~~)) Moneys may be granted for improvements to privately owned railroads, railroad property, or other private property under this chapter for freight rail projects that meet the minimum eligibility criteria for state assistance under RCW 47.76.240, and which are supported by contractual consideration. At a minimum, such contractual consideration shall consist of defined benefits to the public with a value equal to or greater than the grant amount, and where the grant recipient provides the state a contingent interest adequate to ensure that such public benefits are realized.

Passed by the House March 11, 2009.
Passed by the Senate April 9, 2009.
Approved by the Governor April 21, 2009.
Filed in Office of Secretary of State April 22, 2009.

CHAPTER 161

[House Bill 1567]

INSURANCE—MEDICARE SUPPLEMENT POLICIES—REPORTING OF PREMIUMS

AN ACT Relating to insurance; and amending RCW 48.02.190, 48.13.450, 48.14.020, 48.14.090, and 48.66.045.

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

Sec. 1. RCW 48.02.190 and 2008 c 328 s 6003 are each amended to read as follows:

(1) As used in this section:

(a) "Organization" means every insurer, as defined in RCW 48.01.050, having a certificate of authority to do business in this state, every health care service contractor, as defined in RCW 48.44.010, every health maintenance organization, as defined in RCW 48.46.020, or self-funded multiple employer welfare arrangement, as defined in RCW 48.125.010, registered to do business

in this state. "Class one" organizations shall consist of all insurers as defined in RCW 48.01.050. "Class two" organizations shall consist of all organizations registered under provisions of chapters 48.44 and 48.46 RCW. "Class three" organizations shall consist of self-funded multiple employer welfare arrangements as defined in RCW 48.125.010.

(b)(i) "Receipts" means (A) net direct premiums consisting of direct gross premiums, as defined in RCW 48.18.170, paid for insurance written or renewed upon risks or property resident, situated, or to be performed in this state, less return premiums and premiums on policies not taken, dividends paid or credited to policyholders on direct business, and premiums received from policies or contracts issued in connection with qualified plans as defined in RCW 48.14.021, and (B) prepayments to health care service contractors, as defined in RCW 48.44.010, health maintenance organizations, as defined in RCW 48.46.020, or participant contributions to self-funded multiple employer welfare arrangements, as defined in RCW 48.125.010, less experience rating credits, dividends, prepayments returned to subscribers, and payments for contracts not taken.

(ii) Participant contributions, under chapter 48.125 RCW, used to determine the receipts in this state under this section shall be determined in the same manner as premiums taxable in this state are determined under RCW 48.14.090.

(c) "Regulatory surcharge" means the fees imposed by this section.

(2) The annual cost of operating the office of insurance commissioner shall be determined by legislative appropriation. A pro rata share of the cost shall be charged to all organizations as a regulatory surcharge. Each class of organization shall contribute a sufficient amount to the insurance commissioner's regulatory account to pay the reasonable costs, including overhead, of regulating that class of organization.

(3) The regulatory surcharge shall be calculated separately for each class of organization. The regulatory surcharge collected from each organization shall be that portion of the cost of operating the insurance commissioner's office, for that class of organization, for the ensuing fiscal year that is represented by the organization's portion of the receipts collected or received by all organizations within that class on business in this state during the previous calendar year. However, the regulatory surcharge must not exceed one-eighth of one percent of receipts and the minimum regulatory surcharge shall be one thousand dollars.

(4) The commissioner shall annually, on or before June 1st, calculate and bill each organization for the amount of the regulatory surcharge. The regulatory surcharge shall be due and payable no later than June 15th of each year. However, if the necessary financial records are not available or if the amount of the legislative appropriation is not determined in time to carry out such calculations and bill such regulatory surcharge within the time specified, the commissioner may use the regulatory surcharge factors for the prior year as the basis for the regulatory surcharge and, if necessary, the commissioner may impose supplemental fees to fully and properly charge the organizations. Any organization failing to pay the regulatory surcharges by June 30th shall pay the same penalties as the penalties for failure to pay taxes when due under RCW 48.14.060. The regulatory surcharge required by this section is in addition to all other taxes and fees now imposed or that may be subsequently imposed.

(5) All moneys collected shall be deposited in the insurance commissioner's regulatory account in the state treasury which is hereby created.

(6) Unexpended funds in the insurance commissioner's regulatory account at the close of a fiscal year shall be carried forward in the insurance commissioner's regulatory account to the succeeding fiscal year and shall be used to reduce future regulatory surcharges. ((~~During the 2007-2009 fiscal biennium, the legislature may transfer from the insurance commissioner's regulatory account to the Washington state heritage center account such amounts as reflect excess fund balance in the account.~~))

(7)(a) Each insurer may annually collect regulatory surcharges remitted in preceding years by means of a policyholder surcharge on premiums charged for all kinds of insurance. The recoupment shall be at a uniform rate reasonably calculated to collect the regulatory surcharge remitted by the insurer.

(b) If an insurer fails to collect the entire amount of the recoupment in the first year under this section, it may repeat the recoupment procedure provided for in this subsection (7) in succeeding years until the regulatory surcharge is fully collected or a de minimis amount remains uncollected. Any such de minimis amount may be collected as provided in (d) of this subsection.

(c) The amount and nature of any recoupment shall be separately stated on either a billing or policy declaration sent to an insured. The amount of the recoupment must not be considered a premium for any purpose, including the premium tax or agents' commissions.

(d) An insurer may elect not to collect the regulatory surcharge from its insured. In such a case, the insurer may recoup the regulatory surcharge through its rates, if the following requirements are met:

(i) The insurer remits the amount of surcharge not collected by election under this subsection; and

(ii) The surcharge is not considered a premium for any purpose, including the premium tax or agents' commission.

Sec. 2. RCW 48.13.450 and 2008 c 234 s 1 are each amended to read as follows:

The definitions in this section apply throughout RCW 48.13.450 through 48.13.475 unless the context clearly requires otherwise.

(1) "Agent" means a national bank, state bank, trust company, or broker/dealer that maintains an account in its name in a clearing corporation or that is a member of the federal reserve system and through which a custodian participates in a clearing corporation, including the treasury/reserve automated debt entry securities system (TRADES) or treasury direct systems; except that with respect to securities issued by institutions organized or existing under the laws of a foreign country or securities used to meet the deposit requirements pursuant to laws of a foreign country as a condition of doing business therein, "agent" may include a corporation that is organized or existing under the laws of a foreign country and that is legally qualified under those laws to accept custody of securities.

(2) "Broker/dealer" means a broker or dealer as defined in RCW 62A.8-102(1)(c), that is registered with and subject to the jurisdiction of the securities and exchange commission, maintains membership in the securities investor protection corporation, and has a tangible net worth equal to or greater than two hundred fifty million dollars.

(3) "Clearing corporation" means a corporation as defined in RCW 62A.8-102(1)(e) that is organized for the purpose of effecting transactions in securities by computerized book-entry, except that with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation that is organized or existing under the laws of any foreign country and is legally qualified under such laws to effect transactions in securities by computerized book-entry. "Clearing corporation" also includes treasury/reserve automated debt entry securities system and treasury direct book-entry securities systems established pursuant to 31 U.S.C. Sec. 3100 et seq., 12 U.S.C. pt. 391, and 5 U.S.C. pt. 301.

(4) "Commissioner" means the insurance commissioner of the state of Washington.

(5) "Custodian" means:

(a) A national bank, state bank, or trust company that shall, at all times acting as a custodian, be no less than adequately capitalized as determined by the standards adopted by United States banking regulators and that is regulated by either state banking laws or is a member of the federal reserve system and that is legally qualified to accept custody of securities; except that with respect to securities issued by institutions organized or existing under the laws of a foreign country, or securities used to meet the deposit requirements pursuant to laws of a foreign country as a condition of doing business therein, "custodian" may include a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as such by that country's government or an agency thereof that shall at all times acting as a custodian be no less than adequately capitalized as determined by the standards adopted by the international banking authorities and legally qualified to accept custody of securities; or

(b) A broker/dealer.

(6) "Custodied securities" means securities held by the custodian or its agent or in a clearing corporation, including the treasury/reserve automated debt ((~~equity~~)) entry securities system (TRADES) or treasury direct systems.

(7) "Securities" means instruments as defined in RCW 62A.8-102(1)(o).

(8) "Securities certificate" has the same meaning as in RCW 62A.8-102(1)(d).

(9) "Tangible net worth" means shareholders equity, less intangible assets, as reported in the broker/dealer's most recent annual or transition report pursuant to section 13 or 15(d) of the securities exchange act of 1934 (S.E.C. Form 10-K) filed with the securities and exchange commission.

(10) "Treasury/reserve automated debt entry securities system" ("TRADES") and "treasury direct" mean book-entry securities systems established pursuant to 31 U.S.C. Sec. 3100 et seq., 12 U.S.C. pt. 391, and 5 U.S.C. pt. 301, with the operation of TRADES and treasury direct subject to 31 C.F.R. pt. 357 et seq.

Sec. 3. RCW 48.14.020 and 2008 c 217 s 6 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) 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) 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) 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) 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) 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.

Sec. 4. RCW 48.14.090 and 1963 c 195 s 14 are each amended to read as follows:

In determining the amount of direct premium taxable in this state, all such premiums written, procured, or received in this state shall be deemed written

upon risks or property resident, situated, or to be performed in this state except such premiums as are properly allocated or apportioned and reported as taxable premiums of any other state or states. 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.

Sec. 5. RCW 48.66.045 and 2005 c 41 s 4 are each amended to read as follows:

(1) Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, and before June 1, 2010, shall:

(((~~(1)~~))) (a) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized benefit plans B, C, D, E, F, G, K, and L without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement standardized benefit plan policy or certificate B, C, D, E, F, G, K, or L, or other more comprehensive coverage than the replacing policy; and

(((~~(2)~~))) (b) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized plans A, H, I, and J without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy replaces another medicare supplement policy or certificate which is the same standardized plan as the replaced policy. After December 31, 2005, plans H, I, and J may be replaced only by the same plan if that plan has been modified to remove outpatient prescription drug coverage((~~; and~~)).

(2)(a) Unless otherwise provided for in RCW 48.66.055, every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after June 1, 2010, shall issue coverage under its standardized plans B, C, D, E, F with high deductible, G, K, L, M, or N without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy or certificate replaces another medicare supplement policy or certificate or other more comprehensive coverage; and

(b) Unless otherwise provided for in RCW 48.66.055, issue coverage under its standardized plan A without evidence of insurability to any resident of this state who is eligible for both medicare hospital and physician services by reason of age or by reason of disability or end-stage renal disease, if the medicare supplement policy or certificate replaces another standardized plan A medicare supplement policy or certificate.

(3) Every issuer of a medicare supplement insurance policy or certificate providing coverage to a resident of this state issued on or after January 1, 1996, shall set rates only on a community-rated basis. Premiums shall be equal for all policyholders and certificate holders under a standardized medicare supplement benefit plan form, except that an issuer may vary premiums based on spousal discounts, frequency of payment, and method of payment including automatic

deposit of premiums and may develop no more than two rating pools that distinguish between an insured's eligibility for medicare by reason of:

(a) Age; or

(b) Disability or end-stage renal disease.

Passed by the House February 23, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 21, 2009.
Filed in Office of Secretary of State April 22, 2009.

CHAPTER 162

[Engrossed House Bill 1568]

INSURANCE—SALE, SOLICITATION, NEGOTIATION

AN ACT Relating to persons selling, soliciting, or negotiating insurance; amending RCW 48.03.020, 48.14.010, 48.15.070, 48.15.073, 48.15.100, 48.15.140, 48.17.010, 48.17.060, 48.17.090, 48.17.110, 48.17.150, 48.17.160, 48.17.170, 48.17.173, 48.17.250, 48.17.270, 48.17.380, 48.17.565, 48.30.260, 48.30.270, 48.31.111, 48.31.141, 48.62.121, 48.62.151, 48.99.030, 48.135.010, and 51.12.020; reenacting and amending RCW 82.04.260; adding new sections to chapter 48.15 RCW; prescribing penalties; providing an effective date; and declaring an emergency.

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

Sec. 1. RCW 48.03.020 and 2008 c 217 s 1 are each amended to read as follows:

For the purpose of ascertaining its condition, or compliance with this code, the commissioner may as often as he or she deems advisable examine the accounts, records, documents, and transactions of:

(1) Any insurance producer, surplus line broker, adjuster, or title insurance agent.

(2) Any person having a contract under which he or she enjoys in fact the exclusive or dominant right to manage or control a stock or mutual insurer.

(3) Any person holding the shares of capital stock or policyholder proxies of a domestic insurer for the purpose of control of its management either as voting trustee or otherwise.

(4) Any person engaged in or proposing to be engaged in or assisting in the promotion or formation of a domestic insurer, or an insurance holding corporation, or a stock corporation to finance a domestic mutual insurer or the production of its business, or a corporation to be attorney-in-fact for a domestic reciprocal insurer.

Sec. 2. RCW 48.14.010 and 2007 c 117 s 37 are each amended to read as follows:

(1) The commissioner shall collect in advance the following fees:

(a)	**For filing charter documents:**		
	(i)	Original charter documents, bylaws or record of organization of insurers, or certified copies thereof, required to be filed	$250.00
	(ii)	Amended charter documents, or certified copy thereof, other than amendments of bylaws	$ 10.00

(iii) No additional charge or fee shall be required for filing any of such documents in the office of the secretary of state.

(b) Certificate of authority:

(i) Issuance . . . . . $ 25.00

(ii) Renewal . . . . . $ 25.00

(c) Annual statement of insurer, filing . . . . . $ 20.00

(d) Organization or financing of domestic insurers and affiliated corporations:

(i) Application for solicitation permit, filing $100.00

(ii) Issuance of solicitation permit . . . . . $ 25.00

(e) Insurance producer licenses:

(i) License application . . . . . $ 55.00

(ii) License renewal, every two years . . . . . $ 55.00

(iii) Initial appointment and renewal of appointment of each insurance producer, every two years . . . . . $ 20.00

(iv) Limited line insurance producer license application and renewal, every two years . . . . . $ 20.00

(f) Title insurance agent licenses:

(i) License application . . . . . $ 50.00

(ii) License renewal, every two years . . . . . $ 50.00

(g) Reinsurance intermediary licenses:

(i) Reinsurance intermediary-broker, each year . . . . . $ 50.00

(ii) Reinsurance intermediary-manager, each year $100.00

((~~(g)~~)) (h) Surplus line broker license application and renewal, every two years $200.00

((~~(h)~~)) (i) Adjusters' licenses:

(i) Independent adjuster, every two years . . . . . $ 50.00

(ii) Public adjuster, every two years . . . . . $ 50.00

((~~(i)~~)) (j) Managing general agent appointment, every two years $200.00

((~~(j)~~)) (k) Examination for license, each examination:

All examinations, except examinations administered by an independent testing service, the fees for which are to be approved by the commissioner and collected directly by and retained by such independent testing service . . . . . $ 20.00

((~~(k)~~)) (l) Miscellaneous services:

(i) Filing other documents . . . . . $ 5.00

(ii) Commissioner's certificate under seal . . . . . $ 5.00

(iii) Copy of documents filed in the commissioner's office, reasonable charge therefor as determined by the commissioner.

(2) All fees so collected shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the general fund.

(a) Fees for examinations administered by an independent testing service that are approved by the commissioner under subsection (1)((~~(j)~~)) (k) of this section shall be collected directly by the independent testing service and retained by it.

(b) Fees for copies of documents filed in the commissioner's office shall be remitted by the commissioner to the state treasurer not later than the first business day following, and shall be placed to the credit of the insurance commissioner's regulatory account.

Sec. 3. RCW 48.15.070 and 2002 c 227 s 3 are each amended to read as follows:

Any individual while a resident of this state, or any firm or any corporation that has in its employ a qualified individual who is a resident of this state and who is authorized to exercise the powers of the firm or corporation, deemed by the commissioner to be competent and trustworthy, and while maintaining an office at a designated location in this state, may be licensed as a surplus line broker in accordance with this section.

(1) Application to the commissioner for the license shall be made on forms furnished by the commissioner. As part of, or in connection with, this application, the applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business records; purposes; and other pertinent information, as the commissioner may reasonably require. If in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(2) ((~~The license shall expire if not timely renewed. Surplus line brokers licenses shall be valid for the time period established by the commissioner unless suspended or revoked at an earlier date.~~

~~(3) Prior to issuance of license the applicant shall file with the commissioner~~)) Every surplus line broker licensed under this chapter must maintain a bond in favor of the state of Washington in the penal sum of twenty thousand dollars, with authorized corporate sureties approved by the commissioner, conditioned that ((~~he or she~~)) the licensee will conduct business under the license in accordance with the provisions of this chapter and that ((~~he or she~~)) the licensee will promptly remit the taxes provided by RCW 48.15.120. The licensee shall maintain such bond in force for as long as the license remains in effect.

(((~~(4) Every applicant for a surplus line broker's license or for the renewal of a surplus line broker's license shall file with the application or request for~~

~~renewal a bond in favor of the people of the state of Washington, executed by an authorized corporate surety approved by the commissioner, in the amount of one hundred thousand dollars and shall be the bonding requirement for new licensees. The licensee shall maintain such bond in force while so licensed.~~)) (3) Every surplus line broker licensed under this chapter must maintain in force while so licensed a bond in favor of the people of the state of Washington or a named insured such that the people of the state are covered by the bond, executed by an authorized corporate surety approved by the commissioner, in the amount of two thousand five hundred dollars, or five percent of the premiums from placement of coverage with surplus line insurers in the previous calendar year, whichever is greater, but not to exceed one hundred thousand dollars total aggregate liability. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the required amount ((~~stated in~~)) of the bond. The bond shall be contingent on the accounting by the surplus line broker to any person requesting ((~~such~~)) the broker to obtain insurance, for moneys or premiums collected in connection therewith. A bond issued in accordance with RCW 48.17.250 or with this subsection will satisfy the requirements of both RCW 48.17.250 and this subsection if the limit of liability is not less than the greater of the requirement of RCW 48.17.250 or the requirement of this subsection.

(((~~(5) Any bond issued pursuant to subsection (3) or (4) of this section shall remain in force until the surety is released from liability by the commissioner, or until the bond is canceled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon thirty days' advance notice in writing filed with the commissioner.~~

~~(6) If in the process of verifying fingerprints under subsection (1) of this section, business records, or other information the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.~~

~~(7)~~)) (4) Authorized surplus line brokers of a business entity may meet the requirements of subsection (3) of this section with a bond in the name of the business entity, continuous in form, and in the amount set forth in subsection (3) of this section.

(5) Surplus line brokers may meet the requirements of this section with a bond in the name of an association. The association must have been in existence for five years, have common membership, and have been formed for a purpose other than obtaining a bond. An individual surplus line broker remains responsible for assuring that a bond is in effect and is for the correct amount.

(6) Members of an association may meet the requirements of subsection (3) of this section with a bond in the name of the association that is continuous in form and in the amounts set forth in subsection (3) of this section for each participating member.

(7) The surety may cancel the bond and be released from further liability thereunder upon thirty days' written notice in advance to the principal. The cancellation does not affect any liability incurred or accrued under the bond before the termination of the thirty-day period.

(8) Failure to have and maintain the bonds required under subsections (2) and (3) of this section is grounds for revocation of a license under RCW 48.15.140.

(9) If a party injured under the terms of the bond required under subsection (3) of this section requests the surplus line broker to provide the name of the surety and the bond number, the surplus line broker must provide the information within three working days after receiving the request.

(10) All records relating to the bonds required by this section must be kept available and open to the inspection of the commissioner at any business time.

(11) A surplus line broker's license expires if not timely renewed. Surplus line broker licenses are valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(12) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any surplus line broker's license as provided in this title, the license may be renewed into another like period by filing with the commissioner by any means acceptable to the commissioner on or before the expiration date a request, by or on behalf of the licensee, for the renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010.

(13) If the request and fee for renewal of a surplus line broker's license are filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under the license, unless sooner revoked or suspended, until the issuance of a renewal license, or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed notification of the refusal to the licensee. If the request and fee for the license are not received by the expiration date, the authority conferred by the license ends on the expiration date.

(14) If the request for renewal of a surplus line broker's license and payment of the fee are not received by the commissioner prior to the expiration date, the applicant for renewal shall pay to the commissioner in addition to the renewal fee, a surcharge as follows:

(a) For the first thirty days or part thereof of delinquency, the surcharge is fifty percent of the renewal fee; and

(b) For the next thirty days or part thereof of delinquency, the surcharge is one hundred percent of the renewal fee.

(15) If the request for renewal of a surplus line broker's license and payment of the renewal fee are not received by the commissioner after sixty days but prior to twelve months after the expiration date, the application shall be for reinstatement of the license and the applicant for reinstatement shall pay to the commissioner the license fee and a surcharge of two hundred percent of the license fee.

(16) Subsections (14) and (15) of this section do not exempt any person from any penalty provided by law for transacting business without a valid and subsisting license.

(17) An individual surplus line broker who allows his or her license to lapse may, within twelve months after the expiration date, reinstate the same license without the necessity of passing a written examination.

(18) For the purposes of this section, a "qualified individual" is a natural person who has met all the requirements that must be met by an individual surplus line broker.

(19) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed surplus line broker to produce the information called for in an application for license.

Sec. 4. RCW 48.15.073 and 2001 c 91 s 1 are each amended to read as follows:

(1) The commissioner may license as a surplus line broker a person who is otherwise qualified under this code but who is not a resident of this state, if by the laws of the state or province of his or her residence or domicile a similar privilege is extended to residents of this state.

(2) A person under subsection (1) of this section must meet the same qualifications, other than residency, as any other person seeking to be licensed as a surplus line broker under this chapter. A person granted a nonresident surplus line broker's license must have all the same responsibilities as any other surplus line broker and is subject to the (a) commissioner's supervision as though resident in this state and (b) rules adopted under this chapter.

(3) A nonresident surplus line broker's license: (a) Expires and (b) is subject to the same renewal and fee requirements for renewal as a resident surplus line broker licensed under RCW 48.15.070.

(4) Each licensed nonresident surplus line broker shall appoint the commissioner as the surplus line broker's attorney to receive service of legal process issued against the surplus line broker in this state upon causes of action arising within this state. Service upon the commissioner as attorney constitutes effective legal service upon the surplus line broker.

(a) The appointment is irrevocable for as long as there could be any cause of action against the surplus line broker arising out of the surplus line broker's insurance transactions in this state.

(b) Duplicate copies of legal process against a surplus line broker shall be served upon the commissioner either by a person competent to serve a summons, or through registered mail. At the time of service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(c) Upon receiving service, the commissioner shall immediately send one of the copies of the process, by registered mail with return receipt requested, to the defendant surplus line broker at the surplus line broker's last address of record with the commissioner.

(d) The commissioner shall keep a record of the day and hour of service upon the commissioner of all legal process. Proceedings may not be had against the defendant surplus line broker and the defendant is not required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner.

Sec. 5. RCW 48.15.100 and 1955 c 303 s 6 are each amended to read as follows:

(1) Each licensed surplus line broker shall keep a full and true record of each surplus line contract procured by him or her including a copy of the daily report, if any, showing such of the following items as may be applicable:

(a) Amount of the insurance;

(b) Gross premiums charged;

(c) Return premium paid, if any;

(d) Rate of premium charged upon the several items of property;

(e) Effective date of the contract, and the terms thereof;

(f) Name and address of the insurer;

(g) Name and address of the insured;

(h) Brief general description of property insured and where located;

(i) Other information as may be required by the commissioner.

(2) All such records as to any particular transaction shall be kept available and open to the inspection of the commissioner at any business time during the five years next following the date of completion of such transaction.

(3) For the purpose of ascertaining its condition, or compliance with this title, the commissioner may as often as he or she deems advisable, examine the accounts, records, documents, and transactions of any surplus line broker as set forth in chapter 48.03 RCW.

NEW SECTION. **Sec. 6.** A new section is added to chapter 48.15 RCW to read as follows:

(1) A surplus line broker doing business under any name other than the surplus line broker's legal name is required to register the name in accordance with chapter 19.80 RCW and notify the commissioner before using the assumed name.

(2) Every licensed surplus line broker shall have and maintain in this state, or, if a nonresident surplus line broker, in this state or in the state of the licensee's domicile, a place of business accessible to the public. The place of business is where the surplus line broker principally conducts transactions under that person's license. A licensee maintaining more than one place of business in this state shall obtain a duplicate license or licenses for each additional place, and shall pay the full fee therefor.

(3) Any notice, order, or written communication from the commissioner to a person licensed under this chapter which directly affects the person's license shall be sent by mail to the person's last address of record with the commissioner.

(4) The license or licenses of each surplus line broker shall be displayed in a conspicuous place in that part of the place of business which is customarily open to the public.

(5) If a surplus line broker is dealing directly with the insured in any capacity, the surplus line broker must comply with the disclosure requirements contained in RCW 48.17.270.

(6) Every surplus line broker or other person licensed under this chapter shall promptly reply in writing to an inquiry of the commissioner relative to the business of insurance. A timely response is one that is received by the commissioner within fifteen business days from receipt of the inquiry. Failure to make a timely response constitutes a violation of this section.

(7) A surplus line broker shall report to the commissioner any administrative action taken against the surplus line broker in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report must include a copy of the order, consent to order, or other relevant legal documents.

(8) Within thirty days of the initial pretrial hearing date, a surplus line broker shall report to the commissioner any criminal prosecution of the surplus line broker taken in any jurisdiction. The report must include a copy of the

initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

Sec. 7. RCW 48.15.140 and 2008 c 217 s 10 are each amended to read as follows:

(1) The commissioner may place on probation, revoke, suspend, or refuse to renew any surplus line broker's license, or may levy a civil penalty in accordance with RCW 48.17.560 or any combination of actions, for any one or more of the following causes:

(a) If the surplus line broker fails to file the licensee's annual statement or to remit the tax as required by this chapter; or

(b) If the surplus line broker fails to maintain an office in this state, or to keep the records, or to allow the commissioner to examine the licensee's records as required by this chapter; or

(c) For any of the causes for which an insurance producer's license may be revoked under chapter 48.17 RCW.

(2) The commissioner may suspend or revoke any such license whenever he or she deems suspension or revocation to be for the best interests of the people of this state.

(3) The procedures provided by this code for the suspension or revocation of insurance producers' licenses shall be applicable to suspension or revocation of a surplus line broker's license.

(4) A surplus line broker whose license has been so revoked shall not again be so licensed within one year thereafter, nor until any fines or delinquent taxes owing by the formal licensee have been paid.

NEW SECTION. **Sec. 8.** A new section is added to chapter 48.15 RCW to read as follows:

(1) A surplus line broker shall not engage in any act prohibited by RCW 48.05.465(2), 48.43.335(2), and chapter 48.30 RCW.

(2) A surplus line broker is entitled to the immunities granted under RCW 48.43.105 and 48.50.070.

(3) The rights and prohibitions applicable to insurance producers contained in RCW 48.30.260, 48.30.270, and 48.62.121 also apply to surplus line brokers.

(4) The exemption for taxes and fees in RCW 48.62.151 does not apply to surplus line brokers.

NEW SECTION. **Sec. 9.** A new section is added to chapter 48.15 RCW to read as follows:

(1) A surplus line broker, its representative, or any person licensed under this chapter involved in the procuring or issuance of an insurance contract and who receives any funds representing premiums or return premiums which belong to or should be paid to another person as a result of or in connection with an insurance transaction is deemed to have been received in the surplus line broker's fiduciary capacity and shall:

(a) Report to the insurer the exact amount of consideration charged as premium for the contract, and the amount shall likewise be shown in the contract and in the records of the surplus line broker;

(b) Be promptly accounted for and paid to the insured, insurer, or person entitled to the funds;

(c) Be accounted for and maintained in a separate account from all other business and personal funds and not commingle or otherwise combine premiums with any other moneys, except a surplus line broker may commingle with premium funds any additional funds as the surplus line broker may deem prudent for the purpose of advancing premiums, establishing reserves for the paying of return premiums, or for any contingencies as may arise in the surplus line broker's business of receiving and transmitting premium or return premium funds.

(2) Each willful violation of this section constitutes a misdemeanor.

(3) Any surplus line broker or other person licensed under this chapter who, not being lawfully entitled thereto, diverts or appropriates funds received in a fiduciary capacity or any portion thereof to his or her own use, is guilty of theft under chapter 9A.56 RCW.

NEW SECTION. **Sec. 10.** A new section is added to chapter 48.15 RCW to read as follows:

The commissioner shall immediately suspend the license or certificate of a person issued under this chapter who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the commissioner's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

NEW SECTION. **Sec. 11.** A new section is added to chapter 48.15 RCW to read as follows:

It is unlawful for any unauthorized person to remove, reproduce, duplicate, or distribute in any form, any question used by the state of Washington to determine the qualifications and competence of surplus line brokers required by this title to be licensed. This section does not prohibit an insurance education provider from creating and using sample test questions in courses approved by the commissioner.

Any person violating this section is subject to penalties as provided by RCW 48.01.080 and 48.15.140.

NEW SECTION. **Sec. 12.** A new section is added to chapter 48.15 RCW to read as follows:

The commissioner may adopt rules to implement and administer this chapter.

Sec. 13. RCW 48.17.010 and 2007 c 117 s 1 are each amended to read as follows:

The definitions in this section apply throughout this ((~~chapter~~)) title unless the context clearly requires otherwise.

(1) "Adjuster" means any person who, for compensation as an independent contractor or as an employee of an independent contractor, or for fee or commission, investigates or reports to the adjuster's principal relative to claims arising under insurance contracts, on behalf solely of either the insurer or the insured. An attorney-at-law who adjusts insurance losses from time to time incidental to the practice of his or her profession, or an adjuster of marine losses,

or a salaried employee of an insurer or of a managing general agent, is not deemed to be an "adjuster" for the purpose of this chapter.

(a) "Independent adjuster" means an adjuster representing the interests of the insurer.

(b) "Public adjuster" means an adjuster employed by and representing solely the financial interests of the insured named in the policy.

(2) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(3) "Home state" means the District of Columbia and any state or territory of the United States or province of Canada in which an insurance producer maintains the insurance producer's principal place of residence or principal place of business, and is licensed to act as an insurance producer.

(4) "Insurance education provider" means any insurer, health care service contractor, health maintenance organization, professional association, educational institution created by Washington statutes, or vocational school licensed under Title 28C RCW, or independent contractor to which the commissioner has granted authority to conduct and certify completion of a course satisfying the insurance education requirements of RCW 48.17.150.

(5) "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. "Insurance producer" does not include title insurance agents as defined in subsection (15) of this section or surplus line brokers licensed under chapter 48.15 RCW.

(6) "Insurer" has the same meaning as in RCW 48.01.050, and includes a health care service contractor as defined in RCW 48.44.010 and a health maintenance organization as defined in RCW 48.46.020.

(7) "License" means a document issued by the commissioner authorizing a person to act as an insurance producer or title insurance agent for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent, or inherent, in the holder to represent or commit to an insurer.

(8) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, automobile dealer gap insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing the credit obligation that the commissioner determines should be designated a form of limited line credit insurance.

(9) "NAIC" means national association of insurance commissioners.

(10) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

(11) "Person" means an individual or a business entity.

(12) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

(13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer.

(14) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer's authority to transact insurance.

(15) "Title insurance agent" means a business entity licensed under the laws of this state and appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company.

(16) "Uniform business entity application" means the current version of the NAIC uniform application for business entity insurance license or registration for resident and nonresident business entities.

(17) "Uniform application" means the current version of the NAIC uniform application for individual insurance producers for resident and nonresident insurance producer licensing.

Sec. 14. RCW 48.17.060 and 2007 c 117 s 2 are each amended to read as follows:

A person shall not sell, solicit, or negotiate insurance in this state for any line or lines of insurance unless the person is licensed for that line of authority in accordance with this chapter. A person may not act as or hold himself or herself out to be an adjuster in this state unless licensed by the commissioner or otherwise authorized to act as an adjuster under this chapter.

Sec. 15. RCW 48.17.090 and 2007 c 117 s 7 are each amended to read as follows:

(1) ((~~A person~~)) An individual applying for a resident insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. As a part of or in connection with the application, the individual applicant shall furnish information concerning the applicant's identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check. If, in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(2) Before approving the application, the commissioner shall find that the individual:

(a) Is at least eighteen years of age;

(b) Has not committed any act that is a ground for denial, suspension, or revocation set forth in RCW 48.17.530;

(c) Has completed a prelicensing course of study for the lines of authority for which the person has applied;

(d) Has paid the fees set forth in RCW 48.14.010; and

(e) Has successfully passed the examinations for the lines of authority for which the person has applied.

(3) A resident business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application, and the individual signing the application shall declare under penalty of refusal, suspension, or revocation of the license

that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that:

(a) The business entity has paid the fees set forth in RCW 48.14.010; ((~~and~~))

(b) The business entity has designated a licensed insurance producer responsible for the business entity's compliance with the insurance laws and rules of this state; and

(c) The business entity has not committed any act that is a ground for denial, suspension, or revocation set forth in RCW 48.17.530.

(4) A resident business entity acting as a title insurance agent is required to obtain a title insurance agent license. Application shall be made to the commissioner on the uniform business entity application, and the individual ((~~signing~~)) submitting the application shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the business entity:

(a) Has paid the fees set forth in RCW 48.14.010;

(b) Maintains a lawfully established place of business in this state ((~~or holds a corresponding license issued by the state of its principal place of business, and has complied with the laws of this state governing the admission of foreign corporations~~));

(c) Is empowered to be a title insurance agent under a members' agreement, if a limited liability company, or by its articles of incorporation;

(d) Is appointed as an agent by one or more authorized title insurance companies; and

(e) Has complied with RCW 48.29.155 and 48.29.160.

(5) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed insurance producer((~~,~~)) or title insurance agent((~~, or adjuster~~)) to produce the information called for in an application for license.

Sec. 16. RCW 48.17.110 and 2007 c 117 s 8 are each amended to read as follows:

(1) A resident individual applying for an insurance producer license or an individual applying for an adjuster license shall pass a written examination unless exempt under this section or RCW 48.17.175. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer or adjuster, and the insurance laws and rules of this state. Examinations required by this section shall be developed and conducted under the rules prescribed by the commissioner. The commissioner shall prepare, or approve, and make available a manual specifying in general terms the subjects which may be covered in any examination for a particular license.

(2) The following are exempt from the examination requirement:

(a) Applicants for licenses under RCW 48.17.170(1) (g), (h), and (i), at the discretion of the commissioner;

(b) ((~~Applicants who within the two-year period next preceding date of application have been licensed as a resident in this state under a license requiring qualifications similar to qualifications required by the license applied for, or who~~

~~have successfully completed a course of study recognized as a mark of distinction by the insurance industry, and who are deemed by the commissioner to be fully qualified and competent;~~

~~(e)~~)) Applicants for an adjuster's license who for a period of one year, a portion of which was in the year next preceding the date of application, have been a full-time salaried employee of an insurer or of a managing general agent to adjust, investigate, or report claims arising under insurance contracts;

(((~~d~~))) (c) Applicants for a license as a nonresident adjuster who are duly licensed in another state and who are deemed by the commissioner to be fully qualified ((~~by past experience to deal in ocean marine and related coverages~~)) and competent for a similar license in this state.

(3) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations.

(4) The commissioner may, at any time, require any licensed insurance producer or adjuster to take and successfully pass an examination testing the licensee's competence and qualifications as a condition to the continuance or renewal of a license, if the licensee has been guilty of violating this title, or has so conducted affairs under an insurance license as to cause the commissioner to reasonably desire further evidence of the licensee's qualifications.

Sec. 17. RCW 48.17.150 and 2007 c 117 s 10 are each amended to read as follows:

(1) The commissioner shall by rule establish minimum continuing education requirements for the renewal or reissuance of a license to an insurance producer.

(2) The commissioner shall require that continuing education courses will be made available on a statewide basis in order to ensure that persons residing in all geographical areas of this state will have a reasonable opportunity to attend such courses.

(((~~2~~))) (3) The continuing education requirements must be appropriate to the license for the lines of authority specified in RCW 48.17.170 or by rule.

(((~~(3) The continuing education requirements may be waived by the commissioner for good cause shown.~~)))

Sec. 18. RCW 48.17.160 and 2007 c 117 s 11 are each amended to read as follows:

(1) An insurance producer or title insurance agent shall not act as an agent of an insurer unless the insurance producer or title insurance agent becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

(2) To appoint an insurance producer or title insurance agent as its agent, the appointing insurer shall file, in a format approved by the commissioner, a notice of appointment within fifteen days from the date the agency contract is executed or ((~~when~~)) the first insurance application is submitted, whichever is ((~~later~~)) earlier.

(3) Upon receipt of the notice of appointment, the commissioner shall verify within a reasonable time, not to exceed thirty days, that the insurance producer or title insurance agent is eligible for appointment. If the insurance producer or title insurance agent is determined to be ineligible for appointment, the commissioner shall notify the insurer within ten days of the determination.

(4) An insurer shall pay an appointment fee, in the amount and method of payment set forth in RCW 48.14.010, for each insurance producer or title insurance agent appointed by the insurer.

(5) Contingent upon payment of the appointment renewal fee as set forth in RCW 48.14.010, an appointment shall be effective until terminated by the ((~~insurance company~~)) insurer, insurance producer, or title insurance agent and notice has been given to the commissioner as required by RCW 48.17.595.

Sec. 19. RCW 48.17.170 and 2007 c 117 s 12 are each amended to read as follows:

(1) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090 and 48.17.110 shall be issued an insurance producer license. An insurance producer may receive a license in one or more of the following lines of authority:

(a) "Life," which is insurance coverage on human lives, including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

(b) "Disability," which is insurance coverage for accident, health, and disability or sickness, bodily injury, or accidental death, and may include benefits for disability income;

(c) "Property," which is insurance coverage for the direct or consequential loss or damage to property of every kind;

(d) "Casualty," which is insurance coverage against legal liability, including that for death, injury, or disability or damage to real or personal property;

(e) "Variable life and variable annuity products," which is insurance coverage provided under variable life insurance contracts, variable annuities, or any other life insurance or annuity product that reflects the investment experience of a separate account;

(f) "Personal lines," which is property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes;

(g) Limited lines:

(i) Surety;

(ii) Limited line credit insurance;

(iii) Travel;

(h) Specialty lines:

(i) Communications equipment or services;

(ii) Rental car; or

(i) Any other line of insurance permitted under state laws or rules.

(2) Unless denied licensure under RCW 48.17.530, persons who have met the requirements of RCW 48.17.090(4) shall be issued a title insurance agent license.

(3) All insurance producers', title insurance agents', and adjusters' licenses issued by the commissioner shall be valid for the time period established by the commissioner unless suspended or revoked at an earlier date.

(4) Subject to the right of the commissioner to suspend, revoke, or refuse to renew any insurance producer's, title insurance agent's, or adjuster's license as provided in this title, the license may be renewed into another like period by filing with the commissioner by any means acceptable to the commissioner on or before the expiration date a request, by or on behalf of the licensee, for such

renewal accompanied by payment of the renewal fee as specified in RCW 48.14.010.

(5) If the request and fee for renewal of an insurance producer's, title insurance agent's, or adjuster's license ((~~is~~)) are filed with the commissioner prior to expiration of the existing license, the licensee may continue to act under such license, unless sooner revoked or suspended, until the issuance of a renewal license, or until the expiration of fifteen days after the commissioner has refused to renew the license and has mailed ((~~order~~)) notification of such refusal to the licensee. ((~~Any request for renewal not so filed until after date of expiration may be considered by the commissioner as an application for a new license.~~)) If the request and fee for the license renewal are not received by the expiration date, the authority conferred by the license ends on the expiration date.

(6) ((~~For all licenses,~~)) If the request for renewal of an insurance producer's, title insurance agent's, or adjuster's license ((~~or~~)) and payment of the fee ((~~is~~)) are not received by the commissioner prior to the expiration date ((~~as required under subsection (4) of this section~~)), the ((~~insurer or~~)) applicant for renewal shall pay to the commissioner ((~~and the commissioner shall collect~~)), in addition to the ((~~regular~~)) renewal fee, a surcharge as follows:

(a) For the first thirty days or part thereof of delinquency, the surcharge is fifty percent of the renewal fee; ((~~for all delinquencies extending more than thirty days,~~))

(b) For the next thirty days or part thereof of delinquency, the surcharge is one hundred percent of the renewal fee. ((~~A surcharge of two hundred percent of the renewal fee is required for any delinquency extending more than sixty days after the expiration date. This subsection shall~~))

(7) If the request for renewal of an insurance producer's, title insurance agent's, or adjuster's license and fee for the renewal are received by the commissioner after sixty days but prior to twelve months after the expiration date, the application is for reinstatement of the license and the applicant for reinstatement must pay to the commissioner the license fee and a surcharge of two hundred percent of the license fee.

(8) Subsections (6) and (7) of this section do not exempt any person from any penalty provided by law for transacting business without a valid and subsisting license or appointment((~~, or affect the commissioner's right, at his or her discretion, to consider such delinquent application as one for a new license or appointment~~)).

(((~~(7)~~))) (9) An individual insurance producer, title insurance agent, or adjuster who allows his or her license to lapse may, within twelve months after the expiration date, reinstate the same license without the necessity of passing a written examination.

(((~~(8)~~))) (10) A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance such as a long-term medical disability, may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

(((~~(9)~~))) (11) The license shall contain the licensee's name, address, personal identification number, and the date of issuance, lines of authority, expiration date, and any other information the commissioner deems necessary.

(((~~(10)~~))) (12) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of address within thirty days of the change. Failure to timely inform the commissioner of a change in legal name or address may result in a penalty under either RCW 48.17.530 or 48.17.560, or both.

Sec. 20. RCW 48.17.173 and 2007 c 117 s 13 are each amended to read as follows:

(1) Unless denied licensure under RCW 48.17.530, a nonresident person shall receive a nonresident producer license for the line or lines of authority under RCW 48.17.170 which is substantially equivalent to the line or lines of authority granted to the nonresident person in the person's home state if:

(a) The person is currently licensed as a resident and in good standing in the person's home state;

(b) The person has submitted the proper request for licensure and has paid the fees required by RCW 48.14.010;

(c) The person has submitted or transmitted to the commissioner ((~~the application for licensure that the person submitted to the person's home state, or in lieu,~~)) a completed uniform application;

(d) The person's home state awards nonresident producer licenses to residents of this state on the same basis; and

(e) ((~~The person~~)) A business entity, it has designated an individual licensed insurance producer responsible for the business entity's compliance with the insurance laws and rules of this state.

(2) An individual, as part of the request for licensure, ((~~has furnished~~)) shall furnish information concerning the ((~~person's~~)) individual's identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check. If, in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges shall be paid to the commissioner's office by the applicant.

(((~~(2)~~))) (3) A nonresident business entity acting as a title insurance agent is required to obtain a title insurance agent license. Application shall be made to the commissioner on the uniform business entity application, and the individual submitting the application shall declare under penalty of refusal, suspension, or revocation of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner must find that the business entity:

(a) Has paid the fees set forth in RCW 48.14.010;

(b) Maintains a lawfully established place of business in its home state and holds a corresponding license issued by the state of its principal place of business, and has complied with the laws of this state governing the admission of foreign corporations;

(c) Is empowered to be a title agent under a members' agreement, if a limited liability company, or by its articles of incorporation;

(d) Is appointed as an agent by one or more authorized title insurance companies; and

(e) Has complied with RCW 48.29.155 and 48.29.160.

(4) The commissioner shall waive any license application requirements for a nonresident license applicant with a valid license from the applicant's home state, except the requirements imposed by this section, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.

(((~~(3)~~))) (5) A nonresident insurance producer's satisfaction of the nonresident insurance producer's home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the nonresident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

(((~~(4)~~))) (6) The commissioner shall waive the requirement for providing fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, if the person possesses a valid insurance producer's or surplus line broker's license from the person's home state and the person's home state requires submission of information concerning a person's identity, including fingerprints for the licensure of its resident insurance producers or surplus line brokers, respectively.

(((~~(5)~~))) (7) The commissioner may verify the producer's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.

(((~~(6)~~))) (8) A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty days of the change of legal residence. No fee or license application is required.

(((~~(7) A person licensed as a surplus lines producer in the person's home state and complying with the requirements of subsection (1) of this section and chapter 48.15 RCW shall receive a nonresident surplus line broker license under subsection (1) of this section.~~

~~(8)~~))) (9) A person licensed as a limited line credit insurance or other type of limited lines producer in the person's home state and who complies with the requirements of subsection (1) of this section shall receive a nonresident limited lines producer license, under subsection (1) of this section, granting the same scope of authority as granted under the license issued by the producer's home state. For the purpose of this subsection, limited line insurance is any authority granted by the home state which restricts the authority of the license to the lines set out in RCW 48.17.170(1)(g).

(((~~(9)~~))) (10) Each licensed nonresident insurance producer or title insurance agent shall appoint the commissioner as the insurance producer's or title insurance agent's attorney to receive service of legal process issued against the insurance producer or title insurance agent in this state upon causes of action arising within this state. Service upon the commissioner as attorney shall constitute effective legal service upon the insurance producer or title insurance agent.

(a) The appointment shall be irrevocable for as long as there could be any cause of action against the insurance producer or title insurance agent arising out

of the insurance producer's or title insurance agent's insurance transactions in this state.

(b) Duplicate copies of such legal process against such insurance producer or title insurance agent shall be served upon the commissioner either by a person competent to serve a summons, or through registered mail. At the time of such service the plaintiff shall pay to the commissioner ten dollars, taxable as costs in the action.

(c) Upon receiving such service, the commissioner shall forthwith send one of the copies of the process, by registered mail with return receipt requested, to the defendant insurance producer or title insurance agent at the insurance producer's or title insurance agent's last address of record with the commissioner.

(d) The commissioner shall keep a record of the day and hour of service upon the commissioner of all such legal process. No proceedings shall be had against the defendant insurance producer or title insurance agent, and the defendant shall not be required to appear, plead, or answer until the expiration of forty days after the date of service upon the commissioner.

(11) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed insurance producer or title insurance agent to produce the information called for in an application for license.

Sec. 21. RCW 48.17.250 and 2007 c 117 s 16 are each amended to read as follows:

(1) Every insurance producer licensed under this chapter on or after July 1, 2009, who places insurance either directly or indirectly with an insurer with which the insurance producer is not appointed as an agent must maintain in force while so licensed a bond in favor of the people of the state of Washington or a named insured such that the people of Washington are covered by the bond, executed by an authorized corporate surety approved by the commissioner, in the amount of two thousand five hundred dollars, or five percent of the premiums brokered in the previous calendar year, whichever is greater, but not to exceed one hundred thousand dollars total aggregate liability. The bond may be continuous in form, and total aggregate liability on the bond may be limited to the required amount of the bond. The bond shall be contingent on the accounting by the insurance producer to any person requesting the insurance producer to obtain insurance, for moneys or premiums collected in connection therewith.

(2) Authorized insurance producers of a business entity may meet the requirements of this section with a bond in the name of the business entity, continuous in form, and in the amounts set forth in subsection (1) of this section. Insurance producers may meet the requirements of this section with a bond in the name of an association. The association must have been in existence for five years, have common membership, and have been formed for a purpose other than obtaining a bond. An individual insurance producer remains responsible for assuring that a bond is in effect and is for the correct amount.

(3) The surety may cancel the bond and be released from further liability thereunder upon thirty days' written notice in advance to the principal. The cancellation does not affect any liability incurred or accrued under the bond before the termination of the thirty-day period.

(4) The insurance producer's license may be revoked if the insurance producer acts without a bond that is required under this section.

(5) If a party injured under the terms of the bond requests the insurance producer to provide the name of the surety and the bond number, the insurance producer must provide the information within three working days after receiving the request.

(6) Members of an association may meet the requirements of this section ((~~for all of its members~~)) with a bond in the name of the association that is continuous in form and in the amounts set forth in subsection (1) of this section for each participating member.

(7) All records relating to the bond required by this section shall be kept available and open to the inspection of the commissioner at any business time.

Sec. 22. RCW 48.17.270 and 2007 c 117 s 17 are each amended to read as follows:

(1) The sole relationship between an insurance producer and an insurer as to which the insurance producer is appointed as an agent shall, as to transactions arising during the existence of such agency appointment, be that of insurer and agent.

(2) Unless the agency-insurer agreement provides to the contrary, an insurance producer may receive the following compensation:

(a) A commission paid by the insurer;

(b) A fee paid by the insured; or

(c) A combination of commission paid by the insurer and a fee paid by the insured from which an insurance producer may offset or reimburse the insured for all or part of the fee.

(3) If the compensation received by an insurance producer who is dealing directly with the insured includes a fee, for each policy, the insurance producer must disclose in writing to the insured:

(a) The full amount of the fee paid by the insured;

(b) The full amount of any commission paid to the insurance producer by the insurer, if one is received;

(c) An explanation of any offset or reimbursement of fees or commissions as described in subsection (2)(c) of this section;

(d) When the insurance producer may receive additional commission, notice that states the insurance producer:

(i) May receive additional commission in the form of future incentive compensation from the insurer, including contingent commissions and other awards and bonuses based on factors that typically include the total sales volume, growth, profitability, and retention of business placed by the insurance producer with the insurer, and incentive compensation is only paid if the performance criteria established in the agency-insurer agreement is met by the insurance producer or the business entity with which the insurance producer is affiliated; and

(ii) Will furnish to the insured or prospective insured specific information relating to additional commission upon request; and

(e) The full name of the insurer that may pay any commission to the insurance producer.

(4) Written disclosure of compensation as required by subsection (3) of this section shall be provided by the insurance producer to the insured prior to the sale of the policy.

(5) Written disclosure as required by subsection (3) of this section must be signed by the insurance producer and the insured, and the writing must be retained by the insurance producer for five years. For the purposes of this section, written disclosure means the insured's written consent obtained prior to the insured's purchase of insurance. In the case of a purchase over the telephone or by electronic means for which written consent cannot be reasonably obtained, consent documented by the insurance producer shall be acceptable.

Sec. 23. RCW 48.17.380 and 2007 c 117 s 18 are each amended to read as follows:

(1) Application for a license to be an adjuster shall be made to the commissioner upon forms furnished by the commissioner. As a part of or in connection with the application, an individual applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, and any governmental agency or entity authorized to receive this information for a state and national criminal history background check, personal history, experience, business record, purposes, and other pertinent facts, as the commissioner may reasonably require. If, in the process of verifying fingerprints, business records, or other information, the commissioner's office incurs fees or charges from another governmental agency or from a business firm, the amount of the fees or charges must be paid to the commissioner's office by the applicant.

(2) Any person willfully misrepresenting any fact required to be disclosed in any application shall be liable to penalties as provided by this code.

(3) The commissioner shall license as an adjuster only an individual or business entity which has otherwise complied with this code therefor and the individual or responsible officer of the business entity has furnished evidence satisfactory to the commissioner that the individual or responsible officer of the business entity is qualified as follows:

(((~~(1)~~))) (a) Is eighteen or more years of age((~~,~~));

(((~~(2)~~))) (b) Is a bona fide resident of this state, or is a resident of a state which will permit residents of this state to act as adjusters in such other state((~~,~~));

(((~~(3)~~))) (c) Is a trustworthy person((~~,~~));

(((~~(4)~~))) (d) Has had experience or special education or training with reference to the handling of loss claims under insurance contracts, of sufficient duration and extent reasonably to make the individual or responsible officer of the business entity competent to fulfill the responsibilities of an adjuster((~~,~~));

(((~~(5)~~))) (e) Has successfully passed any examination as required under this chapter((~~,~~));

(((~~(6)~~))) (f) If for a public adjuster's license, has filed the bond required by RCW 48.17.430.

(4) The commissioner may require any documents reasonably necessary to verify the information contained in an application and may, from time to time, require any licensed adjuster to produce the information called for in an application for a license.

Sec. 24. RCW 48.17.565 and 2007 c 117 s 30 are each amended to read as follows:

If an investigation of any insurance education provider culminates in a finding by the commissioner or by any court of competent jurisdiction, that the insurance education provider has failed to comply with or has violated any statute or regulation pertaining to insurance education, the insurance education provider shall pay the expenses reasonably attributable and allocable to such investigation.

(1) The commissioner shall calculate such expenses and render a bill therefor by registered mail to the insurance education provider. Within thirty days after receipt of such bill, the insurance education provider shall pay the full amount to the commissioner. The commissioner shall transmit such payment to the state treasurer. The state treasurer shall credit the payment to the office of the insurance commissioner regulatory account, treating such payment as recovery of a prior expenditure.

(2) In any action brought under this section, if the ((~~insurance~~)) commissioner prevails, the court may award to the office of the commissioner all costs of the action, including a reasonable attorneys' fee to be fixed by the court.

Sec. 25. RCW 48.30.260 and 2008 c 217 s 41 are each amended to read as follows:

(1) Every debtor or borrower, when property insurance of any kind is required in connection with the debt or loan, shall have reasonable opportunity and choice in the selection of the insurance producer, surplus line broker, and insurer through whom such insurance is to be placed; but only if the insurance is properly provided for the protection of the creditor or lender, whether by policy or binder, not later than at commencement of risk as to such property as respects such creditor or lender, and in the case of renewal of insurance, only if the renewal policy, or a proper binder therefor containing a brief description of the coverage bound and the identity of the insurer in which the coverage is bound, is delivered to the creditor or lender not later than thirty days prior to the renewal date.

(2) Every person who lends money or extends credit and who solicits insurance on real and personal property must explain to the borrower in prominently displayed writing that the insurance related to such loan or credit extension may be purchased from an insurer, surplus line broker, or insurance producer of the borrower's choice, subject only to the lender's right to reject a given insurer, surplus line broker, or insurance producer as provided in subsection (3)(b) of this section.

(3) No person who lends money or extends credit may:

(a) Solicit insurance for the protection of property, after a person indicates interest in securing a loan or credit extension, until such person has received a commitment from the lender as to a loan or credit extension;

(b) Unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an

insurance contract because the contract contains coverage in addition to that required in the credit transaction;

(c) Require that any borrower, mortgagor, purchaser, insurer, surplus line broker, or insurance producer pay a separate charge, in connection with the handling of any contract of insurance required as security for a loan, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;

(d) Use or disclose, without the prior written consent of the borrower, mortgagor, or purchaser taken at a time other than the making of the loan or extension of credit, information relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing such insurance;

(e) Require any procedures or conditions of duly licensed insurance producers, surplus line brokers, or insurers not customarily required of those insurance producers, surplus line brokers, or insurers affiliated or in any way connected with the person who lends money or extends credit; or

(f) Require property insurance in an amount in excess of the amount which could reasonably be expected to be paid under the policy, or combination of policies, in the event of a loss.

(4) Nothing contained in this section shall prevent a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(5) Nothing contained in this section shall apply to credit life or credit disability insurance.

Sec. 26. RCW 48.30.270 and 2008 c 217 s 42 are each amended to read as follows:

(1) No officer or employee of this state, or of any public agency, public authority or public corporation except a public corporation or public authority created pursuant to agreement or compact with another state, and no person acting or purporting to act on behalf of such officer or employee, or public agency or public authority or public corporation, shall, with respect to any public building or construction contract which is about to be, or which has been competitively bid, require the bidder to make application to, or to furnish financial data to, or to obtain or procure, any of the surety bonds or contracts of insurance specified in connection with such contract, or specified by any law, general, special or local, from a particular insurer, surplus line broker, or insurance producer.

(2) No such officer or employee or any person, acting or purporting to act on behalf of such officer or employee shall negotiate, make application for, obtain or procure any of such surety bonds or contracts of insurance, except contracts of insurance for builder's risk or owner's protective liability, which can be obtained or procured by the bidder, contractor or subcontractor.

(3) This section shall not be construed to prevent the exercise by such officer or employee on behalf of the state or such public agency, public authority, or public corporation of its right to approve the form, sufficiency or manner or execution of the surety bonds or contracts of insurance furnished by the insurer selected by the bidder to underwrite such bonds, or contracts of insurance.

(4) Any provisions in any invitation for bids, or in any of the contract documents, in conflict with this section are declared to be contrary to the public policy of this state.

(5) A violation of this section shall be subject to the penalties provided by RCW 48.01.080.

(6) This section shall not apply to public construction projects, when the actual or estimated aggregate value of the project, exclusive of insurance and surety costs, exceeds two hundred million dollars. For purposes of applying the two hundred million dollar threshold set forth in this subsection, the term "public construction project" means a project that has a public owner and has phases, segments, or component parts relating to a common geographic site or public transportation system, but does not include the aggregation of unrelated construction projects.

(7) The exclusions specified in subsection (6) of this section do not apply to surety bonds.

Sec. 27. RCW 48.31.111 and 2008 c 217 s 43 are each amended to read as follows:

(1) A delinquency proceeding may not be commenced under this chapter by anyone other than the commissioner of this state, and no court has jurisdiction to entertain a proceeding commenced by another person.

(2) No court of this state has jurisdiction to entertain a complaint praying for the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of an insurer, or praying for an injunction or restraining order or other relief preliminary to, incidental to, or relating to the proceedings, other than in accordance with this chapter.

(3) In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter has jurisdiction over a person served under the rules of civil procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:

(a) If the person served is an insurance producer, title insurance agent, surplus line broker, or other person who has written policies of insurance for or has acted in any manner on behalf of an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer;

(b) If the person served is a reinsurer who has entered into a contract of reinsurance with an insurer against which a delinquency proceeding has been instituted, or is an insurance producer of or for the reinsurer, in an action on or incident to the reinsurance contract;

(c) If the person served is or has been an officer, director, manager, trustee, organizer, promoter, or other person in a position of comparable authority or influence over an insurer against which a delinquency proceeding has been instituted, in an action resulting from or incident to such a relationship with the insurer;

(d) If the person served is or was at the time of the institution of the delinquency proceeding against the insurer holding assets in which the receiver claims an interest on behalf of the insurer, in an action concerning the assets; or

(e) If the person served is obligated to the insurer in any way, in an action on or incident to the obligation.

(4) If the court on motion of a party finds that an action should as a matter of substantial justice be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state.

Sec. 28. RCW 48.31.141 and 2008 c 217 s 44 are each amended to read as follows:

(1)(a) An insurance producer, title insurance agent, surplus line broker, premium finance company, or any other person, other than the policy owner or the insured, responsible for the payment of a premium is obligated to pay any unpaid premium for the full policy term due the insurer at the time of the declaration of insolvency, whether earned or unearned, as shown on the records of the insurer. The liquidator also has the right to recover from the person a part of an unearned premium that represents commission of the person. Credits or setoffs or both may not be allowed to an insurance producer, title insurance agent, surplus line broker, or premium finance company for amounts advanced to the insurer by the insurance producer, title insurance agent, surplus line broker, or premium finance company on behalf of, but in the absence of a payment by, the policy owner or the insured.

(b) Notwithstanding (a) of this subsection, the insurance producer, title insurance agent, surplus line broker, premium finance company, or other person is not liable for uncollected unearned premium of the insurer. A presumption exists that the premium as shown on the books of the insurer is collected, and the burden is upon the insurance producer, title insurance agent, surplus line broker, premium finance company, or other person to demonstrate by a preponderance of the evidence that the unearned premium was not actually collected. For purposes of this subsection, "unearned premium" means that portion of an insurance premium covering the unexpired term of the policy or the unexpired period of the policy period.

(c) An insured is obligated to pay any unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(2) Upon a violation of this section, the commissioner may pursue either one or both of the following courses of action:

(a) Suspend or revoke or refuse to renew the licenses of the offending party or parties;

(b) Impose a penalty of not more than one thousand dollars for each violation.

(3) Before the commissioner may take an action as set forth in subsection (2) of this section, he or she shall give written notice to the person accused of violating the law, stating specifically the nature of the alleged violation, and fixing a time and place, at least ten days thereafter, when a hearing on the matter shall be held. After the hearing, or upon failure of the accused to appear at the hearing, the commissioner, if he or she finds a violation, shall impose those penalties under subsection (2) of this section that he or she deems advisable.

(4) When the commissioner takes action in any or all of the ways set out in subsection (2) of this section, the party aggrieved has the rights granted under the Administrative Procedure Act, chapter 34.05 RCW.

Sec. 29. RCW 48.62.121 and 2008 c 217 s 62 are each amended to read as follows:

(1) No employee or official of a local government entity may directly or indirectly receive anything of value for services rendered in connection with the operation and management of a self-insurance program other than the salary and benefits provided by his or her employer or the reimbursement of expenses reasonably incurred in furtherance of the operation or management of the program. No employee or official of a local government entity may accept or solicit anything of value for personal benefit or for the benefit of others under circumstances in which it can be reasonably inferred that the employee's or official's independence of judgment is impaired with respect to the management and operation of the program.

(2)(a) No local government entity may participate in a joint self-insurance program in which local government entities do not retain complete governing control. This prohibition does not apply to:

(i) Local government contribution to a self-insured employee health and welfare benefits plan otherwise authorized and governed by state statute;

(ii) Local government participation in a multistate joint program where control is shared with local government entities from other states; or

(iii) Local government contribution to a self-insured employee health and welfare benefit trust in which the local government shares governing control with their employees.

(b) If a local government self-insured health and welfare benefit program, established by the local government as a trust, shares governing control of the trust with its employees:

(i) The local government must maintain at least a fifty percent voting control of the trust;

(ii) No more than one voting, nonemployee, union representative selected by employees may serve as a trustee; and

(iii) The trust agreement must contain provisions for resolution of any deadlock in the administration of the trust.

(3) Moneys made available and moneys expended by school districts and educational service districts for self-insurance under this chapter are subject to such rules of the superintendent of public instruction as the superintendent may adopt governing budgeting and accounting. However, the superintendent shall ensure that the rules are consistent with those adopted by the state risk manager for the management and operation of self-insurance programs.

(4) RCW 48.30.140, 48.30.150, 48.30.155, and 48.30.157 apply to the use of insurance producers <u>and surplus line brokers</u> by local government self-insurance programs.

(5) Every individual and joint local government self-insured health and welfare benefits program that provides comprehensive coverage for health care services shall include mandated benefits that the state health care authority is required to provide under RCW 41.05.170 and 41.05.180. The state risk manager may adopt rules identifying the mandated benefits.

(6) An employee health and welfare benefit program established as a trust shall contain a provision that trust funds be expended only for purposes of the trust consistent with statutes and rules governing the local government or governments creating the trust.

Sec. 30. RCW 48.62.151 and 2008 c 217 s 63 are each amended to read as follows:

A joint self-insurance program approved in accordance with this chapter is exempt from insurance premium taxes, from fees assessed under chapter 48.02 RCW, from chapters 48.32 and 48.32A RCW, from business and occupations taxes imposed under chapter 82.04 RCW, and from any assigned risk plan or joint underwriting association otherwise required by law. This section does not apply to and no exemption is provided for insurance companies issuing policies to cover program risks, nor does it apply to or provide an exemption for third-party administrators, surplus line brokers, or insurance producers serving the self-insurance program.

Sec. 31. RCW 48.99.030 and 2008 c 217 s 84 are each amended to read as follows:

(1) Whenever under the laws of this state an ancillary receiver is to be appointed in delinquency proceedings for an insurer not domiciled in this state, the court shall appoint the commissioner as ancillary receiver. The commissioner shall file a petition requesting the appointment (a) if he or she finds that there are sufficient assets of such insurer located in this state to justify the appointment of an ancillary receiver, or (b) if ten or more persons resident in this state having claims against such insurer file a petition with the commissioner requesting the appointment of such ancillary receiver.

(2) The domiciliary receiver for the purpose of liquidating an insurer domiciled in a reciprocal state, shall be vested by operation of law with the title to all of the property, contracts, and rights of action, and all of the books and records of the insurer located in this state, and he or she shall have the immediate right to recover balances due from local insurance producers and surplus line brokers and to obtain possession of any books and records of the insurer found in this state. He or she shall also be entitled to recover the other assets of the insurer located in this state except that upon the appointment of an ancillary receiver in this state, the ancillary receiver shall during the ancillary receivership proceedings have the sole right to recover such other assets. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. All remaining assets shall promptly transfer to the domiciliary receiver. Subject to the foregoing provisions the ancillary receiver and his or her deputies shall have the same powers and be subject to the same duties with respect to the administration of such assets, as a receiver of an insurer domiciled in this state.

(3) The domiciliary receiver of an insurer domiciled in a reciprocal state may sue in this state to recover any assets of such insurer to which he or she may be entitled under the laws of this state.

Sec. 32. RCW 48.135.010 and 2008 c 217 s 97 are each amended to read as follows:

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

(1) "Insurance fraud" means an act or omission committed by a person who, knowingly, and with intent to defraud, commits, or conceals any material information concerning, one or more of the following:

(a) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer ((~~or~~)), insurance producer, or surplus line broker, false information as part of, in support of, or concerning a fact material to one or more of the following:

(i) An application for the issuance or renewal of an insurance policy;

(ii) The rating of an insurance policy or contract;

(iii) A claim for payment or benefit pursuant to an insurance policy;

(iv) Premiums paid on an insurance policy;

(v) Payments made in accordance with the terms of an insurance policy; or

(vi) The reinstatement of an insurance policy;

(b) Willful embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance; or

(c) Attempting to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

The definition of insurance fraud is for illustrative purposes only under this chapter to describe the nature of the behavior to be reported and investigated, and is not intended in any manner to create or modify the definition of any existing criminal acts nor to create or modify the burdens of proof in any criminal prosecution brought as a result of an investigation under this chapter.

(2) "Insurer" means an insurance company authorized under chapter 48.05 RCW, a health care service contractor registered under chapter 48.44 RCW, and a health care maintenance organization registered under chapter 48.46 RCW.

Sec. 33. RCW 51.12.020 and 2008 c 217 s 98 are each amended to read as follows:

The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the work of keeping in proper condition, "repair" means to restore to sound condition after damage, and "private home" means a person's place of residence.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners.

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in RCW 23B.01.400(24) may exempt eight or fewer bona fide officers, who 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, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall 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 shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a newspaper carrier selling or distributing newspapers on the street or from house to house.

(11) Services performed by an insurance producer, as defined in RCW 48.17.010(5), or a surplus line broker licensed under chapter 48.15 RCW.

(12) Services performed by a booth renter. However, a person exempted under this subsection may elect coverage under RCW 51.32.030.

(13) Members of a limited liability company, if either:

(a) Management of the company is vested in its members, and the members for whom exemption is sought would qualify for exemption under subsection (5) of this section were the company a sole proprietorship or partnership; or

(b) Management of the company is vested in one or more managers, and the members for whom the exemption is sought are managers who would qualify for exemption under subsection (8) of this section were the company a corporation.

Sec. 34. RCW 82.04.260 and 2008 c 296 s 1, 2008 c 217 s 100, and 2008 c 81 s 4 are each reenacted and amended to read as follows:

(1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2012, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c) Beginning July 1, 2012, dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed shall be equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(d) Beginning July 1, 2012, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Alcohol fuel or wood biomass fuel, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business

shall be equal to the value of alcohol fuel or wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator

service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW or a surplus line broker licensed under chapter 48.15 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through the later of June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person eligible for the tax rate under this subsection (11) must report as required under RCW 82.32.545.

(e) This subsection (11) does not apply on and after July 1, 2024.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business shall, in the case of extractors, be equal to the value of products, including byproducts, extracted, or in the case of extractors for hire, be equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business shall, in the case of manufacturers, be equal to the value of products, including byproducts, manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business shall be equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business shall be equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For

purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

NEW SECTION. **Sec. 35.** 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. 36.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2009.

Passed by the House February 23, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 21, 2009.
Filed in Office of Secretary of State April 22, 2009.

CHAPTER 163

[House Bill 2165]

FOREST BIOMASS ENERGY DEMONSTRATION PROJECTS

AN ACT Relating to authorizing the department of natural resources to conduct a forest biomass energy demonstration project; amending RCW 76.06.150 and 43.30.020; adding new sections to chapter 43.30 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 forest biomass is an abundant and renewable byproduct of Washington's forest land management. Forest biomass can be utilized to generate clean renewable energy.

In some Washington forests, residual forest biomass is burned on site or left to decompose. The lack of forest products markets in some areas means that standing forest biomass removed for forest health and wildfire risk reduction

treatments must occur at substantial cost. Utilizing forest biomass to generate energy can reduce the greenhouse gases emitted by burning forest biomass.

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

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

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

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

(a) Reveal the utility of Washington's public and private forest biomass feedstock;

(b) Create green jobs and generate renewable energy;

(c) Generate revenues or improve asset values for beneficiaries of state lands and state forest lands;

(d) Improve forest health, reduce pollution, and restore ecological function; and

(e) Avoid interfering with the current working area for forest biomass collection surrounding an existing fixed location biomass energy production site.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Passed by the House April 18, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 164

[House Bill 1596]

PUBLIC BREASTFEEDING

AN ACT Relating to protecting a woman's right to breastfeed in a place of public resort, accommodation, assemblage, or amusement; amending RCW 49.60.030 and 49.60.215.

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

Sec. 1. RCW 49.60.030 and 2007 c 187 s 3 are each amended to read as follows:

(1) The right to be free from discrimination because of race, creed, color, national origin, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

(a) The right to obtain and hold employment without discrimination;

(b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;

(c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;

(d) The right to engage in credit transactions without discrimination;

(e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph; ((~~and~~))

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; and

(g) the right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose

of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

Sec. 2. RCW 49.60.215 and 2007 c 187 s 12 are each amended to read as follows:

It shall be an unfair practice for any person or the person's agent or employee to commit an act which directly or indirectly results in any distinction, restriction, or discrimination, or the requiring of any person to pay a larger sum than the uniform rates charged other persons, or the refusing or withholding from any person the admission, patronage, custom, presence, frequenting, dwelling, staying, or lodging in any place of public resort, accommodation, assemblage, or amusement, except for conditions and limitations established by law and applicable to all persons, regardless of race, creed, color, national origin, sexual orientation, sex, honorably discharged veteran or military status, status as a mother breastfeeding her child, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That this section shall not be construed to require structural changes, modifications, or additions to make any place accessible to a person with a disability except as otherwise required by law: PROVIDED, That behavior or actions constituting a risk to property or other persons can be grounds for refusal and shall not constitute an unfair practice.

Passed by the House March 3, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 165

[Substitute House Bill 1663]
RELOCATION ASSISTANCE RIGHTS—TRANSIENT LODGING—
NONTRANSIENT RESIDENTS

AN ACT Relating to creating relocation assistance rights for nontransient residents of hotels, motels, or other places of transient lodging that are shut down by government action; and amending RCW 59.18.085.

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

Sec. 1. RCW 59.18.085 and 2005 c 364 s 2 are each amended to read as follows:

(1) If a governmental agency responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling is condemned or unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord shall not enter into a rental agreement for the dwelling unit until the conditions are corrected.

(2) If a landlord knowingly violates subsection (1) of this section, the tenant shall recover either three months' periodic rent or up to treble the actual damages sustained as a result of the violation, whichever is greater, costs of suit, or arbitration and reasonable attorneys' fees. If the tenant elects to terminate the tenancy as a result of the conditions leading to the posting, or if the appropriate

governmental agency requires that the tenant vacate the premises, the tenant also shall recover:

(a) The entire amount of any deposit prepaid by the tenant; and

(b) All prepaid rent.

(3)(a) If a governmental agency responsible for the enforcement of a building, housing, or other appropriate code has notified the landlord that a dwelling will be condemned or will be unlawful to occupy due to the existence of conditions that violate applicable codes, statutes, ordinances, or regulations, a landlord, who knew or should have known of the existence of these conditions, shall be required to pay relocation assistance to the displaced tenants except that:

(i) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which the condemnation or no occupancy order affects one or more dwelling units and directly results from conditions caused by a tenant's or any third party's illegal conduct without the landlord's prior knowledge;

(ii) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which the condemnation or no occupancy order affects one or more dwelling units and results from conditions arising from a natural disaster such as, but not exclusively, an earthquake, tsunami, wind storm, or hurricane; and

(iii) A landlord shall not be required to pay relocation assistance to any displaced tenant in a case in which a condemnation affects one or more dwelling units and the tenant's displacement is a direct result of the acquisition of the property by eminent domain.

(b) Relocation assistance provided to displaced tenants under this subsection shall be the greater amount of two thousand dollars per dwelling unit or three times the monthly rent. In addition to relocation assistance, the landlord shall be required to pay to the displaced tenants the entire amount of any deposit prepaid by the tenant and all prepaid rent.

(c) The landlord shall pay relocation assistance and any prepaid deposit and prepaid rent to displaced tenants within seven days of the governmental agency sending notice of the condemnation, eviction, or displacement order to the landlord. The landlord shall pay relocation assistance and any prepaid deposit and prepaid rent either by making individual payments by certified check to displaced tenants or by providing a certified check to the governmental agency ordering condemnation, eviction, or displacement, for distribution to the displaced tenants. If the landlord fails to complete payment of relocation assistance within the period required under this subsection, the city, town, county, or municipal corporation may advance the cost of the relocation assistance payments to the displaced tenants.

(d) During the period from the date that a governmental agency responsible for the enforcement of a building, housing, or other appropriate code first notifies the landlord of conditions that violate applicable codes, statutes, ordinances, or regulations to the time that relocation assistance payments are paid to eligible tenants, or the conditions leading to the notification are corrected, the landlord may not:

(i) Evict, harass, or intimidate tenants into vacating their units for the purpose of avoiding or diminishing application of this section;

(ii) Reduce services to any tenant; or

(iii) Materially increase or change the obligations of any tenant, including but not limited to any rent increase.

(e) Displaced tenants shall be entitled to recover any relocation assistance, prepaid deposits, and prepaid rent required by (b) of this subsection. In addition, displaced tenants shall be entitled to recover any actual damages sustained by them as a result of the condemnation, eviction, or displacement that exceed the amount of relocation assistance that is payable. In any action brought by displaced tenants to recover any payments or damages required or authorized by this subsection (3)(e) or (c) of this subsection that are not paid by the landlord or advanced by the city, town, county, or municipal corporation, the displaced tenants shall also be entitled to recover their costs of suit or arbitration and reasonable attorneys' fees.

(f) If, after sixty days from the date that the city, town, county, or municipal corporation first advanced relocation assistance funds to the displaced tenants, a landlord has failed to repay the amount of relocation assistance advanced by the city, town, county, or municipal corporation under (c) of this subsection, then the city, town, county, or municipal corporation shall assess civil penalties in the amount of fifty dollars per day for each tenant to whom the city, town, county, or municipal corporation has advanced a relocation assistance payment.

(g) In addition to the penalties set forth in (f) of this subsection, interest will accrue on the amount of relocation assistance paid by the city, town, county, or municipal corporation for which the property owner has not reimbursed the city, town, county, or municipal corporation. The rate of interest shall be the maximum legal rate of interest permitted under RCW 19.52.020, commencing thirty days after the date that the city, town, county, or municipal corporation first advanced relocation assistance funds to the displaced tenants.

(h) If the city, town, county, or municipal corporation must initiate legal action in order to recover the amount of relocation assistance payments that it has advanced to low-income tenants, including any interest and penalties under (f) and (g) of this subsection, the city, town, county, or municipal corporation shall be entitled to attorneys' fees and costs arising from its legal action.

(4) The governmental agency that has notified the landlord that a dwelling will be condemned or will be unlawful to occupy shall notify the displaced tenants that they may be entitled to relocation assistance under this section.

(5) No payment received by a displaced tenant under this section may be considered as income for the purpose of determining the eligibility or extent of eligibility of any person for assistance under any state law or for the purposes of any tax imposed under Title 82 RCW, and the payments shall not be deducted from any amount to which any recipient would otherwise be entitled under Title 74 RCW.

(6)(a) A person whose living arrangements are exempted from this chapter under RCW 59.18.040(3) and who has resided in or occupied one or more dwelling units within a hotel, motel, or other place of transient lodging for thirty or more consecutive days with the knowledge and consent of the owner of the hotel, motel, or other place of transient lodging, or any manager, clerk, or other agent representing the owner, is deemed to be a tenant for the purposes of this section and is entitled to receive relocation assistance under the circumstances described in subsection (2) or (3) of this section except that all relocation assistance and other payments shall be made directly to the displaced tenants.

(b) An interruption in occupancy primarily intended to avoid the application of this section does not affect the application of this section.

(c) An occupancy agreement, whether oral or written, in which the provisions of this section are waived is deemed against public policy and is unenforceable.

Passed by the House March 11, 2009.
Passed by the Senate April 8, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 166

[House Bill 1675]

ALTERNATIVE ROUTE PARTNERSHIP GRANT PROGRAM

AN ACT Relating to work experience as an entry requirement for the alternative route partnership grant program; and amending RCW 28A.660.040.

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

Sec. 1. RCW 28A.660.040 and 2006 c 263 s 817 are each amended to read as follows:

Partnership grants funded under this chapter shall operate one to four specific route programs. Successful completion of the program shall make a candidate eligible for residency teacher certification. For route one and two candidates, the mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the higher education teacher preparation program must both agree that the teacher candidate has successfully completed the program. For route three and four candidates, the mentor of the teacher candidate shall make the determination that the candidate has successfully completed the program.

(1) Partnership grant programs seeking funds to operate route one programs shall enroll currently employed classified instructional employees with transferable associate degrees seeking residency teacher certification with endorsements in special education, bilingual education, or English as a second language. It is anticipated that candidates enrolled in this route will complete both their baccalaureate degree and requirements for residency certification in two years or less, including a mentored internship to be completed in the final year. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) District or building validation of qualifications, including ((~~three~~)) one year((~~s~~)) of successful student interaction and leadership as a classified instructional employee;

(b) Successful passage of the statewide basic skills exam, when available; and

(c) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers.

(2) Partnership grant programs seeking funds to operate route two programs shall enroll currently employed classified staff with baccalaureate degrees seeking residency teacher certification in subject matter shortage areas and areas with shortages due to geographic location. Candidates enrolled in this route

must complete a mentored internship complemented by flexibly scheduled training and coursework offered at a local site, such as a school or educational service district, or online or via video-conference over the K-20 network, in collaboration with the partnership program's higher education partner. In addition, partnership grant programs shall uphold entry requirements for candidates that include:

(a) District or building validation of qualifications, including ((~~three~~)) one year((~~s~~)) of successful student interaction and leadership as classified staff;

(b) A baccalaureate degree from a regionally accredited institution of higher education. The individual's college or university grade point average may be considered as a selection factor;

(c) Successful completion of the content test, once the state content test is available;

(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(e) Successful passage of the statewide basic skills exam, when available.

(3) Partnership grant programs seeking funds to operate route three programs shall enroll individuals with baccalaureate degrees, who are not employed in the district at the time of application. When selecting candidates for certification through route three, districts shall give priority to individuals who are seeking residency teacher certification in subject matter shortage areas or shortages due to geographic locations. For route three only, the districts may include additional candidates in nonshortage subject areas if the candidates are seeking endorsements with a secondary grade level designation as defined by rule by the professional educator standards board. The districts shall disclose to candidates in nonshortage subject areas available information on the demand in those subject areas. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship, followed, if necessary, by a second summer teaching academy. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) ((~~Five years' experience in the workforce;~~

~~(b)~~)) A baccalaureate degree from a regionally accredited institution of higher education. The individual's grade point average may be considered as a selection factor;

(((~~(c)~~))) (b) Successful completion of the content test, once the state content test is available;

(((~~(d)~~))) (c) External validation of qualifications, including demonstrated successful experience with students or children, such as reference letters and letters of support from previous employers;

(((~~(e)~~))) (d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(((~~(f)~~))) (e) Successful passage of statewide basic skills exams, when available.

(4) Partnership grant programs seeking funds to operate route four programs shall enroll individuals with baccalaureate degrees, who are employed in the district at the time of application, or who hold conditional teaching certificates or emergency substitute certificates. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed

by a district in a mentored internship. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) ((~~Five years' experience in the workforce;~~

~~(b)~~)) A baccalaureate degree from a regionally accredited institution of higher education. The individual's grade point average may be considered as a selection factor;

(((~~(c)~~))) (b) Successful completion of the content test, once the state content test is available;

(((~~(d)~~))) (c) External validation of qualifications, including demonstrated successful experience with students or children, such as reference letters and letters of support from previous employers;

(((~~(e)~~))) (d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(((~~(f)~~))) (e) Successful passage of statewide basic skills exams, when available.

Passed by the House March 3, 2009.
Passed by the Senate April 9, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 167

[Substitute House Bill 1692]

PUBLIC FACILITIES DISTRICTS—BOARD OF DIRECTORS

AN ACT Relating to authority of the board of directors of a public facilities district; and amending RCW 36.100.160 and 35.57.060.

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

Sec. 1. RCW 36.100.160 and 1995 c 396 s 13 are each amended to read as follows:

(1) The board of directors of the public facilities district shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public and promoting, advertising, improving, developing, operating, and maintaining facilities of the district. For promotional activities the district board must: (a) Identify the proposed expenditure in its annual budget; and (b) adopt written rules governing promotional hosting by employees, agents, and the board, including requirements for identifying and evaluating the public benefits to be derived and documenting the public benefits realized.

(2) Nothing contained in this section may be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a district election.

Sec. 2. RCW 35.57.060 and 1999 c 165 s 6 are each amended to read as follows:

(1) The board of directors of the public facilities district shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public and promoting, advertising, improving, developing, operating, and maintaining a regional center. For promotional activities the district board must: (a) Identify the proposed

expenditure in its annual budget; and (b) adopt written rules governing promotional hosting by employees, agents, and the board, including requirements for identifying and evaluating the public benefits to be derived and documenting the public benefits realized.

(2) Nothing contained in this section may be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a district election.

Passed by the House March 5, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 168

[Substitute House Bill 1808]

PARAMEDIC TRAINING AND NURSING PROGRAMS—WORK GROUP

AN ACT Relating to an interdisciplinary work group with faculty from a paramedic training program and an associate degree in nursing program; creating a new section; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** The state board for community and technical colleges shall create an interdisciplinary work group with faculty from a paramedic training program, faculty from an associate degree nursing program, faculty from a bachelor's degree nursing program, a representative of the Washington center for nursing, and a representative of the Washington state nursing association. The work group shall review the training and curriculum of the programs to establish a set of recognized course equivalencies or skill competencies between the programs. The work group shall report its findings and any recommendations to the board by July 1, 2010. The board may use the findings and recommendations as the basis for any proposals for statewide policies regarding articulation between paramedic training programs and nursing programs. This section expires December 1, 2010.

Passed by the House March 10, 2009.
Passed by the Senate April 7, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 169

[House Bill 1844]

IDENTICARDS AND ENHANCED DRIVERS' LICENSES—
EMPLOYEE BACKGROUND CHECKS

AN ACT Relating to criminal history record checks of current and prospective department of licensing employees who issue or may issue enhanced drivers' licenses and identicards; and amending RCW 46.01.130.

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

Sec. 1. RCW 46.01.130 and 1979 c 158 s 121 are each amended to read as follows:

(1) The department of licensing shall have the general supervision and control of the issuing of vehicle licenses and vehicle license number plates and shall have the full power to do all things necessary and proper to carry out the provisions of the law relating to the licensing of vehicles; the director shall have the power to appoint and employ deputies, assistants and representatives, and such clerks as may be required from time to time, and to provide for their operation in different parts of the state, and the director shall have the power to appoint the county auditors of the several counties as ((~~his~~)) the director's agents for the licensing of vehicles.

(2)(a) The director 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 has or will have:

(i) The ability to create or modify records of applicants for enhanced drivers' licenses and identicards issued under RCW 46.20.202; and

(ii) The ability to issue enhanced drivers' licenses and identicards under RCW 46.20.202.

(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.

Passed by the House March 3, 2009.
Passed by the Senate April 10, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 170

[House Bill 1852]

RECORD CHECKS—FINGERPRINTS—FEES

AN ACT Relating to record checks using fingerprints; and amending RCW 43.43.838.

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

Sec. 1. RCW 43.43.838 and 2007 c 17 s 5 are each amended to read as follows:

(1) After January 1, 1988, and notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the state patrol shall furnish a transcript of the conviction record pertaining to any person for whom the state patrol or the federal bureau of investigation has a record upon the written request of:

(a) The subject of the inquiry;

(b) Any business or organization for the purpose of conducting evaluations under RCW 43.43.832;

(c) The department of social and health services;

(d) Any law enforcement agency, prosecuting authority, or the office of the attorney general;

(e) The department of social and health services for the purpose of meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any later-enacted statute which purpose is to regulate or license a facility which handles vulnerable adults. However, access to conviction records pursuant to this subsection (1)(e) does not limit or restrict the ability of the department to obtain additional information regarding conviction records and pending charges as set forth in RCW 74.15.030(2)(b); or

(f) The department of early learning for the purpose of meeting responsibilities in chapter 43.215 RCW.

(2) The state patrol shall by rule establish fees for disseminating records under this section to recipients identified in subsection (1)(a) and (b) of this section. The state patrol shall also by rule establish fees for disseminating records in the custody of the national crime information center. The revenue from the fees shall cover, as nearly as practicable, the direct and indirect costs to the state patrol of disseminating the records. No fee shall be charged to a nonprofit organization for the records check. ((~~In the case of record checks using fingerprints requested by school districts and educational service districts, the state patrol shall charge only for the incremental costs associated with checking fingerprints in addition to name and date of birth.~~)) Record checks requested by school districts and educational service districts using only name and date of birth ((~~shall continue to~~)) will be provided free of charge.

(3) No employee of the state, employee of a business or organization, or the business or organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

(4) Before July 26, 1987, the state patrol shall adopt rules and forms to implement this section and to provide for security and privacy of information disseminated under this section, giving first priority to the criminal justice requirements of this chapter. The rules may include requirements for users, audits of users, and other procedures to prevent use of civil adjudication record information or criminal history record information inconsistent with this chapter.

(5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an employer to make an inquiry not specifically authorized by this chapter, or be construed to affect the policy of the state declared in chapter 9.96A RCW.

Passed by the House February 23, 2009.

Passed by the Senate April 10, 2009.

Approved by the Governor April 22, 2009.

Filed in Office of Secretary of State April 23, 2009.

CHAPTER 171

[House Bill 2206]

OASI REVOLVING FUND AND CONTRIBUTION ACCOUNT

AN ACT Relating to authorized expenditures from the OASI revolving fund and OASI contribution account; and amending RCW 41.48.065 and 41.48.080.

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

Sec. 1. RCW 41.48.065 and 1991 sp.s. c 13 s 111 are each amended to read as follows:

(1) There is hereby established a separate fund in the custody of the state treasurer to be known as the OASI revolving fund. The fund shall consist of all moneys designated for deposit in the fund. The OASI revolving fund shall be used exclusively for the purpose of this section, including the costs of program administration. Withdrawals from the fund ((~~shall~~)) may be made for the payment of amounts the state may be obligated to pay or forfeit by reason of any failure of any public agency to pay assessments on contributions or interest assessments required under the federal-state agreement under this chapter or federal regulations.

(2) All costs allocable to the administration of this chapter shall be charged to and paid to the OASI revolving fund by the participating divisions and instrumentalities of the state pro rata according to their respective contributions.

(3) The treasurer of the state shall be ex officio treasurer and custodian of the fund and shall administer the fund in accordance with this chapter and the directions of the governor and shall pay all amounts drawn upon it in accordance with this section and with the regulations the governor may prescribe under this section.

Sec. 2. RCW 41.48.080 and 1951 c 184 s 9 are each amended to read as follows:

All costs allocable to the administration of this chapter shall be charged to and paid to the ((~~general~~)) OASI revolving fund by the participating divisions and instrumentalities of the state pro rata according to their respective contributions.

Passed by the House March 11, 2009.
Passed by the Senate April 10, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 172

[Substitute Senate Bill 5044]

STATE WORK-STUDY PROGRAM

AN ACT Relating to the state work-study program; and amending RCW 28B.12.060.

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

Sec. 1. RCW 28B.12.060 and 2005 c 93 s 4 are each amended to read as follows:

The higher education coordinating board shall adopt rules as may be necessary or appropriate for effecting the provisions of this chapter, and not in conflict with this chapter, in accordance with the provisions of chapter 34.05

RCW, the state higher education administrative procedure act. Such rules shall include provisions designed to make employment under the work-study program reasonably available, to the extent of available funds, to all eligible needy students in eligible postsecondary institutions ((~~in need thereof~~)). The rules shall include:

(1) Providing work under the state work-study program that will not result in the displacement of employed workers or impair existing contracts for services;

(2) Furnishing work only to a student who:

(a) Is capable, in the opinion of the eligible institution, of maintaining good standing in such course of study while employed under the program covered by the agreement; and

(b) Has been accepted for enrollment as at least a half-time student at the eligible institution or, in the case of a student already enrolled in and attending the eligible institution, is in good standing and in at least half-time attendance there either as an undergraduate, graduate or professional student; and

(c) Is not pursuing a degree in theology;

(3) Placing priority on providing:

(a) Work opportunities for students who are residents of the state of Washington as defined in RCW 28B.15.012 and 28B.15.013, particularly former foster youth as defined in RCW 28B.92.060((~~, except resident students defined in RCW 28B.15.012(2)(g)~~));

(b) Job placements in fields related to each student's academic or vocational pursuits, with an emphasis on off-campus job placements whenever appropriate; and

(c) Off-campus community service placements;

(4) To the extent practicable, limiting the proportion of state subsidy expended upon nonresident students to fifteen percent, or such less amount as specified in the biennial appropriations act;

(5) Provisions to assure that in the state institutions of higher education, utilization of this work-study program:

(a) Shall only supplement and not supplant classified positions under jurisdiction of chapter 41.06 RCW;

(b) That all positions established which are comparable shall be identified to a job classification under the director of personnel's classification plan and shall receive equal compensation;

(c) Shall not take place in any manner that would replace classified positions reduced due to lack of funds or work; and

(d) That work study positions shall only be established at entry level positions of the classified service unless the overall scope and responsibilities of the position indicate a higher level; and

((~~(5)~~)) (6) Provisions to encourage job placements in high employer demand occupations that meet Washington's economic development goals, ((~~especially~~)) including those in international trade and international relations. The board shall permit appropriate job placements in other states and other countries.

Passed by the Senate February 18, 2009.

Passed by the House April 13, 2009.

Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 173

[Substitute Senate Bill 5267]

ISSUANCE OF CHECKS—JOINT OPERATING AGENCIES AND PUBLIC UTILITIES DISTRICTS

AN ACT Relating to the issuance of checks by joint operating agencies and public utility districts; and amending RCW 43.52.375 and 54.24.010.

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

Sec. 1. RCW 43.52.375 and 1982 1st ex.s. c 43 s 7 are each amended to read as follows:

(1) The board of each joint operating agency shall by resolution appoint a treasurer. The treasurer shall be the chief financial officer of the operating agency, who shall report at least annually to the board a detailed statement of the financial condition of the operating agency and of its financial operations for the preceding fiscal year. The treasurer shall advise the board on all matters affecting the financial condition of the operating agency. Before entering upon his or her duties the treasurer shall give bond to the operating agency, with a surety company authorized to write such bonds in this state as surety, in an amount which the board finds by resolution will protect the operating agency against loss, conditioned that all funds which he or she receives as such treasurer will be faithfully kept and accounted for and for the faithful discharge of his or her duties. The amount of such bond may be decreased or increased from time to time as the board may by resolution direct.

(2) The board shall also appoint an auditor and may require him or her to give a bond with a surety company authorized to do business in the state of Washington in such amount as it shall by resolution prescribe, conditioned for the faithful discharge of his or her duties. The auditor shall report directly to the board and be responsible to it for discharging his or her duties.

(3) The premiums on the bonds of the auditor and the treasurer shall be paid by the operating agency. The board may provide for coverage of said officers and other persons on the same bond.

(4) All funds of the joint operating agency shall be paid to the treasurer and shall be disbursed by ((~~him~~)) the treasurer only on checks or warrants issued by the auditor upon orders or vouchers approved by the board: PROVIDED, That the board by resolution may authorize the managing director or any other bonded officer or employee as legally permissible to approve or disapprove vouchers presented to defray salaries of employees and other expenses of the operating agency arising in the usual and ordinary course of its business, including expenses incurred by the board of directors, its executive committee, or the executive board in the performance of their duties. All moneys of the operating agency shall be deposited forthwith by the treasurer in such depositaries, and with such securities as are designated by rules of the board. The treasurer shall establish a general fund and such special funds as shall be created by the board, into which he or she shall place all money of the joint operating agency as the board by resolution or motion may direct.

(5) The board may adopt a policy for the payment of claims or other obligations of the operating agency, which are payable out of solvent funds, and may elect to pay such obligations by check or warrant. However, if the applicable fund is not solvent at the time payment is ordered, then no check may be issued and payment shall be by warrant. When checks are to be used, the board shall designate the qualified public depositary upon which the checks are to be drawn as well as the officers required or authorized to sign the checks. For the purposes of this chapter, "warrant" includes checks where authorized by this subsection.

Sec. 2. RCW 54.24.010 and 1999 c 18 s 6 are each amended to read as follows:

(1) The treasurer of the county in which a utility district is located shall be ex officio treasurer of the district: PROVIDED, That the commission by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the utility district. The commission may 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 commission by resolution from time to time finds will protect the district against loss. The premium on any such bond shall be paid by the district.

(2) All district funds shall be paid to the treasurer and shall be disbursed by him or her only on warrants issued by an auditor appointed by the commission, upon orders or vouchers approved by it. The treasurer shall establish a public utility district fund, into which shall be paid all district funds, and he or she shall maintain such special funds as may be created by the commission, into which he or she shall place all money as the commission 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 depositaries under the same restrictions, contracts, and security as provided for county depositaries; if the treasurer of the district is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state as the commission by resolution shall designate, and with surety bond to the district or securities in lieu thereof of the kind, no less in amount, as provided in RCW 36.48.020 for deposit of county funds.

(4) Such surety bond or securities in lieu thereof shall be filed or deposited with the treasurer of the district, and approved by resolution of the commission.

(5) All interest collected on district funds shall belong to the district and be deposited to its credit in the proper district funds.

(6) A district may provide and require a reasonable bond of any other person handling moneys or securities of the district: PROVIDED, That the district pays the premium thereon.

(7) If the treasurer of the district is some other person than the treasurer of the county, the commission may adopt a policy for the payment of claims or other obligations of the utility district, which are payable out of solvent funds, and may elect to pay such obligations by check or warrant. However, if the applicable fund is not solvent at the time payment is ordered, then no check may be issued and payment shall be by warrant. When checks are to be used, the commission shall designate the qualified public depositary upon which the checks are to be drawn as well as the officers required or authorized to sign the

checks. For the purposes of this chapter, "warrant" includes checks where authorized by this subsection.

Passed by the Senate March 2, 2009.
Passed by the House April 13, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 174

[Senate Bill 5298]

NATURAL RESOURCE CIVIL INFRACTION—PENALTY REMOVAL

AN ACT Relating to removing the penalty language from natural resource civil infractions; and amending RCW 7.84.030.

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

Sec. 1. RCW 7.84.030 and 2004 c 43 s 2 are each amended to read as follows:

(1) An infraction proceeding is initiated by the issuance and service of a printed notice of infraction and filing of a printed or electronic copy of the notice of infraction.

(2) A notice of infraction may be issued by a person authorized to enforce the provisions of the title or chapter in which the infraction is established when the infraction occurs in that person's presence.

(3) A court may issue a notice of infraction if a person authorized to enforce the provisions of the title or chapter in which the infraction is established files with the court a written statement that the infraction was committed in that person's presence or that the officer has reason to believe an infraction was committed.

(4) Service of a notice of infraction issued under subsection (2) or (3) of this section shall be as provided by court rule.

(5) A notice of infraction shall be filed with a court having jurisdiction within five days of issuance, excluding Saturdays, Sundays, and holidays.

((~~(6) Failure to sign an infraction notice shall constitute a misdemeanor under chapter 9A.20 RCW.~~))

Passed by the Senate March 2, 2009.
Passed by the House April 13, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 175

[Substitute Senate Bill 5480]

HEALTH CARE DISCOUNT PLAN ORGANIZATION ACT

AN ACT Relating to creating the Washington health care discount plan organization act; adding a new chapter to Title 48 RCW; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** This chapter may be known and cited as the Washington health care discount plan organization act.

NEW SECTION. **Sec. 2.** The purposes of this chapter are to promote the public interest by establishing standards for discount plan organizations, to protect consumers from unfair or deceptive marketing, sales, or enrollment practices, and to facilitate consumer understanding of the role and function of discount plan organizations in providing discounts on charges for health care services.

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

(1) "Affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(2) "Commissioner" means the Washington state insurance commissioner.

(3)(a) "Control" or "controlled by" or "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(b) Control exists when any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities of any other person. A presumption of control may be rebutted by a showing made in the manner provided by RCW 48.31B.005(2) and 48.31B.025(11) that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

(4)(a) "Discount plan" means a business arrangement or contract in which a person or organization, in exchange for fees, dues, charges, or other consideration, provides or purports to provide discounts to its members on charges by providers for health care services.

(b) "Discount plan" does not include:

(i) A plan that does not charge a membership or other fee to use the plan's discount card;

(ii) A patient access program as defined in this chapter;

(iii) A medicare prescription drug plan as defined in this chapter; or

(iv) A discount plan offered by a health carrier authorized under chapter 48.20, 48.21, 48.44, or 48.46 RCW.

(5)(a) "Discount plan organization" means a person that, in exchange for fees, dues, charges, or other consideration, provides or purports to provide access to discounts to its members on charges by providers for health care services. "Discount plan organization" also means a person or organization that contracts with providers, provider networks, or other discount plan organizations to offer discounts on health care services to its members. This term also includes all persons that determine the charge to or other consideration paid by members.

(b) "Discount plan organization" does not mean:

(i) Pharmacy benefit managers;

(ii) Health care provider networks, when the network's only involvement in discount plans is contracting with the plan to provide discounts to the plan's members;

(iii) Marketers who market the discount plans of discount plan organizations which are licensed under to this chapter as long as all written communications of the marketer in connection with a discount plan clearly identify the licensed discount plan organization as the responsible entity; or

(iv) Health carriers, if the discount on health care services is offered by a health carrier authorized under chapter 48.20, 48.21, 48.44, or 48.46 RCW.

(6) "Health care facility" or "facility" has the same meaning as in RCW 48.43.005(15).

(7) "Health care provider" or "provider" has the same meaning as in RCW 48.43.005(16).

(8) "Health care provider network," "provider network," or "network" means any network of health care providers, including any person or entity that negotiates directly or indirectly with a discount plan organization on behalf of more than one provider to provide health care services to members.

(9) "Health care services" has the same meaning as in RCW 48.43.005(17).

(10) "Health carrier" or "carrier" has the same meaning as in RCW 48.43.005(18).

(11) "Marketer" means a person or entity that markets, promotes, sells, or distributes a discount plan, including a contracted marketing organization and a private label entity that places its name on and markets or distributes a discount plan pursuant to a marketing agreement with a discount plan organization.

(12) "Medicare prescription drug plan" means a plan that provides a medicare part D prescription drug benefit in accordance with the requirements of the federal medicare prescription drug improvement and modernization act of 2003.

(13) "Member" means any individual who pays fees, dues, charges, or other consideration for the right to receive the benefits of a discount plan, but does not include any individual who enrolls in a patient access program.

(14) "Patient access program" means a voluntary program sponsored by a pharmaceutical manufacturer, or a consortium of pharmaceutical manufacturers, that provides free or discounted health care products for no additional consideration directly to low-income or uninsured individuals either through a discount card or direct shipment.

(15) "Person" means an individual, a corporation, a governmental entity, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the persons listed in this subsection.

(16)(a) "Pharmacy benefit manager" means a person that performs pharmacy benefit management for a covered entity.

(b) For purposes of this subsection, a "covered entity" means an insurer, a health care service contractor, a health maintenance organization, or a multiple employer welfare arrangement licensed, certified, or registered under the provisions of this title. "Covered entity" also means a health program administered by the state as a provider of health coverage, a single employer that provides health coverage to its employees, or a labor union that provides health coverage to its members as part of a collective bargaining agreement.

NEW SECTION. **Sec. 4.** (1) This chapter applies to all discount plans and all discount plan organizations doing business in or from this state or that affect subjects located wholly or in part or to be performed within this state, and all persons having to do with this business.

(2) A discount plan organization that is a health carrier with a license, certificate of authority, or registration under RCW 48.05.030 or chapter 48.31C RCW:

(a) Is not required to obtain a license under section 5 of this act, except that any of its affiliates that operate as a discount plan organization in this state must obtain a license under section 5 of this act and comply with all other provisions of this chapter;

(b) Is required to comply with sections 9 through 12 of this act and report, in the form and manner as the commissioner may require, any of the information described in section 14(2) (b), (c), or (d) of this act that is not otherwise already reported; and

(c) Is subject to sections 16 and 17 of this act.

NEW SECTION. **Sec. 5.** (1) Before conducting discount plan business to which this chapter applies, a person shall obtain a license from the commissioner to operate as a discount plan organization.

(2) Except as provided in subsection (3) of this section, each application for a license to operate as a discount plan organization:

(a) Must be in a form prescribed by the commissioner and verified by an officer or authorized representative of the applicant; and

(b) Must demonstrate, set forth, or be accompanied by the following:

(i) The two hundred fifty dollar application fee, which must be deposited into the general fund;

(ii) A copy of the organization documents of the applicant, such as the articles of incorporation, including all amendments;

(iii) A copy of the applicant's bylaws or other enabling documents that establish organizational structure;

(iv) The applicant's federal identification number, business address, and mailing address;

(v)(A) A list of names, addresses, official positions, and biographical information of the individuals who are responsible for conducting the applicant's affairs, including all members of the board of directors, board of trustees, executive committee, or other governing board or committee, the officers, contracted management company personnel, and any person or entity owning or having the right to acquire ten percent or more of the voting securities of the applicant; and

(B) A disclosure in the listing of the extent and nature of any contracts or arrangements between any individual who is responsible for conducting the applicant's affairs and the discount plan organization, including all possible conflicts of interest;

(vi) A complete biographical statement, on forms prescribed by the commissioner, with respect to each individual identified under (b)(v) of this subsection;

(vii) A statement generally describing the applicant, its facilities and personnel, and the health care services for which a discount will be made available under the discount plan;

(viii) A copy of the form of all contracts made or to be made between the applicant and any health care providers or health care provider networks regarding the provision of health care services to members and discounts to be made available to members;

(ix) A copy of the form of any contract made or arrangement to be made between the applicant and any individual listed in (b)(v) of this subsection;

(x) A list identifying by name, address, telephone number, and e-mail address all persons who will market each discount plan offered by the applicant. If the person who will market a discount plan is an entity, only the entity must be identified. This list must be maintained and updated within sixty days of any change in the information. An updated list must be sent to the commissioner as part of the discount plan organization's renewal application under (b)(vii) of this subsection;

(xi) A copy of the form of any contract made or to be made between the applicant and any person, corporation, partnership, or other entity for the performance on the applicant's behalf of any function, including marketing, administration, enrollment, and subcontracting for the provision of health care services to members and discounts to be made available to members;

(xii) A copy of the applicant's most recent financial statements audited by an independent certified public accountant, except that, subject to the approval of the commissioner, an applicant that is an affiliate of a parent entity that is publicly traded and that prepares audited financial statements reflecting the consolidated operations of the parent entity may submit the audited financial statement of the parent entity and a written guaranty that the minimum capital requirements required under section 6 of this act will be met by the parent entity instead of the audited financial statement of the applicant;

(xiii) A description of the proposed methods of marketing including, but not limited to, describing the use of marketers, use of the internet, sales by telephone, electronic mail, or facsimile machine, and use of salespersons to market the discount plan benefits;

(xiv) A description of the member complaint procedures which must be established and maintained by the applicant;

(xv) The name and address of the applicant's Washington statutory agent for service of process, notice, or demand or, if not domiciled in this state, a power of attorney duly executed by the applicant, appointing the commissioner and duly authorized deputies as the true and lawful attorney of the applicant in and for this state upon whom all law process in any legal action or proceeding against the discount plan organization on a cause of action arising in this state may be served; and

(xvi) Any other information the commissioner may reasonably require.

(3)(a) Upon application to and approval by the commissioner and payment of the applicable fees, a discount plan organization that holds a current license or other form of authority from another state to operate as a discount plan organization, at the commissioner's discretion, may not be required to submit the information required under subsection (2) of this section in order to obtain a license under this section if the commissioner is satisfied that the other state's requirements, at a minimum, are equivalent to those required under subsection (2) of this section or the commissioner is satisfied that the other state's requirements are sufficient to protect the interests of the residents of this state.

(b) Whenever the discount plan organization loses its license or other form of authority in that other state to operate as a discount plan organization, or is the subject of any disciplinary administrative proceeding related to the organization's operating as a discount plan organization in that other state, the discount plan organization shall immediately notify the commissioner.

(4) After the receipt of an application filed under subsection (2) or (3) of this section, the commissioner shall review the application and notify the applicant of any deficiencies in the application.

(5)(a) Within ninety days after the date of receipt of a completed application, the commissioner shall:

(i) Issue a license if the commissioner is satisfied that the applicant has met the following:

(A) The applicant has fulfilled the requirements of this section and the minimum capital requirements in accordance with section 6 of this act; and

(B) The persons who own, control, and manage the applicant are competent and trustworthy and possess managerial experience that would make the proposed operation of the discount plan organization beneficial to discount plan members; or

(ii) Disapprove the application and state the grounds for disapproval.

(b) In making a determination under (a) of this subsection, the commissioner may consider, for example, whether the applicant or an officer or manager of the applicant: (i) Is not financially responsible; (ii) does not have adequate expertise or experience to operate a medical discount plan organization; or (iii) is not of good character. Among the factors that the commissioner may consider in making the determination is whether the applicant or an affiliate or a business formerly owned or managed by the applicant or an officer or manager of the applicant has had a previous application for a license, or other authority, to operate as any entity regulated by the commissioner denied, revoked, suspended, or terminated for cause, or is under investigation for or has been found in violation of a statute or regulation in another jurisdiction within the previous five years.

(6) Prior to licensure by the commissioner, each discount plan organization shall establish an internet web site in order to conform to the requirements of section 10(2) of this act.

(7)(a) A license is effective for one year, unless prior to its expiration the license is renewed in accordance with this subsection or suspended or revoked in accordance with subsection (8) of this section.

(b) At least ninety days before a license expires, the discount plan organization shall submit:

(i) A renewal application form; and

(ii) A two hundred dollar renewal application fee for deposit into the general fund.

(c) The commissioner shall renew the license of each holder that meets the requirements of this chapter and pays the appropriate renewal fee required.

(8)(a) The commissioner may suspend the authority of a discount plan organization to enroll new members or refuse to renew or revoke a discount plan organization's license if the commissioner finds that any of the following conditions exist:

(i) The discount plan organization is not operating in compliance with this chapter;

(ii) The discount plan organization does not have the minimum net worth as required under section 6 of this act;

(iii) The discount plan organization has advertised, merchandised, or attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service or has engaged in deceptive, misleading, or unfair practices with respect to advertising or merchandising;

(iv) The discount plan organization is not fulfilling its obligations as a discount plan organization; or

(v) The continued operation of the discount plan organization would be hazardous to its members.

(b) If the commissioner has cause to believe that grounds for the nonrenewal, suspension, or revocation of a license exists, the commissioner shall notify the discount plan organization in writing specifically stating the grounds for the refusal to renew or suspension or revocation and may also pursue a hearing on the matter under chapter 48.04 RCW.

(c) When the license of a discount plan organization is nonrenewed, surrendered, or revoked, the discount plan organization shall immediately upon the effective date of the order of revocation or, in the case of a nonrenewal, the date of expiration of the license, stop any further advertising, solicitation, collecting of fees, or renewal of contracts, and proceed to wind up its affairs transacted under the license.

(d)(i) When the commissioner suspends a discount plan organization's authority to enroll new members, the suspension order must specify the period during which the suspension is to be in effect and the conditions, if any, that must be met by the discount plan organization prior to reinstatement of its license to enroll members.

(ii) The commissioner may rescind or modify the order of suspension prior to the expiration of the suspension period.

(iii) The license of a discount plan organization may not be reinstated unless requested by the discount plan organization. The commissioner shall not grant the request for reinstatement if the commissioner finds that the circumstances for which the suspension occurred still exist or are likely to recur.

(9) Each licensed discount plan organization shall notify the commissioner immediately whenever the discount plan organization's license, or other form of authority to operate as a discount plan organization in another state, is suspended, revoked, or nonrenewed in that state.

(10) A health care provider who provides discounts to his or her own patients without any cost or fee of any kind to the patient is not required to obtain and maintain a license under this chapter as a discount plan organization.

NEW SECTION. **Sec. 6.** (1) Except under subsection (3) of this section, before the commissioner issues a license to any person required to obtain a license under section 5 of this act, the person seeking to operate a discount plan organization must have a net worth of at least one hundred fifty thousand dollars.

(2) At all times, except under subsection (3) of this section, each discount plan organization must maintain a net worth of at least one hundred fifty thousand dollars.

(3) By rule of the commissioner, the amounts in subsections (1) and (2) of this section may be adjusted annually for inflation.

NEW SECTION. **Sec. 7.** (1) Each licensed discount plan organization shall continuously maintain in force a surety bond in its own name in an amount not less than thirty-five thousand dollars to be used in the discretion of the commissioner to protect the financial interest of Washington members. The bond must be issued by an insurance company licensed to do business in this state.

(2) In lieu of the bond specified in subsection (1) of this section, a licensed discount plan organization may deposit and maintain deposited with the commissioner, or at the discretion of the commissioner, with any organization or trustee acceptable to the commissioner through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the commissioner which always have a market value of not less than thirty-five thousand dollars.

(3) All income from a deposit made under subsection (2) of this section is an asset of the discount plan organization.

(4) Except for the commissioner, the assets or securities held in this state as a deposit under subsection (1) or (2) of this section are not subject to levy by a judgment creditor or other claimant of the discount plan organization.

NEW SECTION. **Sec. 8.** (1) The commissioner may conduct investigations to determine whether any person has violated any provision of this chapter and may, if the commissioner has a reason to believe that the discount plan organization is not complying with the requirements of this chapter, examine the business and affairs of any discount plan organization.

(2) An examination conducted under subsection (1) of this section must be performed in accordance with chapter 48.03 RCW, except that RCW 48.03.060 (1) and (2) shall not be applicable to the examination of persons registered under this chapter.

(3) The commissioner may:

(a) Order any discount plan organization or applicant that operates a discount plan organization to produce any records, books, files, advertising, and solicitation materials or other information; and

(b) Gather evidence and take statements under oath to determine whether the discount plan organization or applicant is in violation of the law or is acting contrary to the public interest.

(4) The discount plan organization or applicant that is the subject of the examination or investigation shall pay the expenses incurred in conducting the examination or investigation. Failure by the discount plan organization or applicant to pay the expenses is grounds for denial or revocation of a license to operate as a discount plan organization.

(5) All discount plan organizations or applicants that are subject to examinations, investigations, or annual reporting requirements under this chapter shall maintain detailed books and records of the following:

(a) Records documenting all Washington transactions, showing all funds received and all funds disbursed to Washington members, prospective members, providers, and provider networks;

(b) All contracts or agreements with providers of the services under a discount plan offered in Washington or sold to Washington residents; and

(c) Telephone scripts for marketing activities to which this chapter applies.

The discount plan organization shall maintain the books and records described in this section, in addition to the books and records required to be maintained under section 10 of this act, for a period of at least two years.

NEW SECTION. **Sec. 9.** (1) A discount plan organization may charge a periodic charge as well as a reasonable one-time processing fee of no more than thirty dollars for a discount plan, or such other amount as established by rule, but may not require payment of these or any other charges or fees by direct debit from a banking, credit, or debit card account unless that method of payment is clearly and conspicuously disclosed to the prospective member. All charges and fees must be provided in writing to the member when the member first joins the plan.

(2) When a marketer or discount plan organization solicits a discount plan in conjunction with any other product, all charges that a member or prospective member must pay for each discount plan must be provided in writing as a separate item to the member or prospective member, unless the entire amount of the periodic charge which includes the periodic discount plan charge will be refunded if the member cancels his or her membership in the discount plan organization within the first thirty days after the date of receipt of the written documents for the discount plan as provided in subsection (3) of this section.

(3)(a)(i) If a member cancels his or her membership in the discount plan organization within the first thirty days after the date of receipt of the written documents for the discount plan described in section 12(4) of this act, the member must receive a reimbursement of all periodic charges upon return of the discount plan card to the discount plan organization.

(ii)(A) Cancellation occurs when notice of cancellation is given to the discount plan organization.

(B) Notice of cancellation is given when delivered by hand or deposited in a mailbox, properly addressed and postage prepaid to the mailing address of the discount plan organization, or e-mailed to the e-mail address of the discount plan organization.

(iii) A discount plan organization shall return in full any periodic charge charged or collected after the member has given the discount plan organization notice of cancellation.

(b) If the discount plan organization cancels a membership for any reason other than nonpayment of charges by the member, the discount plan organization shall make a pro rata reimbursement of all periodic charges to the member.

NEW SECTION. **Sec. 10.** (1)(a) A discount plan organization shall have a written health care provider agreement with all health care providers for whose health care services it provides access to a discount to its members. The written health care provider agreement may be entered into directly with the health care provider or indirectly with a health care provider network to which the health care provider belongs.

(b) A health care provider agreement between a discount plan organization and a health care provider must provide the following:

(i) A list of the health care services and products to be provided at a discount;

(ii) The amount or amounts of the discounts or, alternatively, a fee schedule that reflects the health care provider's discounted rates; and

(iii) That the health care provider may not charge members more than the discounted rates.

(c) A health care provider agreement between a discount plan organization and a health care provider network must require that the health care provider network have written agreements with its health care providers that:

(i) Contain the provisions described in (b) of this subsection;

(ii) Authorize the health care provider network to contract with the discount plan organization on behalf of the health care provider; and

(iii) Require the health care provider network to maintain an up-to-date list of its contracted health care providers and to provide the list on a monthly basis to the discount plan organization.

(d) A health care provider agreement between a discount plan organization and an entity that contracts with a health care provider network must require that the entity, in its contract with the health care provider network, require the health care provider network to have written agreements with its health care providers that comply with (c) of this subsection.

(e) The discount plan organization shall maintain a copy of each health care provider agreement into which it has entered and shall promptly furnish a copy of each agreement to the commissioner when requested.

(2)(a) Each discount plan organization shall maintain on an internet web site a list of the names and addresses of the health care providers with which it has a current provider agreement directly or through a health care provider network. This list must be updated every thirty days. The internet web site address must be prominently displayed on all of its advertisements, marketing materials, brochures, and discount plan cards.

(b) This subsection applies to those health care providers with which the discount plan organization has a current provider agreement directly as well as those health care providers that are members of a health care provider network with which the discount plan organization has a current provider agreement.

NEW SECTION. **Sec. 11.** (1) A discount plan organization may market its products directly to consumers or contract with marketers for the distribution of its discount plans.

(2)(a) The discount plan organization shall have an executed written agreement with a marketer prior to the marketer's marketing, promoting, selling, or distributing the discount plan organization's discount plans.

(b) The agreement between the discount plan organization and the marketer must prohibit the marketer from using advertising, marketing materials, brochures, and discount plan cards without first having the discount plan organization's approval in writing.

(c) The discount plan organization is bound by and responsible for the activities of a marketer that are within the scope of the marketer's agency relationship with the organization.

(3) A discount plan organization shall approve in writing all advertisements, marketing materials, brochures, and discount cards used by marketers to market, promote, sell, or distribute the discount plan prior to their use.

(4) Upon request, a discount plan organization shall submit to the commissioner all advertising, marketing materials, and brochures used or to be used in connection with the organization's discount plans.

NEW SECTION. **Sec. 12.** (1)(a) All advertisements, marketing efforts, promotions, marketing materials, discount plan documents, brochures, discount plan cards, and any other communications of a discount plan organization provided to prospective members and members must be truthful and not misleading in fact or in implication.

(b) Any advertisement, marketing material, discount plan document, brochure, discount plan card, or other communication is misleading in fact or in implication if it has a capacity or tendency to mislead or deceive based on the overall impression that it may reasonably be expected to create within the segment of the public to which it is directed.

(c) A discount plan organization shall conduct its business in its own legal name and all written communications from a discount plan to regulators and consumers must prominently display the discount plan organization's full legal name.

(2) A discount plan organization shall not:

(a) Except as otherwise provided in this chapter or as a disclaimer of any relationship between discount plan benefits and insurance, or as a description of an insurance product connected with a discount plan, use in its advertisements, marketing efforts, promotions, marketing materials, discount plan documents, brochures, and discount plan cards the term "insurance";

(b) Describe or characterize the discount plan as being insurance whenever a discount plan is bundled with an insured product and the insurance benefits are incidental to the discount plan benefits;

(c) Use in its advertisements, marketing efforts, promotions, marketing materials, discount plan documents, brochures, and discount plan cards words or phrases that are commonly associated with the business of insurance, such as the terms "health plan," "coverage," "copay," "copayments," "deductible," "preexisting conditions," "guaranteed issue," "premium," "PPO," "preferred provider organization," or similar terms, in a manner that could reasonably mislead an individual into believing that the discount plan is health insurance;

(d) Use language in its advertisements, marketing efforts, promotions, marketing material, discount plan documents, brochures, and discount plan cards with respect to being licensed by the insurance commissioner's office in a manner that could reasonably mislead an individual into believing that the discount plan is insurance or has been endorsed by the insurance commissioner's office;

(e) Make misleading, deceptive, or fraudulent representations regarding the discount or range of discounts offered by the discount plan or the access to any range of discounts offered by the discount plan;

(f) Have restrictions on access to discount plan providers including, except for hospital services, waiting periods and notification periods; or

(g) Pay health care providers any fees for health care services or collect or accept money from a member to pay a health care provider for health care services provided under the discount plan, unless the discount plan organization has an active certificate of authority or registration in Washington.

(3)(a) Each discount plan organization shall make the following general disclosures in not less than twelve-point type on the first content page of any advertisements, marketing materials, or brochures made available to the public relating to a discount plan, along with any enrollment forms given to a prospective member:

(i) That the plan is a discount plan and is not insurance coverage;

(ii) If true, that the range of discounts for health care services provided under the plan will vary depending on the type of health care provider and health care service received;

(iii) That the discount plan organization does not make payments to providers for the health care services received under the discount plan, unless the discount plan organization has an active certificate of authority or registration, as described in subsection (2)(g) of this section;

(iv) That the plan member is obligated to pay for all health care services, but will receive the stated discount from those health care providers that have a current provider agreement with the discount plan organization; and

(v) The toll-free telephone number and internet web site address for the licensed discount plan organization for prospective members and members to obtain additional information about and assistance with the discount plan and up-to-date lists of health care providers participating in the discount plan.

(b) If the initial contact with a prospective member is by telephone, the disclosures required under (a) of this subsection must be made orally and included in the initial written materials that describe the benefits under the discount plan provided to the prospective or new member.

(4)(a) In addition to the general disclosures required under subsection (3) of this section, each discount plan organization shall send to:

(i) Each prospective member, at their request, information that describes the terms and conditions of the discount plan, including any limitations or restrictions on the refund of any processing fees or periodic charges associated with the discount plan. The written materials presented must not be dependent upon the requestor first making any form of payment or enrolling in the plan; and

(ii) Each new member, within fourteen calendar days of enrollment, written documents that contain all terms and conditions of the discount plan.

(b) The written documents required under (a)(ii) of this subsection must be clear and include the following information:

(i) The name of the member;

(ii) The benefits to be provided under the discount plan;

(iii) Any processing fees and periodic charges associated with the discount plan, including any limitations or restrictions on the refund of any processing fees and periodic charges;

(iv) The mode of payment of any processing fees and periodic charges, such as monthly or quarterly, and procedures for changing the mode of payment;

(v) Any limitations, exclusions, or exceptions regarding the receipt of discount plan benefits;

(vi) Any waiting periods for receiving discounts on hospital services under the discount plan;

(vii) Procedures for obtaining discounts under the discount plan, such as requiring members to contact the discount plan organization to make an appointment with a health care provider on the member's behalf;

(viii) Cancellation procedures, including information on the member's thirty-day cancellation rights and refund requirements and procedures for obtaining refunds;

(ix) Renewal, termination, and cancellation terms and conditions;

(x) Procedures for adding new members to a family discount plan, if applicable;

(xi) Procedures for filing complaints under the discount plan organization's complaint system and information that, if the member remains dissatisfied after completing the organization's complaint system, the plan member may contact the office of the insurance commissioner; and

(xii) The name, telephone number, internet web site address, and mailing address of the licensed discount plan organization or other entity where the member can make inquiries about the plan, or send cancellation notices and file complaints.

NEW SECTION. **Sec. 13.** Each discount plan organization shall provide the commissioner at least thirty days' advance notice of any change in the discount plan organization's name, address, principal business address, mailing address, toll-free telephone number, or internet web site address.

NEW SECTION. **Sec. 14.** (1) If the information required in subsection (2) of this section is not provided at the time of renewal of a license under section 5 of this act, a discount plan organization shall file an annual report with the commissioner in the form prescribed by the commissioner no later than March 31st of the following year.

(2) The annual report must be filed with the commissioner, accompanied by the twenty dollar annual reporting fee to be deposited into the general fund. The annual report must include:

(a) Audited financial statements prepared in accordance with generally accepted accounting principles certified by an independent certified public accountant, including the organization's balance sheet, income statement, and statement of changes in cash flow for the preceding year. However, subject to the approval of the commissioner, an organization that is an affiliate of a parent entity that is publicly traded and that prepares audited financial statements reflecting the consolidated operations of the parent entity may submit the audited financial statement of the parent entity and a written guaranty that the minimum capital requirements required under section 6 of this act will be met by the parent entity instead of the audited financial statement of the organization;

(b) If different from the initial application for a license, or at the time of renewal of a license, or the last annual report, as appropriate, a list of the names and residence addresses of all persons responsible for the conduct of the organization's affairs, together with a disclosure of the extent and nature of any contracts or arrangements with these persons and the discount plan organization, including any possible conflicts of interest;

(c) The number of current members the discount plan organization has in the state; and

(d) Any other information relating to the performance of the discount plan organization that may be required by the commissioner.

(3) Any discount plan organization that fails to file an annual report in the form and within the time required by this section is subject to the following:

(a) Monetary penalties of:

(i) Up to five hundred dollars each day for the first ten days during which the violation continues; and

(ii) Up to one thousand dollars each day after the first ten days during which the violation continues; and

(b) Upon notice by the commissioner, loss, suspension, or revocation of its license and authority to enroll new members or to do business in this state while the violation continues.

NEW SECTION. **Sec. 15.** Each discount plan organization shall designate and provide the commissioner with the name, address, and telephone number of the organization's compliance officer responsible for ensuring compliance with this chapter.

NEW SECTION. **Sec. 16.** (1) In lieu of or in addition to suspending or revoking a discount plan organization's license under section 5(8) of this act, whenever the commissioner has cause to believe that any person is violating or is about to violate any provision of this chapter or any rules adopted under this chapter or any order of the commissioner, the commissioner may:

(a) Issue a cease and desist order; and

(b) After hearing or with the consent of the discount plan organization and in addition to or in lieu of the suspension, revocation, or refusal to renew any license, impose a monetary penalty of not less than one hundred dollars for each violation and not more than ten thousand dollars for each violation.

(2) A person that willfully operates as or aids and abets another operating as a discount plan organization in violation of section 5(1) of this act commits insurance fraud and is subject to RCW 48.15.020 and 48.15.023, as if the unlicensed discount plan organization were an unauthorized insurer, and the fees, dues, charges, or other consideration collected from the members by the unlicensed discount plan organization or marketer were insurance premiums.

(3) A person that collects fees for purported membership in a discount plan but willfully fails to provide the promised benefits commits a theft and upon conviction is subject to the provisions of Title 9A RCW. In addition, upon conviction, the person shall pay restitution to persons aggrieved by the violation of this chapter.

(4) Any person damaged by acts that violate this chapter may maintain an action for the recovery of damages caused by that act or acts.

(a) An action for violation of this section may be brought:

(i) In the county where the plaintiff resides;

(ii) In the county where the plaintiff conducts business; or

(iii) In the county where the discount plan was sold, marketed, promoted, advertised, or otherwise distributed.

(b) The acceptance or use of any discount plan or discount plan card does not operate as a waiver of any civil, criminal, or administrative claim that may be asserted under this chapter.

NEW SECTION. **Sec. 17.** (1)(a) In addition to the penalties and other enforcement provisions of this chapter, the commissioner may seek both temporary and permanent injunctive relief when:

(i) A discount plan is being operated by a person or entity that is not licensed under this chapter; or

(ii) Any person, entity, or discount plan organization has engaged in any activity prohibited by this chapter or any rule adopted under this chapter.

(b) The venue for any court proceeding brought under this section is Thurston county.

(2) The commissioner's authority to seek injunctive relief is not conditioned on having conducted any proceeding under chapter 34.05 RCW.

NEW SECTION. **Sec. 18.** The commissioner may adopt rules to implement this chapter.

NEW SECTION. **Sec. 19.** 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. 20.** Any person, organization, or entity that has engaged in a discount plan business to which this chapter applies, and has done so on or before the effective date of this section, has six months following the effective date of this section to submit a substantially complete application for a license as provided in section 5 of this act and to otherwise come into compliance with the requirements of this chapter.

NEW SECTION. **Sec. 21.** Sections 1 through 20 of this act constitute a new chapter in Title 48 RCW.

Passed by the Senate March 9, 2009.
Passed by the House April 13, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 176

[Substitute Senate Bill 5571]

TAXES—USE OF ELECTRONIC METHODS

AN ACT Relating to requiring the use of electronic methods for taxes administered by the department of revenue, including filing of taxes, payment of taxes, assessment of taxes, and other taxpayer information; and amending RCW 82.32.135, 82.32.080, 82.32.085, 82.32.060, and 82.32.087.

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

Sec. 1. RCW 82.32.135 and 2007 c 111 s 113 are each amended to read as follows:

(1) Except as otherwise provided in this subsection, whenever the department is required to send any assessment, notice, or any other information to persons by regular mail, the department ((~~may~~)) must instead provide the assessment, notice, or other information electronically ((~~if the following conditions are met:~~

~~(a) The person entitled to receive the information has authorized the department in writing, electronically or otherwise, to provide the assessment, notice, or other information electronically; and~~

~~(b)~~)). The department may implement the requirement in this subsection in phases. The department, for good cause, may waive the requirement in this subsection for any taxpayer. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(2) If the assessment, notice, or other information is subject to the confidentiality provisions of RCW 82.32.330, the department must use methods reasonably designed to protect the information from unauthorized disclosure. The provisions of this subsection ((~~(1)(b)~~)) (2) may be waived by a taxpayer. The waiver must be in writing and may be provided to the department electronically. A person may provide a waiver with respect to a particular item of information or may give a blanket waiver with respect to any item of information or certain items of information to be provided electronically. A blanket waiver will continue until revoked in writing by the taxpayer. Such revocation may be provided to the department electronically in a manner provided or approved by the department.

((~~(2) A person may authorize the department under subsection (1)(a) of this section to provide a particular item of information electronically or may give blanket authorization to provide any item of information or certain items of information electronically. Such blanket authorization will continue until revoked in writing by the taxpayer. Such revocation may be provided to the department electronically in a manner provided or approved by the department.~~))

(3) Any assessment, notice, or other information provided by the department electronically to a person is deemed to be received by the taxpayer on the date that the department electronically sends the information to the person or electronically notifies the person that the information is available to be accessed by the person.

(4) This section also applies to any information that is not expressly required by statute to be sent by regular mail, but is customarily sent by the department using regular mail, to persons entitled to receive the information.

(5)(a) For purposes of this section, "good cause" includes the inability of the department to comply with this section for any reason, including lacking information necessary to send information to a person electronically or to electronically notify a person that information is available to be accessed by the person.

(b) "Good cause" also includes the inability of a person to receive or otherwise obtain information from the department electronically because:

(i) The person does not have the equipment or software necessary to enable the person to receive or otherwise obtain information from the department electronically;

(ii) The equipment or software necessary to enable the person to receive or otherwise obtain information from the department electronically is not functioning properly;

(iii) The person does not have access to the internet using the person's own equipment; or

(iv) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from receiving or otherwise obtaining information from the department electronically.

Sec. 2. RCW 82.32.080 and 2008 c 181 s 502 are each amended to read as follows:

(1) When authorized by the department, payment of the tax may be made by uncertified check under such ((~~regulations~~)) rules as the department ((~~shall~~)) prescribes, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, ((~~shall~~)) will remain liable for payment of the tax and for all legal penalties, the same as if such check had not been tendered.

(2)(a) Except as otherwise provided in this subsection, payment of the tax ((~~shall~~)) must be made by electronic funds transfer, as defined in RCW 82.32.085, ((~~if the amount of the tax due in a calendar year is one million eight hundred thousand dollars or more. The department may by rule provide for tax thresholds between two hundred forty thousand dollars and one million eight hundred thousand dollars for mandatory use of electronic funds transfer~~)) if the taxpayer is required to file and remit its taxes on a monthly basis. As an alternative to electronic funds transfer, the department may authorize other forms of electronic payment, such as credit card and e-check. All taxes administered by this chapter are subject to this requirement except the taxes authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW. It is the intent of this ((~~section~~)) subsection to require electronic ((~~funds transfer~~)) payment for those taxes reported on the department's combined excise tax return or any successor return. The mandatory electronic payment requirement in this subsection also applies to taxpayers who meet the threshold for filing and remitting taxes on a monthly basis as established by rule of the department but for whom the department has authorized a less frequent reporting frequency, when such authorization became effective on or after the effective date of this section.

(b) The department, for good cause, may waive the electronic payment requirement in this subsection for any taxpayer. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to accept payment of taxes by electronic funds transfer or other acceptable forms of electronic payment from taxpayers that are not subject to the mandatory electronic payment requirements in this subsection.

(3) ((~~A return or remittance which is transmitted to the department by United States mail shall be deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it, except as otherwise provided in this chapter. The department is authorized to allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the department electronically shall be deemed filed or received according to procedures set forth by the department.~~)) (a) Except as otherwise provided in this subsection, returns must be filed electronically using the department's online tax filing service, if the taxpayer is required to file and remit its taxes on a monthly basis. The mandatory electronic filing requirement in this subsection also applies to taxpayers who meet the threshold for filing and remitting taxes on a monthly basis as established by rule of the department but for whom the department has authorized a less frequent

reporting frequency, when such authorization became effective on or after the effective date of this section.

(b) The department, for good cause, may waive the electronic filing requirement in this subsection for any taxpayer. In the discretion of the department, a waiver under this subsection may be made temporary or permanent, and may be made on the department's own motion.

(c) The department is authorized to accept payment of taxes by electronic funds transfer or other acceptable forms of electronic payment from taxpayers that are not subject to the mandatory electronic payment requirements in this subsection.

(4)(a)(i) The department, for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper, but any permanent extension granting the taxpayer a reporting date without penalty more than ten days beyond the due date, and any extension in excess of thirty days ((~~shall~~)) must be conditional on deposit with the department of an amount to be determined by the department which shall be approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of a permanent extension or a temporary extension of more than thirty days the deposit ((~~shall~~)) must be deposited within the state treasury with other tax funds and a credit recorded to the taxpayer's account which may be applied to taxpayer's liability upon cancellation of the permanent extension or upon reporting of the tax liability where an extension of more than thirty days has been granted.

(ii) The department ((~~shall~~)) must review the requirement for deposit at least annually and may require a change in the amount of the deposit required when it believes that such amount does not approximate the tax liability for the reporting period or periods for which the extension is granted.

(b) 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 making or filing any return as the department deems proper. The department may not require any deposit as a condition for granting an extension under this subsection (4)(b).

(5) The department ((~~shall~~)) must keep full and accurate records of all funds received and disbursed by it. Subject to the provisions of RCW 82.32.105 and 82.32.350, the department ((~~shall~~)) must apply the payment of the taxpayer first against penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

(6) The department may refuse to accept any return ((~~which~~)) that is not accompanied by a remittance of the tax shown to be due thereon or that is not filed electronically as required in this section. When such return is not accepted, the taxpayer ((~~shall be~~)) is deemed to have failed or refused to file a return and ((~~shall be~~)) is subject to the procedures provided in RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The above authority to refuse to accept a return ((~~shall~~)) may not apply when a return is timely filed electronically and a timely payment has been made by electronic funds transfer or other form of electronic payment as authorized by the department.

(7) Except for returns and remittances required to be transmitted to the department electronically under this section and except as otherwise provided in

this chapter, a return or remittance that is transmitted to the department by United States mail is deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it. A return or remittance that is transmitted to the department electronically is deemed filed or received according to procedures set forth by the department.

(8)(a) For purposes of subsections (2) and (3) of this section, "good cause" means the inability of a taxpayer to comply with the requirements of subsection (2) or (3) of this section because:

(i) The taxpayer does not have the equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section;

(ii) The equipment or software necessary to enable the taxpayer to comply with subsection (2) or (3) of this section is not functioning properly;

(iii) The taxpayer does not have access to the internet using the taxpayer's own equipment;

(iv) The taxpayer does not have a bank account or a credit card;

(v) The taxpayer's bank is unable to send or receive electronic funds transfer transactions; or

(vi) Some other circumstance or condition exists that, in the department's judgment, prevents the taxpayer from complying with the requirements of subsection (2) or (3) of this section.

(b) "Good cause" also includes any circumstance that, in the department's judgment, supports the efficient or effective administration of the tax laws of this state, including providing relief from the requirements of subsection (2) or (3) of this section to any taxpayer that is voluntarily collecting and remitting this state's sales or use taxes on sales to Washington customers but has no legal requirement to be registered with the department.

Sec. 3. RCW 82.32.085 and 2006 c 256 s 4 are each amended to read as follows:

(1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(2)(a) Except as provided in (b) of this subsection, the electronic funds transfer is to be completed so that the state receives collectible funds on or before the next banking day following the due date.

(b) A remittance made using the automated clearinghouse debit method will be deemed to be received on the due date if the electronic funds transfer is initiated on or before 11:59 p.m. pacific time on the due date with an effective payment date on or before the next banking day following the due date.

(3)(((~~(a)~~))) The department ((~~shall~~)) must adopt rules necessary to implement the provisions of RCW 82.32.080 and this section. The rules ((~~shall~~)) must include but are not limited to: (((~~(i)~~))) (a) Coordinating the filing of tax returns with payment by electronic funds transfer or other form of electronic payment as authorized by the department; (((~~(ii)~~))) (b) form and content of electronic funds transfer; (((~~(iii)~~))) (c) voluntary use of electronic funds transfer with permission of the department for those taxpayers that are not subject to the mandatory electronic payment requirement in RCW 82.32.080; (((~~(iv)~~))) (d) use of commonly accepted means of electronic funds transfer; (((~~(v)~~))) (e) means of crediting and

recording proof of payment; and (((~~(vi)~~))) (f) means of correcting errors in transmission.

(((~~(b) Any changes in the threshold of tax shall be implemented with a separate rule-making procedure.~~)))

Sec. 4. RCW 82.32.060 and 2004 c 153 s 306 are each amended to read as follows:

(1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period ((~~shall~~)) must be credited to the taxpayer's account or ((~~shall~~)) must be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit ((~~shall~~)) may be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 ((~~shall~~)) will extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(b) A refund or credit ((~~shall~~)) must be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds ((~~shall~~)) must be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 ((~~shall~~)) must have any refunds paid by electronic funds transfer if the department has the necessary account information to facilitate a refund by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer ((~~shall~~)) must be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum ((~~shall~~)) must be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest ((~~shall apply~~)) applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, ((~~shall~~)) must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed ((~~shall~~)) must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest ((~~shall~~)) must be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest ((~~shall apply~~)) applies for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, ((~~shall~~)) must be computed at the rate as computed under RCW 82.32.050(2). The rate so computed ((~~shall~~)) must be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, ((~~shall~~)) must be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest ((~~shall~~)) must be computed from January 31st following each calendar year included in a notice or refund; or

(ii) Interest ((~~shall~~)) must be computed from the last day of the month following the final month included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest ((~~shall~~)) must be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice ((~~shall~~)) must accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest ((~~shall~~)) must be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice.

Sec. 5. RCW 82.32.087 and 2001 c 188 s 2 are each amended to read as follows:

(1) The director may grant a direct pay permit to a taxpayer who demonstrates, to the satisfaction of the director, that the taxpayer meets the requirements of this section. The direct pay permit allows the taxpayer to accrue and remit directly to the department use tax on the acquisition of tangible personal property or sales tax on the sale of or charges made for labor and/or services, in accordance with all of the applicable provisions of this title. Any taxpayer that uses a direct pay permit shall remit state and local sales or use tax directly to the department. The agreement by the purchaser to remit tax directly to the department, rather than pay sales or use tax to the seller, relieves the seller of the obligation to collect sales or use tax and requires the buyer to pay use tax on the tangible personal property and sales tax on the sale of or charges made for labor and/or services.

(2)(a) A taxpayer may apply for a permit under this section if: (i) The ((~~taxpayer (i) is subject to mandatory use of electronic funds transfer under RCW 82.32.080~~)) taxpayer's cumulative tax liability is reasonably expected to

be two hundred forty thousand dollars or more in the current calendar year; or (ii) the taxpayer makes purchases subject to the taxes imposed under chapter 82.08 or 82.12 RCW in excess of ten million dollars per calendar year. For the purposes of this section, "tax liability" means the amount required to be remitted to the department for taxes administered under this chapter, except for the taxes imposed or authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW.

(b) Application for a permit must be made in writing to the director in a form and manner prescribed by the department. A taxpayer who transacts business in two or more locations may submit one application to cover the multiple locations.

(c) The director ((~~shall~~)) must review a direct pay permit application in a timely manner and shall notify the applicant, in writing, of the approval or denial of the application. The department ((~~shall~~)) must approve or deny an application based on the applicant's ability to comply with local government use tax coding capabilities and responsibilities; requirements for vendor notification; recordkeeping obligations; electronic data capabilities; and tax reporting procedures. Additionally, an application may be denied if the director determines that denial would be in the best interest of collecting taxes due under this title. The department ((~~shall~~)) must provide a direct pay permit to an approved applicant with the notice of approval. The direct pay permit shall clearly state that the holder is solely responsible for the accrual and payment of the tax imposed under chapters 82.08 and 82.12 RCW and that the seller is relieved of liability to collect tax imposed under chapters 82.08 and 82.12 RCW on all sales to the direct pay permit holder. The taxpayer may petition the director for reconsideration of a denial.

(d) A taxpayer who uses a direct pay permit must continue to maintain records that are necessary to a determination of the tax liability in accordance with this title. A direct pay permit is not transferable and the use of a direct pay permit may not be assigned to a third party.

(3) Taxes for which the direct pay permit is used are due and payable on the tax return for the reporting period in which the taxpayer (a) receives the tangible personal property purchased or in which the labor and/or services are performed or (b) receives an invoice for such property or such labor and/or services, whichever period is earlier.

(4) The holder of a direct pay permit ((~~shall~~)) must furnish a copy of the direct pay permit to each vendor with whom the taxpayer has opted to use a direct pay permit. Sellers who make sales upon which the sales or use tax is not collected by reason of the provisions of this section, in addition to existing requirements under this title, ((~~shall~~)) must maintain a copy of the direct pay permit and any such records or information as the department may specify.

(5) A direct pay permit is subject to revocation by the director at any time the department determines that the taxpayer has violated any provision of this section or that revocation would be in the best interests of collecting the taxes due under this title. The notice of revocation must be in writing and is effective either as of the end of the taxpayer's next normal reporting period or a date deemed appropriate by the director and identified in the revocation notice. The taxpayer may petition the director for reconsideration of a revocation and reinstatement of the permit.

(6) Any taxpayer who chooses to no longer use a direct pay permit or whose permit is revoked by the department, ((~~shall~~)) must return the permit to the department and immediately make a good faith effort to notify all vendors to whom the permit was given, advising them that the permit is no longer valid.

(7) Except as provided in this subsection, the direct pay permit may be used for any purchase of tangible personal property and any retail sale under RCW 82.04.050. The direct pay permit may not be used for:

(a) Purchases of meals or beverages;

(b) Purchases of motor vehicles, trailers, boats, airplanes, and other property subject to requirements for title transactions by the department of licensing;

(c) Purchases for which a resale certificate may be used;

(d) Purchases that meet the definitions of RCW 82.04.050 (2)(e) and (f), (3)(a) through (d), (f), and (g), and (5); or

(e) Other activities subject to tax under chapter 82.08 or 82.12 RCW that the department by rule designates, consistent with the purposes of this section, as activities for which a direct pay permit is not appropriate and may not be used.

Passed by the Senate March 10, 2009.
Passed by the House April 9, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 177

[Substitute Senate Bill 5752]

DENTISTS—DISCIPLINARY PROCEEDINGS—COST RECOVERY

AN ACT Relating to cost recovery in disciplinary proceedings involving dentists; and adding a new section to chapter 18.32 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 18.32 RCW to read as follows:

(1) In any disciplinary case pertaining to a dentist where there is a contested hearing, if the commission or its hearing panel makes the finding requisite for, and imposes upon the dentist, a disciplinary sanction or fine under RCW 18.130.160, unless it determines to waive the assessment of a hearing fee, it shall assess against the licensee a partial recovery of the state's hearing expenses as follows:

(a) The partial recovery hearing fee must be:

(i) An amount equal to six thousand dollars for each full hearing day in the proceeding and one-half of that amount for any partial hearing day; and

(ii) A partial recovery of investigative and hearing preparation expenses in an amount as found to be reasonable reimbursement under the circumstances but no more than ten thousand dollars;

(b) Substantiation of investigative and hearing preparation expenses for purposes of (a) of this subsection may be by affidavit or declaration descriptive of efforts expended, which are reviewable in the hearing as would be a cost bill;

(c) The commission or its hearing panel may waive the partial recovery hearing fee if it determines the assessment of the fee (i) would create substantial undue hardship for the dentist, or (ii) in all the circumstances of the case,

including the nature of the charges alleged, it would be manifestly unjust to assess the fee. Consideration of the waiver must be applied for and considered during the hearing itself. This may be in advance of the decision related to RCW 18.130.160.

(2) If the dentist seeks judicial review of the disciplinary action and there was a partial recovery hearing fee assessed, then unless the license holder achieves a substantial element of relief, the reviewing trial court or appellate court shall further impose a partial cost recovery fee in the amount of twenty-five thousand dollars at the superior court level, twenty-five thousand dollars at the court of appeals level, and twenty-five thousand dollars at the supreme court level. Application for waiver may be made to the court at each level and must be considered by the court under the standards stated in subsection (1)(c) of this section.

(3) In any disciplinary case pertaining to a dentist where the case is resolved by agreement prior to completion of a contested hearing, the commission shall assess against the dentist a partial recovery of investigative and hearing preparation expenses in an amount as found to be reasonable reimbursement in the circumstances but no more than ten thousand dollars, unless it determines to waive this fee under the standards stated in subsection (1)(c) of this section.

(4) In any stipulated informal disposition of allegations pertaining to a dentist as contemplated under RCW 18.130.172, the potential dollar limit of reimbursement of investigative and processing costs may not exceed two thousand dollars per allegation.

(5) Should the dentist fail to pay any agreed reimbursement or ordered cost recovery under the statute, the commission may seek collection of the amount in the same manner as enforcement of a fine under RCW 18.130.165.

(6) All fee recoveries and reimbursements under this statute must be deposited to the health professions account for the portion of it allocated to the commission. The fee recoveries shall be fully credited in reduction of actual or projected expenditures used to determine dentist license renewal fees.

(7) The authority of the commission under this section is in addition to all of its authorities under RCW 18.130.160, elsewhere in chapter 18.130 RCW, or in this chapter.

Passed by the Senate March 3, 2009.
Passed by the House April 13, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 178

[Substitute Senate Bill 5797]

SOLID WASTE HANDLING PERMITS—REQUIREMENTS—EXEMPTIONS

AN ACT Relating to exemptions from solid waste handling permit requirements; amending RCW 43.21B.300, 43.21B.310, 70.95.170, and 70.95.315; and adding a new section to chapter 70.95 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 70.95 RCW to read as follows:

(1) An anaerobic digester that complies with the conditions specified in this section is exempt from the permitting requirements of this chapter. To qualify for the exemption, an anaerobic digester must meet the following conditions:

(a) The owner or operator must provide the department or the jurisdictional health department with at least thirty days' notice of intent to operate under the conditions specified in this section and comply with any guidelines issued under subsection (2) of this section;

(b) The anaerobic digester must process at least fifty percent livestock manure by volume;

(c) The anaerobic digester may process no more than thirty percent imported organic waste-derived material by volume, and must comply with subsection (3) of this section;

(d) The anaerobic digester must comply with design and operating standards in the natural resources conservation service's conservation practice standard code 366 in effect as of the effective date of this section;

(e) Digestate must:

(i) Be managed in accordance with a dairy nutrient management plan under chapter 90.64 RCW that includes elements addressing management and use of digestate;

(ii) Meet compost quality standards concerning pathogens, stability, nutrient testing, and metals before it is distributed for off-site use, or be sent to an off-site permitted compost facility for further treatment to meet compost quality standards; or

(iii) Be processed or managed in an alternate manner approved by the department;

(f) The owner or operator must allow inspection by the department or jurisdictional health department at reasonable times to verify compliance with the conditions specified in this section; and

(g) The owner or operator must submit an annual report to the department or the jurisdictional health department concerning use of nonmanure material in the anaerobic digester and any required compliance testing.

(2) By August 1, 2009, the department and the department of agriculture, in consultation with the department of health, shall make available to anaerobic digester owners and operators clearly written guidelines for the anaerobic codigestion of livestock manure and organic waste-derived material. The guidelines must explain the steps necessary for an owner or operator to meet the conditions specified in this section for an exemption from the permitting requirements of this chapter.

(3) Any imported organic waste-derived material must:

(a) Be preconsumer in nature;

(b) Be fed into the anaerobic digester within thirty-six hours of receipt at the anaerobic digester;

(c) If it is likely to contain animal byproducts, be previously source-separated at a facility licensed to process food by the United States department of agriculture, the United States food and drug administration, the Washington state department of agriculture, or other applicable regulatory agency;

(d) If it contains bovine processing waste, be derived from animals approved by the United States department of agriculture food safety and inspection service and not contain any specified risk material;

(e) If it contains sheep carcasses or sheep processing waste, not be fed into the anaerobic digester;

(f) Be stored and handled in a manner that protects surface water and groundwater and complies with best management practices;

(g) Be received or stored in structures that:

(i) Comply with the natural resources conservation service's conservation practice standard code 313 in effect as of the effective date of this section;

(ii) Are certified to be effective by a representative of the natural resources conservation service; or

(iii) Meet applicable construction industry standards adopted by the American concrete institute or the American institute of steel construction and in effect as of the effective date of this section; and

(h) Be managed to prevent migration of nuisance odors beyond property boundaries and minimize attraction of flies, rodents, and other vectors.

(4) Digestate that is managed in accordance with a dairy nutrient management plan under chapter 90.64 RCW that includes elements addressing management and use of digestate shall no longer be considered a solid waste. Use of digestate from an anaerobic digester that complies with the conditions specified in this section is exempt from the permitting requirements of this chapter.

(5) An anaerobic digester that does not comply with the conditions specified in this section may be subject to the permitting requirements of this chapter. In addition, violations of the conditions specified in this section are subject to provisions in RCW 70.95.315.

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

(a) "Anaerobic digester" means a vessel that processes organic material into biogas and digestate using microorganisms in a decomposition process within a closed, oxygen-free container.

(b) "Best management practices" means managerial practices that prevent or reduce water pollution.

(c) "Digestate" means both solid and liquid substances that remain following anaerobic digestion of organic material in an anaerobic digester.

(d) "Imported" means originating off of the farm or other site where the anaerobic digester is being operated.

(e) "Organic waste-derived material" has the same meaning as defined in RCW 15.54.270 and any other organic wastes approved by the department, except for organic waste-derived material collected through municipal commercial and residential solid waste collection programs.

Sec. 2. RCW 43.21B.300 and 2007 c 147 s 9 are each amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70.94.431, 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330 and chapter 90.76 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the department or the authority for the remission or mitigation of the penalty.

Upon receipt of the application, the department or authority may remit or mitigate the penalty upon whatever terms the department or the authority in its discretion deems proper. The department or the authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority thirty days after the date of receipt by the person penalized of the notice imposing the penalty or thirty days after the date of receipt of the notice of disposition of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

(a) Thirty days after receipt of the notice imposing the penalty;

(b) Thirty days after receipt of the notice of disposition on application for relief from penalty, if such an application is made; or

(c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within thirty days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431, the disposition of which shall be governed by that provision, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account created by RCW 70.105.180, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 90.76.080, which shall be credited to the underground storage tank account created by RCW 90.76.100.

Sec. 3. RCW 43.21B.310 and 2004 c 204 s 5 are each amended to read as follows:

(1) Except as provided in RCW 90.03.210(2), any order issued by the department or local air authority pursuant to RCW 43.27A.190, 70.94.211, 70.94.332, 70.95.315, 70.105.095, ((~~43.27A.190,~~)) 86.16.020, 88.46.070, or 90.48.120(2) or any provision enacted after July 26, 1987, or any permit, certificate, or license issued by the department may be appealed to the pollution control hearings board if the appeal is filed with the board and served on the department or authority within thirty days after the date of receipt of the order. Except as provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the exclusive means of appeal of such an order.

(2) The department or the authority in its discretion may stay the effectiveness of an order during the pendency of such an appeal.

(3) At any time during the pendency of an appeal of such an order to the board, the appellant may apply pursuant to RCW 43.21B.320 to the hearings board for a stay of the order or for the removal thereof.

(4) Any appeal must contain the following in accordance with the rules of the hearings board:

(a) The appellant's name and address;

(b) The date and docket number of the order, permit, or license appealed;

(c) A description of the substance of the order, permit, or license that is the subject of the appeal;

(d) A clear, separate, and concise statement of every error alleged to have been committed;

(e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and

(f) A statement setting forth the relief sought.

(5) Upon failure to comply with any final order of the department, the attorney general, on request of the department, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary, including injunctive relief, to insure compliance with the order. The air authorities may bring similar actions to enforce their orders.

(6) An appealable decision or order shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the hearings board and serving it on the department within thirty days of the date of receipt.

Sec. 4. RCW 70.95.170 and 1998 c 156 s 3 are each amended to read as follows:

Except as provided otherwise in RCW 70.95.300, 70.95.305 ((~~or~~)), 70.95.306, 70.95.310, or section 1 of this act, after approval of the comprehensive solid waste plan by the department no solid waste handling facility or facilities shall be maintained, established, or modified until the county, city, or other person operating such site has obtained a permit pursuant to RCW 70.95.180 or 70.95.190.

Sec. 5. RCW 70.95.315 and 2005 c 510 s 7 are each amended to read as follows:

(1) The department may assess a civil penalty in an amount not to exceed one thousand dollars per day per violation to any person exempt from solid waste permitting in accordance with RCW 70.95.300, 70.95.305, ((~~or~~)) 70.95.306, or section 1 of this act who fails to comply with the terms and conditions of the exemption. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation. The penalty provided in this section shall be imposed pursuant to RCW 43.21B.300.

(2) If a person violates a provision of any of the sections referenced in subsection (1) of this section, the department may issue an appropriate order to ensure compliance with the conditions of the exemption. The order may be appealed pursuant to RCW 43.21B.310.

Passed by the Senate March 2, 2009.
Passed by the House April 9, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 179

[Substitute Senate Bill 5776]

STUDENT FEES—CREATION OR INCREASE

AN ACT Relating to student fees, charges, and assessments; and amending RCW 28B.15.610.

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

Sec. 1. RCW 28B.15.610 and 1969 ex.s. c 223 s 28B.15.610 are each amended to read as follows:

The provisions of this chapter shall not apply to or affect any student fee or charge which the students voluntarily maintain upon themselves for student purposes only. Students are authorized to create or increase voluntary student fees for each academic year when passed by a majority vote of the student government or its equivalent, or referendum presented to the student body or such other process that has been adopted under this section. Notwithstanding RCW 42.17.190 (2) and (3), voluntary student fees imposed under this section and services and activities fees may be used for lobbying by a student government association or its equivalent and may also be used to support a statewide or national student organization or its equivalent that may engage in lobbying.

Passed by the Senate March 12, 2009.
Passed by the House April 9, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 180

[Senate Bill 5952]

MALICIOUS HARASSMENT—SEXUAL ORIENTATION

AN ACT Relating to modifying the definition of "sexual orientation" for malicious harassment prosecution purposes; and amending RCW 9A.36.080.

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

Sec. 1. RCW 9A.36.080 and 1993 c 127 s 2 are each amended to read as follows:

(1) A person is guilty of malicious harassment if he or she maliciously and intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap:

(a) Causes physical injury to the victim or another person;

(b) Causes physical damage to or destruction of the property of the victim or another person; or

(c) Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have

under all the circumstances. For purposes of this section, a "reasonable person" is a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same mental, physical, or sensory handicap as the victim. Words alone do not constitute malicious harassment unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute malicious harassment if it is apparent to the victim that the person does not have the ability to carry out the threat.

(2) In any prosecution for malicious harassment, unless evidence exists which explains to the trier of fact's satisfaction that the person did not intend to threaten the victim or victims, the trier of fact may infer that the person intended to threaten a specific victim or group of victims because of the person's perception of the victim's or victims' race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap if the person commits one of the following acts:

(a) Burns a cross on property of a victim who is or whom the actor perceives to be of African American heritage; or

(b) Defaces property of a victim who is or whom the actor perceives to be of Jewish heritage by defacing the property with a swastika.

This subsection only applies to the creation of a reasonable inference for evidentiary purposes. This subsection does not restrict the state's ability to prosecute a person under subsection (1) of this section when the facts of a particular case do not fall within (a) or (b) of this subsection.

(3) It is not a defense that the accused was mistaken that the victim was a member of a certain race, color, religion, ancestry, national origin, gender, or sexual orientation, or had a mental, physical, or sensory handicap.

(4) Evidence of expressions or associations of the accused may not be introduced as substantive evidence at trial unless the evidence specifically relates to the crime charged. Nothing in this chapter shall affect the rules of evidence governing impeachment of a witness.

(5) Every person who commits another crime during the commission of a crime under this section may be punished and prosecuted for the other crime separately.

(6) "Sexual orientation" for the purposes of this section ((~~means heterosexuality, homosexuality, or bisexuality~~)) has the same meaning as in RCW 49.60.040.

(7) Malicious harassment is a class C felony.

(8) The penalties provided in this section for malicious harassment do not preclude the victims from seeking any other remedies otherwise available under law.

(9) Nothing in this section confers or expands any civil rights or protections to any group or class identified under this section, beyond those rights or protections that exist under the federal or state Constitution or the civil laws of the state of Washington.

Passed by the Senate March 10, 2009.
Passed by the House April 8, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 181

[Senate Bill 6068]

COMMERCIAL DRIVERS' LICENSES—CONVICTION

AN ACT Relating to the definition of "conviction" for purposes of the uniform commercial driver's license act; amending RCW 46.20.270; and reenacting and amending RCW 46.25.010.

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

Sec. 1. RCW 46.20.270 and 2006 c 327 s 1 are each amended to read as follows:

(1) Whenever any person is convicted of any offense for which this title makes mandatory the withholding of the driving privilege of such person by the department, the court in which such conviction is had shall forthwith mark the person's Washington state driver's license or permit to drive, if any, in a manner authorized by the department. A valid driver's license or permit to drive marked under this subsection shall remain in effect until the person's driving privilege is withheld by the department pursuant to notice given under RCW 46.20.245, unless the license or permit expires or otherwise becomes invalid prior to the effective date of this action. Perfection of notice of appeal shall stay the execution of sentence including the withholding of the driving privilege.

(2) Every court having jurisdiction over offenses committed under this chapter, or any other act of this state or municipal ordinance adopted by a local authority regulating the operation of motor vehicles on highways, or any federal authority having jurisdiction over offenses substantially the same as those set forth in Title 46 RCW which occur on federal installations within this state, shall immediately forward to the department a forfeiture of bail or collateral deposited to secure the defendant's appearance in court, a payment of a fine, penalty, or court cost, a plea of guilty or nolo contendere or a finding of guilt, or a finding that any person has committed a traffic infraction an abstract of the court record in the form prescribed by rule of the supreme court, showing the conviction of any person or the finding that any person has committed a traffic infraction in said court for a violation of any said laws other than regulations governing standing, stopping, parking, and pedestrian offenses.

(3) Every state agency or municipality having jurisdiction over offenses committed under this chapter, or under any other act of this state or municipal ordinance adopted by a state or local authority regulating the operation of motor vehicles on highways, may forward to the department within ten days of failure to respond, failure to pay a penalty, failure to appear at a hearing to contest the determination that a violation of any statute, ordinance, or regulation relating to standing, stopping, parking, or other infraction issued under RCW 46.63.030(1)(d) has been committed, or failure to appear at a hearing to explain mitigating circumstances, an abstract of the citation record in the form prescribed by rule of the department, showing the finding by such municipality that two or more violations of laws governing standing, stopping, and parking or one or more other infractions issued under RCW 46.63.030(1)(d) have been committed and indicating the nature of the defendant's failure to act. Such violations or infractions may not have occurred while the vehicle is stolen from the registered owner or is leased or rented under a bona fide commercial vehicle lease or rental agreement between a lessor engaged in the business of leasing vehicles and a lessee who is not the vehicle's registered owner. The department

may enter into agreements of reciprocity with the duly authorized representatives of the states for reporting to each other violations of laws governing standing, stopping, and parking.

(4) For the purposes of this title ((~~46 RCW the term~~)) and except as defined in RCW 46.25.010, "conviction" means a final conviction in a state or municipal court or by any federal authority having jurisdiction over offenses substantially the same as those set forth in this title ((~~46 RCW~~)) which occur on federal installations in this state, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine or court cost, a plea of guilty or nolo contendere, or a finding of guilt on a traffic law violation charge, regardless of whether the imposition of sentence or sanctions are deferred or the penalty is suspended, but not including entry into a deferred prosecution agreement under chapter 10.05 RCW.

(5) For the purposes of this title ((~~46 RCW the term~~)), "finding that a traffic infraction has been committed" means a failure to respond to a notice of infraction or a determination made by a court pursuant to this chapter. Payment of a monetary penalty made pursuant to RCW 46.63.070(2) is deemed equivalent to such a finding.

Sec. 2. RCW 46.25.010 and 2006 c 327 s 2 and 2006 c 50 s 1 are each reenacted and 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 the CMVSA 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 weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds or more); or

(b) Has a gross vehicle weight rating of 11,794 kilograms or more (26,001 pounds or more); 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. 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. 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. 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. 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) 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;

(d) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(e) 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";

(f) 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

(g) 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. 40.281.

(21) "Tank vehicle" means a vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Tank vehicles include, but are not limited to cargo tanks and portable tanks. However, this definition does not include portable tanks having a rated capacity under one thousand gallons.

(22) "United States" means the fifty states and the District of Columbia.

(23) "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. 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. 40, will be considered equivalent to a report of a verified positive drug test for the purposes of this chapter.

Passed by the Senate March 11, 2009.
Passed by the House April 9, 2009.
Approved by the Governor April 22, 2009.
Filed in Office of Secretary of State April 23, 2009.

CHAPTER 182

[Substitute Senate Bill 5551]

ELEMENTARY STUDENTS—RECESS PERIODS

AN ACT Relating to recess periods for elementary school students; and creating new sections.

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

NEW SECTION. **Sec. 1.** The legislature finds that students at the elementary level must have the opportunity to participate in daily recess. The legislature also finds that recess provides children with unstructured time to engage in physical activity that helps to develop healthy minds and bodies. As childhood obesity rates rise, it is important to ensure that children have the time for physical activity. Insufficient physical activity and excessive calories consumed is well-known as a critical factor for this alarming increase in overweight and obese children. As Washington state strives to be the healthiest state in the nation, we must continue to encourage our children to engage in physical activity so they can develop a healthy mind and body.

NEW SECTION. **Sec. 2.** (1) The office of the superintendent of public instruction shall collaborate with the statewide parent-teacher organization to conduct and report the results of a survey of Washington elementary schools to determine the current availability of recess for elementary students and the perceptions of the importance of recess in Washington elementary schools. The survey shall include, but not be limited to, the following inquiries:

(a) How much time does the elementary school devote for recess each day?

(b) Whether the amount of time devoted to recess has decreased or increased and why?

(c) Is recess a structured or unstructured activity at the school?

(d) How is recess provided during inclement weather?

(e) If recess is part of the scheduled day at your school, may an individual teacher keep a student from participating in recess for academic or discipline reasons?

(f) Do you believe that recess is a necessary part of the school day?

(2) By December 1, 2009, the responses to the survey shall be aggregated and reported to the appropriate committees of the legislature.

Passed by the Senate March 3, 2009.
Passed by the House April 8, 2009.
Approved by the Governor April 23, 2009.
Filed in Office of Secretary of State April 24, 2009.

CHAPTER 183

[Second Substitute House Bill 1580]

PILOT LOCAL WATER MANAGEMENT PROGRAM

AN ACT Relating to establishing a pilot local water management program in one qualified jurisdiction; amending RCW 90.03.380, 90.44.100, 43.21B.110, and 90.82.060; reenacting and amending RCW 90.14.140; adding a new chapter to Title 90 RCW; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** The legislature finds that the Walla Walla watershed community faces substantial challenges in planning for future water use and meeting the needs of fish, farms, and people. The legislature further finds that the participants in the Walla Walla watershed planning group have demonstrated exceptional cooperation in developing an innovative water management concept that enhances flexibility in water use while protecting ecological functions. The legislature also recognizes the significant contribution of representative William Grant's leadership in the creation of a Walla Walla pilot design to authorize local water management activity.

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

(1) "Basin" means the WRIA where the planning area is located.

(2) "Board" means a water management board created under this chapter.

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

(4) "Director" means the director of the department of ecology.

(5) "Initiating entities" means the county boards of commissioners within the planning area, the city council of the largest Washington city in the planning area, the largest water user in the planning area, and all affected federally recognized tribes within the planning area.

(6) "Instream flow" means a minimum flow under chapter 90.03 or 90.22 RCW or a base flow under chapter 90.54 RCW that has been set by rule.

(7) "Local water management program" means the water banking mechanism, any local water plans authorized by the board, and any other activities authorized by section 5 of this act.

(8) "Local water plan" means a voluntary water management plan developed by local water rights holders within the planning area to manage their water use in a manner that enhances stream flows in exchange for greater flexibility in exercising the water rights.

(9) "Planning area" means the entirety or a subsection of a single or multiple WRIA as identified in the creation of a board under this chapter.

(10) "Trust water right" means any water right acquired by the state under chapter 90.42 RCW for management in the state's water rights program.

(11) "Watershed plan" means a plan adopted under chapter 90.82 RCW.

(12) "WRIA" means a water resource inventory area established in chapter 173-500 WAC as it existed on January 1, 1997.

NEW SECTION. **Sec. 3.** (1) Initiating entities may collectively petition the department in order to establish a water management board.

(2) The department, in consultation with the initiating entities, may create a board if:

(a) The initiating entities demonstrate to the department that the following criteria are satisfied:

(i) Community support for the development of a local watershed management plan, including the affected federally recognized tribes, local governments, and general community support;

(ii) There is commitment on the part of the initiating entities and the affected community to enhance stream flows for fish; and

(iii) An adequate monitoring network is in place, as determined by the department;

(b) The department determines the following:

(i) An instream flow rule for the WRIA or WRIAs in the planning area has been adopted since 1998;

(ii) The planning area is located within one of the sixteen fish-critical basins designated by the department in its March 2003 "Washington Water Acquisition Program" report and demonstrates a significant history of severely impaired flows; and

(iii) The watershed planning unit has completed a watershed implementation plan adopted under chapter 90.82 RCW and salmon recovery implementation plan adopted under chapter 77.85 RCW.

(3) The department, in determining whether to create a board, must give strong consideration to basins that have completed a judicial proceeding to adjudicate water rights under chapter 90.03 RCW.

NEW SECTION. **Sec. 4.** (1)(a) Each board must be composed of the following members:

(i) All affected federally recognized tribes within the planning area will be invited to participate and may appoint one member each;

(ii) The following entities must each appoint one member:

(A) Each county board of commissioners within the planning area;

(B) The city council of the largest Washington city in the planning area; and

(C) The board of directors of the entity or the person who uses the greatest quantity of water in the planning area;

(iii) The conservation districts' board of supervisors in the planning area must jointly appoint one member; and

(iv) The members under (a)(i) through (iii) of this subsection must appoint the remaining three members of the board. These three members must be residents of the planning area. One member must be a planning area water rights holder. One member must represent environmental interests in the planning area. One member must be a citizen at large.

(b) If for any reason one of the required governments or entities to be represented on the board declines to participate, the remaining board members may invite another local government within the planning area to join the board.

(2) Each member of the board serves a two-year term and may be reappointed for an additional term. Members may continue to serve on the board until a new appointment is made.

(3) The board must create a policy advisory group and a water resource panel.

(a) For the policy advisory group, the board must invite participation from the department and the department of fish and wildlife, other affected state agencies, and other interests as appropriate. The board may also appoint members from local government agencies, academia, watershed and salmon

recovery entities, businesses, and agricultural and environmental organizations as the board deems appropriate.

(b) The policy advisory group must assist and advise the board in coordinating and developing water resource-related programs, planning, and activities within the planning area, including the coordination of efforts with all jurisdictions of the planning area and development of the board's strategic actions.

(c) For the water resource panel, the board must appoint members to the water resource panel who have expertise and understanding regarding surface water and groundwater monitoring and hydrological analysis, irrigation management and engineering, water rights, and fisheries habitat and economic development. The board must invite participation from the department and the department of fish and wildlife.

(d) The water resource panel must provide technical assistance for the development of the local water plans and provide advice to the board on the criteria for establishment of local water plans and the approval, denial, or modification of the local water plans.

(4) A board member, employee, or contractor may not engage in any act that is in conflict with the proper discharge of their official duties. Such conflicts of interest include, but are not limited to, holding a financial interest in a matter before the board.

NEW SECTION. **Sec. 5.** (1) The board has the following authority, duties, and responsibilities:

(a) Assume the duties, responsibilities, and all current activities of the watershed planning unit and the initiating governments authorized in RCW 90.82.040;

(b) Develop strategic actions for the planning area by building on the watershed plan;

(c) Adopt and revise criteria, guidance, and processes to effectuate the purpose of this chapter;

(d) Administer the local water plan process;

(e) Oversee local water plan implementation;

(f) Manage banked water as authorized under this chapter;

(g) Acquire water rights by donation, purchase, or lease;

(h) Participate in local, state, tribal, federal, and multistate basin water planning initiatives and programs; and

(i) Enter into agreements with water rights holders to not divert water that becomes available as a result of local water plans, water banking activities, or other programs and projects endorsed by the board and the department.

(2) The board may acquire, purchase, hold, lease, manage, occupy, and sell real and personal property, including water rights, or any interest in water rights, enter into and perform all necessary contracts, appoint and employ necessary agents and employees, including an executive director and fix their compensation, employ contractors including contracts for professional services, and do all lawful acts required and expedient to carry out the purposes of this chapter.

(3) The board constitutes an independently funded entity, and may provide for its own funding as determined by the board. The board may solicit and accept grants, loans, and donations and may adopt fees for services it provides.

The board may not impose taxes or acquire property, including water rights, by the exercise of eminent domain. The board may distribute available funds as grants or loans to local water plans or other water initiatives and projects that will further the goals of the board.

(4) The ability of the board to fully meet its duties under this chapter is dependent on the level of funding available to the board. If sufficient funding is not available to the board to carry out its duties, the board may, in consultation with the department, establish a plan that determines and sets priorities for implementation of the board's duties.

(5) The board, and its members and staff, acting in their official capacities, are immune from liability and are not subject to any cause of action or claim for damages arising from acts or omissions engaged in under this chapter.

(6) Upon the creation of the board, and for the duration of the board, the existing planning unit for the planning area, established under RCW 90.82.040, is dissolved and all assets, funds, files, planning documents, pending plans and grant applications, and other current activities of the planning unit are transferred to the board.

NEW SECTION. **Sec. 6.** The board, in collaboration with the department, must provide a written report to the legislature by December 1, 2012, December 1, 2015, and December 1, 2018. The report must summarize the actions, funding, and accomplishments of the board in the previous three years, and submit recommendations for improvement of the local water plan process. The 2018 report must also contain recommendations on the future of the board.

NEW SECTION. **Sec. 7.** (1) The board may establish a mechanism to bank water for the holders of water rights within the planning area to voluntarily deposit them on a temporary or permanent basis.

(2) The board has the following authority regarding banked water in the planning area:

(a) The board may accept a surface water right or a groundwater right on a permanent or temporary basis under terms and conditions agreed upon by the water rights holder and the board.

(b) On a temporary or permanent basis, the board may accept a water right, or portion thereof, that will be made available under local water plans for stream flow enhancement under the terms of the local water plan, as provided in this chapter.

(c) Except as provided in (d) of this subsection, the board must accept a water right temporarily banked for instream flow without conducting a review of the extent and validity of the water right. Such a water right may not thereafter be authorized for any other purposes. A banked water right that has not been tentatively determined as to its extent and validity is not entitled to be protected from impairment by another water right.

(d) The board may manage a water right that has been banked as mitigation for impairment to instream flows and other existing water rights. However, the water right may only be available for mitigation to the extent the department determines the water right is valid and use of the water right for mitigation will not cause detriment or injury to existing water rights.

(3)(a) A water right banked on a temporary basis remains in the ownership of the water rights holder and not the state of Washington or the board.

(b) A water right banked on a permanent basis must be transferred to the state of Washington as a trust water right consistent with RCW 90.42.080.

(4) A water right or portion of a water right banked under this chapter is not subject to loss by forfeiture under RCW 90.14.130 through 90.14.200. When a temporary water right is withdrawn from banking, the time period that the water right was banked may not be calculated as time water was not used for purposes of RCW 90.14.160, 90.14.170, and 90.14.180.

(5) When a temporarily deposited water right is withdrawn from banking, the time period that the water right was banked may not be included in the five years of prior water use for purposes of applications to add acreage or purposes of water use under RCW 90.03.380(1).

(6) Nothing in this chapter forecloses or diminishes the rights of any person to apply to the department to transfer a water right to the state trust water rights program under the authority of chapter 90.42 RCW or to apply for a change of a water right to the department or to a water conservancy board authorized under chapter 90.80 RCW.

NEW SECTION. **Sec. 8.** (1) The board shall adopt guidelines and criteria for filing, review, and approval of a local water plan. The board shall also develop a dispute resolution process that provides for water users, the board, and the department to resolve disputes regarding the implementation and enforcement of a local water plan.

(2) A water user or group of water users within the planning area, organized as provided in guidelines adopted by the board, may submit a proposed local water plan to the board.

(3) A local water plan must include:

(a) A determination by the board of the baseline water use for all water rights involved in the local water plan, based on the guidelines adopted by the board, and in consultation with the water resource panel. The baseline documents regarding water use that are submitted by the water users may not be used by the department to determine the validity of the water rights in any future administrative or regulatory actions;

(b) A clearly defined set of practices that provide for flexibility of water use as defined in subsection (4) of this section;

(c) An estimate of the amount of water that would remain instream either long term or during critical flow periods for fish;

(d) Performance measures and options for achieving reductions in total water use from baseline;

(e) Performance measures for tracking improved stream flows either long term or during critical flow periods for fish; and

(f) Measurement, tracking, and monitoring measures and procedures that ensure the implementation and enforcement of the measures for flexibility of water use, enhancement of the stream flows, and other elements, terms, and conditions in the local water plan.

(4) The local water plan may have elements and provide rights to the use and application of water that are not otherwise authorized in the water rights, including:

(a) The ability to use the quantity of water defined as baseline in section 12(1)(a) of this act on new or additional places of use, from new or additional points of diversion or withdrawal, and at different times of the year;

(b) The ability to change or add a source of water supply including the use of groundwater to supplement surface water rights and the ability to implement the conjunctive use of the groundwater and surface water; and

(c) The storage of water and infiltration of the water to the groundwater to supplement shallow groundwater withdrawals or for the purpose of replenishing the aquifer.

(5) To participate in a local water plan, water rights holders must: (a) Agree to allow a portion or all of their baseline water use to remain instream, as specified in the approved local water plan; (b) have existing operable water conveyance infrastructure in place and available for use; (c) agree that any water made available for stream flow enhancement may not be diverted from the water source and used during the term of the local water plan, but instead must be deposited into the water bank or, upon request by the water rights holder, transferred to the trust water rights program consistent with chapter 90.42 RCW; (d) measure and monitor their water use, stream flows upstream and downstream of the boundaries of the plan, and groundwater levels within the boundaries of the plan; and (e) commit to staying in the program consistent with criteria established by the board.

(6) Unless agreed upon by the water rights holder, nothing in this chapter diminishes or changes existing water rights.

(7) The water users must submit annual reports to the department and the board regarding contract performance, consistent with the guidelines adopted by the board.

(8) A local water plan may be effective for a term of one to ten years.

NEW SECTION. **Sec. 9.** (1) The board must provide a thirty-day public notice period for the proposal for a local water plan and accept comments from all interested persons during that period.

(2) To become effective, the local water plan must be approved by both the board and the department. A proposed local water plan must not be approved if the board and the department determine the local water plan will not substantially enhance instream flow conditions.

(3) The approved local water plan must be signed by the executive director of the board, by the director, and by all water users participating in the local water plan. The local water plan is a contract among the board, the department, and the water users in which all parties agree to abide by all terms and conditions of the local water plan.

(4) If an approved local water plan is not in compliance with its terms and conditions, the board shall, consistent with the dispute resolution process adopted by the board, seek compliance. If the board revokes a local water plan due to noncompliance, the water users in the local water plan must thereafter exercise the water rights only as the water rights were authorized and conditioned prior to the approval of the local water plan, and all rights and duties that were terms in the local water plan lapse and are not valid or enforceable.

NEW SECTION. **Sec. 10.** (1) Any person not party to the local water plan and aggrieved by the director's decision may appeal the decision to the pollution control hearings board as provided under RCW 43.21B.230.

(2) A water rights holder who believes the holder's water right has been impaired by any action under this chapter may request that the department

review the impairment claim. If the department determines that some action under this chapter is impairing existing rights, the department, the board, and the water users must amend the local water plan to eliminate the impairment. Any decision of the department to alter or not alter a local water plan is appealable to the pollution control hearings board under RCW 43.21B.230.

NEW SECTION. **Sec. 11.** (1) A local water plan expires by its terms, by withdrawal of one or more water users to the local water plan, or upon agreement by all parties to the contact. Upon the expiration of a local water plan that has been operating for five or more years, the water users may request that the board and the department make the elements of the local water plan, including water deposited to the water bank for placement in the trust water rights program, permanent authorizations and conditions for use of the water rights.

(2) The request under subsection (1) of this section must be evaluated based on whether:

(a) The determination of the baseline water use adequately analyzed the extent and validity of the donated water right; and

(b)(i) Whether there is injury or detriment to other existing water rights; or

(ii) The written approval obtained from the holder of an impaired water right is continued or renewed.

(3) If the board and the department approve the request under subsection (1) of this section, the department shall issue superseding water rights consistent with the management and uses of the water under the local water plan. That portion of the water rights deposited in the water bank for placement in the trust water rights program must be made permanent and transferred in accordance with chapter 90.42 RCW.

(4) If the local water plan expires and the water management and uses under the local water plan are not granted approval to be permanent, the water users in the local water plan must thereafter exercise the water rights only as the water rights were authorized and conditioned prior to the local water plan, and all rights and duties that were terms in the local water plan lapse and are not valid or enforceable.

NEW SECTION. **Sec. 12.** (1) The water rights in the local water plan as authorized for the uses described in section 8(4) of this act are:

(a) Not subject to either the approval of the department under RCW 90.03.380 through 90.03.390, 90.44.100, and 90.44.105, or a tentative determination of the validity and extent of the water rights;

(b) Not subject to loss by forfeiture under RCW 90.14.130 through 90.14.200 during the period of time from when the local water plan is approved to the expiration or nullification of the local water plan as provided in section 11 of this act; and

(c) Not to be exercised in a manner that would result in injury or detriment to other existing water rights unless express written approval is obtained from the holder of the impaired water right. To allow impacts to existing instream flow rights, the board and the department must agree that the flow benefits provided by a local water plan outweigh the impacts on existing instream flow rights.

(2) The years during the period of time when the local water plan is operational may not be considered or calculated as a period of time that the water was not applied to use for purposes of RCW 90.14.130 through 90.14.200. Further, the years during this period of time may not be considered or calculated as a period of time that the water was not applied to use and for purposes of future applications to change the water right for additional purposes or acreage under RCW 90.03.380.

NEW SECTION. **Sec. 13.** The local water management program authorized by this chapter must be piloted in WRIA 32, as defined in chapter 173-500 WAC as it existed on January 1, 1997.

Sec. 14. RCW 90.14.140 and 2001 c 240 s 1, 2001 c 237 s 27, and 2001 c 69 s 5 are each reenacted and amended to read as follows:

(1) For the purposes of RCW 90.14.130 through 90.14.180, "sufficient cause" shall be defined as the nonuse of all or a portion of the water by the owner of a water right for a period of five or more consecutive years where such nonuse occurs as a result of:

(a) Drought, or other unavailability of water;

(b) Active service in the armed forces of the United States during military crisis;

(c) Nonvoluntary service in the armed forces of the United States;

(d) The operation of legal proceedings;

(e) Federal or state agency leases of or options to purchase lands or water rights which preclude or reduce the use of the right by the owner of the water right;

(f) Federal laws imposing land or water use restrictions either directly or through the voluntary enrollment of a landowner in a federal program implementing those laws, or acreage limitations, or production quotas;

(g) Temporarily reduced water need for irrigation use where such reduction is due to varying weather conditions, including but not limited to precipitation and temperature, that warranted the reduction in water use, so long as the water user's diversion and delivery facilities are maintained in good operating condition consistent with beneficial use of the full amount of the water right;

(h) Temporarily reduced diversions or withdrawals of irrigation water directly resulting from the provisions of a contract or similar agreement in which a supplier of electricity buys back electricity from the water right holder and the electricity is needed for the diversion or withdrawal or for the use of the water diverted or withdrawn for irrigation purposes;

(i) Water conservation measures implemented under the Yakima river basin water enhancement project, so long as the conserved water is reallocated in accordance with the provisions of P.L. 103-434;

(j) Reliance by an irrigation water user on the transitory presence of return flows in lieu of diversion or withdrawal of water from the primary source of supply, if such return flows are measured or reliably estimated using a scientific methodology generally accepted as reliable within the scientific community; or

(k) The reduced use of irrigation water resulting from crop rotation. For purposes of this subsection, crop rotation means the temporary change in the type of crops grown resulting from the exercise of generally recognized sound farming practices. Unused water resulting from crop rotation will not be

relinquished if the remaining portion of the water continues to be beneficially used.

(2) Notwithstanding any other provisions of RCW 90.14.130 through 90.14.180, there shall be no relinquishment of any water right:

(a) If such right is claimed for power development purposes under chapter 90.16 RCW and annual license fees are paid in accordance with chapter 90.16 RCW;

(b) If such right is used for a standby or reserve water supply to be used in time of drought or other low flow period so long as withdrawal or diversion facilities are maintained in good operating condition for the use of such reserve or standby water supply;

(c) If such right is claimed for a determined future development to take place either within fifteen years of July 1, 1967, or the most recent beneficial use of the water right, whichever date is later;

(d) If such right is claimed for municipal water supply purposes under chapter 90.03 RCW;

(e) If such waters are not subject to appropriation under the applicable provisions of RCW 90.40.030;

(f) If such right or portion of the right is leased to another person for use on land other than the land to which the right is appurtenant as long as the lessee makes beneficial use of the right in accordance with this chapter and a transfer or change of the right has been approved by the department in accordance with RCW 90.03.380, 90.03.383, 90.03.390, or 90.44.100;

(g) If such a right or portion of the right is authorized for a purpose that is satisfied by the use of agricultural industrial process water as authorized under RCW 90.46.150; ((~~or~~))

(h) If such right is a trust water right under chapter 90.38 or 90.42 RCW;

(i) If such a right is involved in an approved local water plan created under section 9 of this act, provided the right is subject to an agreement not to divert under section 5 of this act, or provided the right is banked under section 7 of this act.

(3) In adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

Sec. 15. RCW 90.03.380 and 2003 c 329 s 2 are each amended to read as follows:

(1) The right to the use of water which has been applied to a beneficial use in the state shall be and remain appurtenant to the land or place upon which the same is used: PROVIDED, HOWEVER, That the right may be transferred to another or to others and become appurtenant to any other land or place of use without loss of priority of right theretofore established if such change can be made without detriment or injury to existing rights. The point of diversion of water for beneficial use or the purpose of use may be changed, if such change can be made without detriment or injury to existing rights. A change in the place of use, point of diversion, and/or purpose of use of a water right to enable irrigation of additional acreage or the addition of new uses may be permitted if such change results in no increase in the annual consumptive quantity of water

used under the water right. For purposes of this section, "annual consumptive quantity" means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right. Before any transfer of such right to use water or change of the point of diversion of water or change of purpose of use can be made, any person having an interest in the transfer or change, shall file a written application therefor with the department, and the application shall not be granted until notice of the application is published as provided in RCW 90.03.280. If it shall appear that such transfer or such change may be made without injury or detriment to existing rights, the department shall issue to the applicant a certificate in duplicate granting the right for such transfer or for such change of point of diversion or of use. The certificate so issued shall be filed and be made a record with the department and the duplicate certificate issued to the applicant may be filed with the county auditor in like manner and with the same effect as provided in the original certificate or permit to divert water. The time period that the water right was banked under section 7 of this act, in an approved local water plan created under section 9 of this act, or the water right was subject to an agreement to not divert under section 5 of this act will not be included in the most recent five-year period of continuous beneficial use for the purpose of determining the annual consumptive quantity under this section. If the water right has not been used during the previous five years but the nonuse of which qualifies for one or more of the statutory good causes or exceptions to relinquishment in RCW 90.14.140 and 90.44.520, the period of nonuse is not included in the most recent five-year period of continuous beneficial use for purposes of determining the annual consumptive quantity of water under this section.

(2) If an application for change proposes to transfer water rights from one irrigation district to another, the department shall, before publication of notice, receive concurrence from each of the irrigation districts that such transfer or change will not adversely affect the ability to deliver water to other landowners or impair the financial integrity of either of the districts.

(3) A change in place of use by an individual water user or users of water provided by an irrigation district need only receive approval for the change from the board of directors of the district if the use of water continues within the irrigation district, and when water is provided by an irrigation entity that is a member of a board of joint control created under chapter 87.80 RCW, approval need only be received from the board of joint control if the use of water continues within the area of jurisdiction of the joint board and the change can be made without detriment or injury to existing rights.

(4) This section shall not apply to trust water rights acquired by the state through the funding of water conservation projects under chapter 90.38 RCW or RCW 90.42.010 through 90.42.070.

(5)(a) Pending applications for new water rights are not entitled to protection from impairment, injury, or detriment when an application relating to an existing surface or ground water right is considered.

(b) Applications relating to existing surface or ground water rights may be processed and decisions on them rendered independently of processing and rendering decisions on pending applications for new water rights within the

same source of supply without regard to the date of filing of the pending applications for new water rights.

(c) Notwithstanding any other existing authority to process applications, including but not limited to the authority to process applications under WAC 173-152-050 as it existed on January 1, 2001, an application relating to an existing surface or ground water right may be processed ahead of a previously filed application relating to an existing right when sufficient information for a decision on the previously filed application is not available and the applicant for the previously filed application is sent written notice that explains what information is not available and informs the applicant that processing of the next application will begin. The previously filed application does not lose its priority date and if the information is provided by the applicant within sixty days, the previously filed application shall be processed at that time. This subsection (5)(c) does not affect any other existing authority to process applications.

(d) Nothing in this subsection (5) is intended to stop the processing of applications for new water rights.

(6) No applicant for a change, transfer, or amendment of a water right may be required to give up any part of the applicant's valid water right or claim to a state agency, the trust water rights program, or to other persons as a condition of processing the application.

(7) In revising the provisions of this section and adding provisions to this section by chapter 237, Laws of 2001, the legislature does not intend to imply legislative approval or disapproval of any existing administrative policy regarding, or any existing administrative or judicial interpretation of, the provisions of this section not expressly added or revised.

(8) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring a change or transfer of any existing water right to enable the holder of the right to store water governed by the right.

(9) This section does not apply to a water right involved in an approved local water plan created under section 9 of this act, a water right that is subject to an agreement not to divert under section 5 of this act, or a banked water right under section 7 of this act.

Sec. 16. RCW 90.44.100 and 2003 c 329 s 3 are each amended to read as follows:

(1) After an application to, and upon the issuance by the department of an amendment to the appropriate permit or certificate of groundwater right, the holder of a valid right to withdraw public groundwaters may, without losing the holder's priority of right, construct wells or other means of withdrawal at a new location in substitution for or in addition to those at the original location, or the holder may change the manner or the place of use of the water.

(2) An amendment to construct replacement or a new additional well or wells at a location outside of the location of the original well or wells or to change the manner or place of use of the water shall be issued only after publication of notice of the application and findings as prescribed in the case of an original application. Such amendment shall be issued by the department only on the conditions that: (a) The additional or replacement well or wells shall tap the same body of public groundwater as the original well or wells; (b) where a

replacement well or wells is approved, the use of the original well or wells shall be discontinued and the original well or wells shall be properly decommissioned as required under chapter 18.104 RCW; (c) where an additional well or wells is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original permit or certificate; and (d) other existing rights shall not be impaired. The department may specify an approved manner of construction and shall require a showing of compliance with the terms of the amendment, as provided in RCW 90.44.080 in the case of an original permit.

(3) The construction of a replacement or new additional well or wells at the location of the original well or wells shall be allowed without application to the department for an amendment. However, the following apply to such a replacement or new additional well: (a) The well shall tap the same body of public groundwater as the original well or wells; (b) if a replacement well is constructed, the use of the original well or wells shall be discontinued and the original well or wells shall be properly decommissioned as required under chapter 18.104 RCW; (c) if a new additional well is constructed, the original well or wells may continue to be used, but the combined total withdrawal from the original and additional well or wells shall not enlarge the right conveyed by the original water use permit or certificate; (d) the construction and use of the well shall not interfere with or impair water rights with an earlier date of priority than the water right or rights for the original well or wells; (e) the replacement or additional well shall be located no closer than the original well to a well it might interfere with; (f) the department may specify an approved manner of construction of the well; and (g) the department shall require a showing of compliance with the conditions of this subsection (3).

(4) As used in this section, the "location of the original well or wells" is the area described as the point of withdrawal in the original public notice published for the application for the water right for the well.

(5) The development and use of a small irrigation impoundment, as defined in RCW 90.03.370(8), does not constitute a change or amendment for the purposes of this section. The exemption expressly provided by this subsection shall not be construed as requiring an amendment of any existing water right to enable the holder of the right to store water governed by the right.

(6) This section does not apply to a water right involved in an approved local water plan created under section 9 of this act or a banked water right under section 7 of this act.

Sec. 17. RCW 43.21B.110 and 2003 c 393 s 19 are each 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, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330.

(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, 90.48.120, and 90.56.330.

(c) A final decision by the department or director made under this act.

(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.

((~~(d)~~)) (e) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

((~~(e)~~)) (f) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

((~~(f)~~)) (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.

((~~(g)~~)) (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.

((~~(h)~~)) (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.

(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) Proceedings conducted by the department, or the department's designee, under RCW 90.03.160 through 90.03.210 or 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.

Sec. 18. RCW 90.82.060 and 2008 c 210 s 1 are each amended to read as follows:

(1) Planning conducted under this chapter must provide for a process to allow the local citizens within a WRIA or multi-WRIA area to join together in an effort to: (a) Assess the status of the water resources of their WRIA or multi-WRIA area; and (b) determine how best to manage the water resources of the WRIA or multi-WRIA area to balance the competing resource demands for that area within the parameters under RCW 90.82.120.

(2)(a) Watershed planning under this chapter may be initiated for a WRIA only with the concurrence of: (i) All counties within the WRIA; (ii) the largest

city or town within the WRIA unless the WRIA does not contain a city or town; and (iii) the water supply utility obtaining the largest quantity of water from the WRIA or, for a WRIA with lands within the Columbia Basin project, the water supply utility obtaining from the Columbia Basin project the largest quantity of water for the WRIA. To apply for a grant for organizing the planning unit as provided for under RCW 90.82.040(2)(a), these entities shall designate the entity that will serve as the lead agency for the planning effort and indicate how the planning unit will be staffed.

(b) For purposes of this chapter, WRIA 40 shall be divided such that the portion of the WRIA located entirely within the Stemilt and Squilchuck subbasins shall be considered WRIA 40a and the remaining portion shall be considered WRIA 40b. Planning may be conducted separately for WRIA 40a and 40b. WRIA 40a shall be eligible for one-fourth of the funding available for a single WRIA, and WRIA 40b shall be eligible for three-fourths of the funding available for a single WRIA.

(c) For purposes of this chapter, WRIA 29 shall be divided such that the portion of the WRIA located entirely within the White Salmon subbasin and the subbasins east thereof shall be considered WRIA 29b and the remaining portion shall be considered WRIA 29a. Planning may be conducted separately for WRIA 29a and 29b. WRIA 29a shall be eligible for one-half of the funding available for a single WRIA and WRIA 29b shall be eligible for one-half of the funding available for a single WRIA.

(d) For purposes of this chapter, WRIA 14 shall be divided such that the portion of the WRIA where surface waters drain into Hood Canal shall be considered WRIA 14b, and the remaining portion shall be considered WRIA 14a. Planning for WRIA 14b under this chapter shall be conducted by the WRIA 16 planning unit. WRIA 14b shall be eligible for one-half of the funding available for a single WRIA, and WRIA 14a shall be eligible for one-half of the funding available for a single WRIA.

(3) Watershed planning under this chapter may be initiated for a multi-WRIA area only with the concurrence of: (a) All counties within the multi-WRIA area; (b) the largest city or town in each WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water in each WRIA.

(4) If entities in subsection (2) or (3) of this section decide jointly and unanimously to proceed, they shall invite all tribes with reservation lands within the management area.

(5) The entities in subsection (2) or (3) of this section, including the tribes if they affirmatively accept the invitation, constitute the initiating governments for the purposes of this section.

(6) The organizing grant shall be used to organize the planning unit and to determine the scope of the planning to be conducted. In determining the scope of the planning activities, consideration shall be given to all existing plans and related planning activities. The scope of planning must include water quantity elements as provided in RCW 90.82.070, and may include water quality elements as contained in RCW 90.82.090, habitat elements as contained in RCW 90.82.100, and instream flow elements as contained in RCW 90.82.080. The initiating governments shall work with state government, other local governments within the management area, and affected tribal governments, in

developing a planning process. The initiating governments may hold public meetings as deemed necessary to develop a proposed scope of work and a proposed composition of the planning unit. In developing a proposed composition of the planning unit, the initiating governments shall provide for representation of a wide range of water resource interests.

(7) Each state agency with regulatory or other interests in the WRIA or multi-WRIA area to be planned shall assist the local citizens in the planning effort to the greatest extent practicable, recognizing any fiscal limitations. In providing such technical assistance and to facilitate representation on the planning unit, state agencies may organize and agree upon their representation on the planning unit. Such technical assistance must only be at the request of and to the extent desired by the planning unit conducting such planning. The number of state agency representatives on the planning unit shall be determined by the initiating governments in consultation with the governor's office.

(8) As used in this section, "lead agency" means the entity that coordinates staff support of its own or of other local governments and receives grants for developing a watershed plan.

(9) A planning unit is dissolved when the department approves a water management board, as authorized in section 3 of this act, and all assets, funds, files, planning documents, pending plans and grant applications, and other current activities of the planning unit are transferred to the approved water management board. The approved water management board must assume the duties, responsibilities, and activities of the planning unit and the initiating governments, as required in this chapter.

NEW SECTION. **Sec. 19.** Sections 1 through 13 of this act constitute a new chapter in Title 90 RCW.

NEW SECTION. **Sec. 20.** This act expires June 30, 2019.

Passed by the House April 18, 2009.
Passed by the Senate March 31, 2009.
Approved by the Governor April 23, 2009.
Filed in Office of Secretary of State April 24, 2009.

CHAPTER 184

[House Bill 1000]

STATE ROUTE NUMBER 397

AN ACT Relating to state route number 397; and amending RCW 47.17.577.

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

Sec. 1. RCW 47.17.577 and 1993 c 430 s 5 are each amended to read as follows:

A state highway to be known as state route number 397 is established as follows:

Beginning at ((~~Piert Road in the vicinity southeast of Finely~~)) state route number 82 at exit 114, thence easterly, northwesterly, and northerly across the Columbia River, thence easterly and northerly to a junction with state route number 395 in Pasco.

Passed by the House February 13, 2009.
Passed by the Senate April 9, 2009.
Approved by the Governor April 23, 2009.
Filed in Office of Secretary of State April 24, 2009.

CHAPTER 185

[House Bill 1042]

NOTICES OF DISHONOR

AN ACT Relating to notices of dishonor; and amending RCW 62A.3-540.

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

Sec. 1. RCW 62A.3-540 and 2005 c 277 s 4 are each amended to read as follows:

(1) If a check is assigned or written to a collection agency as defined in RCW 19.16.100 and the collection agency or its agent provides a notice of dishonor, the notice of dishonor may be sent by mail to the drawer at the drawer's last known address. The drawer is presumed to have received the notice of dishonor three days from the date it is mailed. The collection agency may, as an alternative to providing a notice in the form described in RCW 62A.3-520, provide a notice in substantially the following form:

NOTICE OF DISHONOR OF CHECK

A check drawn by you and made payable by you to . . . . . in the amount of . . . . . has not been accepted for payment by . . . . ., which is the drawee bank designated on your check. This check is dated . . . . ., and it is numbered, No. . . . . ..

You are CAUTIONED that unless you pay the amount of this check and a handling fee of . . . . . within thirty-three days after the date this letter is postmarked or personally delivered, you may very well have to pay the following additional amounts:

(a) Costs of collecting the amount of the check in the lesser of the check amount or forty dollars((~~, plus, in the event of legal action, court costs and attorneys' fees, which will be set by the court~~));

(b) Interest on the amount of the check which shall accrue at the rate of twelve percent per annum from the date of dishonor; and

(c) Three hundred dollars or three times the face amount of the check, whichever is less, plus court costs and attorneys' fees, by award of the court in the event of legal action. Note that this caution regarding increased amounts in any possible legal action is advisory only and should not be construed as a representation or implication that legal action is contemplated or intended.

You are also CAUTIONED that law enforcement agencies may be provided with a copy of this notice of dishonor and the check drawn by you for the possibility of proceeding with criminal charges if you do not pay the amount of this check within thirty-three days after the date this letter is postmarked.

You are advised to make your payment of $. . . . . to . . . . . at the following address: . . . . . .

(2) The cautionary statement regarding law enforcement in subsection (1) of this section need not be included in a notice of dishonor sent by a collection

agency. However, if included and whether or not the collection agency regularly refers dishonored checks to law enforcement, the cautionary statement in subsection (1) of this section shall not be construed as a threat to take any action not intended to be taken or that cannot legally be taken; nor shall it be construed to be harassing, oppressive, or abusive conduct; nor shall it be construed to be a false, deceptive, or misleading representation; nor shall it be construed to be unfair or unconscionable; nor shall it otherwise be construed to violate any law.

(3) In addition to sending a notice of dishonor to the drawer of the check under this section, the person sending notice shall execute an affidavit certifying service of the notice by mail. The affidavit of service by mail must be substantially in the following form:

AFFIDAVIT OF SERVICE BY MAIL

I, ..., hereby certify that on the . . . . . day of . . . . . ., 20. . ., a copy of the foregoing Notice was served on . . . . . by mailing via the United States Postal Service, postage prepaid, at . . . . . ., Washington.

Dated: . . . .

(Signature)

(4) The person enforcing a check under this section shall file the affidavit and check, or a true copy thereof, with the clerk of the court in which an action on the check is commenced as permitted by court rule or practice.

Passed by the House February 13, 2009.
Passed by the Senate April 9, 2009.
Approved by the Governor April 23, 2009.
Filed in Office of Secretary of State April 24, 2009.

CHAPTER 186

[House Bill 1058]

RCW EDITORIAL STANDARDS

AN ACT Relating to editorial standards for the publication of the Revised Code of Washington; and amending RCW 1.08.015 and 1.08.017.

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

Sec. 1. RCW 1.08.015 and 1961 c 246 s 1 are each amended to read as follows:

Subject to such general policies as may be promulgated by the committee and to the general supervision of the committee, the reviser shall:

(1) Codify for consolidation into the Revised Code of Washington all laws of a general and permanent nature heretofore or hereafter enacted by the legislature, and assign permanent numbers as provided by law to all new titles, chapters, and sections so added to the revised code.

(2) Edit and revise such laws for such consolidation, to the extent deemed necessary or desirable by the reviser and without changing the meaning of any such law, in the following respects only:

(a) Make capitalization uniform with that followed generally in the revised code.

(b) Make chapter or section division and subdivision designations uniform with that followed in the revised code.

(c) Substitute for the term "this act," where necessary, the term "section," "part," "code," "chapter," or "title," or reference to specific section or chapter numbers, as the case may require.

(d) Substitute for reference to a section of an "act," the proper code section number reference.

(e) Substitute for "as provided in the preceding section" and other phrases of similar import, the proper code section number references.

(f) Substitute the proper calendar date for "effective date of this act," "date of passage of this act," and other phrases of similar import.

(g) Strike out figures where merely a repetition of written words, and substitute, where deemed advisable for uniformity, written words for figures.

(h) Rearrange any misplaced statutory material, incorporate any omitted statutory material as well as correct manifest errors in spelling, and manifest clerical or typographical errors, or errors by way of additions or omissions.

(i) Correct manifest errors in references, by chapter or section number, to other laws.

(j) Correct manifest errors or omissions in numbering or renumbering sections of the revised code.

(k) ((~~Divide long sections into two or more sections, and~~)) Rearrange the order of sections to conform to such logical arrangement of subject matter as may most generally be followed in the revised code, and alphabetize definition sections, when to do so will not change the meaning or effect of such sections.

(l) Change the wording of section captions, if any, and provide captions to new chapters and sections.

(m) Strike provisions manifestly obsolete.

(3) Create new code titles, chapters, and sections of the Revised Code of Washington, or otherwise revise the title, chapter and sectional organization of the code, all as may be required from time to time, to effectuate the orderly and logical arrangement of the statutes. Such new titles, chapters, and sections, and organizational revisions, shall have the same force and effect as the ninety-one titles originally enacted and designated as the "Revised Code of Washington" pursuant to the code adoption acts codified in chapter 1.04 RCW.

Sec. 2. RCW 1.08.017 and 1955 c 235 s 3 are each amended to read as follows:

(1) The reviser may omit from the code all titles to acts, enacting and repealing clauses, preambles, declarations of emergency, severability, and validity and construction sections unless, in a particular instance, it may be necessary to retain such to preserve the full intent of the law. The omission of validity or construction sections is not intended to, nor shall it change, or be considered as changing, the effect to be given thereto in construing legislation of which such validity and construction sections were a part. Any section so omitted, other than repealing, emergency, severability, or validity provisions, shall be referred to or set forth as an annotation to the applicable sections of the act as codified.

(2) The reviser may remove annotations that have appeared in the published Revised Code of Washington for more than ten years, unless in a particular instance, it may be necessary to retain such to preserve the full intent of the law. Any annotations removed under this subsection shall be retained and available in

the electronic copy of the Revised Code of Washington available on the code reviser web site.

(3) Section captions, part headings, subheadings, tables of contents, and indexes appearing in legislative bills shall not be considered any part of the law, and the reviser may omit such provisions from the Revised Code of Washington and annotations unless, in a particular instance, it may be necessary to retain such to preserve the full intent of the law.

Passed by the House February 27, 2009.
Passed by the Senate April 10, 2009.
Approved by the Governor April 23, 2009.
Filed in Office of Secretary of State April 24, 2009.

CHAPTER 187

[Engrossed House Bill 1059]
RCW—TECHNICAL CORRECTIONS

AN ACT Relating to technical corrections to the Revised Code of Washington; reenacting and amending RCW 13.40.210, 70.105D.070, and 79A.55.020; and reenacting RCW 46.09.170, 49.60.040, and 66.20.310.

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

Sec. 1. RCW 13.40.210 and 2007 c 203 s 1 and 2007 c 199 s 13 are each reenacted and amended to read as follows:

(1) The secretary shall set a release date for each juvenile committed to its custody. The release date shall be within the prescribed range to which a juvenile has been committed under RCW 13.40.0357 or 13.40.030 except as provided in RCW 13.40.320 concerning offenders the department determines are eligible for the juvenile offender basic training camp program. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter. Days spent in the custody of the department shall be tolled by any period of time during which a juvenile has absented himself or herself from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release at the

time of release if any such early releases have occurred as a result of excessive in-residence population. In no event shall an offender adjudicated of a violent offense be granted release under the provisions of this subsection.

(3)(a) Following the release of any juvenile under subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months, except that in the case of a juvenile sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion, the period of parole shall be twenty-four months and, in the discretion of the secretary, may be up to thirty-six months when the secretary finds that an additional period of parole is necessary and appropriate in the interests of public safety or to meet the ongoing needs of the juvenile. A parole program is mandatory for offenders released under subsection (2) of this section and for offenders who receive a juvenile residential commitment sentence of theft of a motor vehicle ((~~,~~)), possession of a stolen motor vehicle, or taking a motor vehicle without permission 1. The decision to place an offender on parole shall be based on an assessment by the department of the offender's risk for reoffending upon release. The department shall prioritize available parole resources to provide supervision and services to offenders at moderate to high risk for reoffending.

(b) The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further this goal shall require the juvenile to refrain from possessing a firearm or using a deadly weapon and refrain from committing new offenses and may require the juvenile to: (i) Undergo available medical, psychiatric, drug and alcohol, sex offender, mental health, and other offense-related treatment services; (ii) report as directed to a parole officer and/or designee; (iii) pursue a course of study, vocational training, or employment; (iv) notify the parole officer of the current address where he or she resides; (v) be present at a particular address during specified hours; (vi) remain within prescribed geographical boundaries; (vii) submit to electronic monitoring; (viii) refrain from using illegal drugs and alcohol, and submit to random urinalysis when requested by the assigned parole officer; (ix) refrain from contact with specific individuals or a specified class of individuals; (x) meet other conditions determined by the parole officer to further enhance the juvenile's reintegration into the community; (xi) pay any court-ordered fines or restitution; and (xii) perform community restitution. Community restitution for the purpose of this section means compulsory service, without compensation, performed for the benefit of the community by the offender. Community restitution may be performed through public or private organizations or through work crews.

(c) The secretary may further require up to twenty-five percent of the highest risk juvenile offenders who are placed on parole to participate in an intensive supervision program. Offenders participating in an intensive supervision program shall be required to comply with all terms and conditions listed in (b) of this subsection and shall also be required to comply with the following additional terms and conditions: (i) Obey all laws and refrain from any conduct that threatens public safety; (ii) report at least once a week to an assigned community case manager; and (iii) meet all other requirements

imposed by the community case manager related to participating in the intensive supervision program. As a part of the intensive supervision program, the secretary may require day reporting.

(d) After termination of the parole period, the juvenile shall be discharged from the department's supervision.

(4)(a) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (i) Continued supervision under the same conditions previously imposed; (ii) intensified supervision with increased reporting requirements; (iii) additional conditions of supervision authorized by this chapter; (iv) except as provided in (a)(v) and (vi) of this subsection, imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision; (v) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and (vi) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the youth has completed the basic training camp program as described in RCW 13.40.320.

(b) The secretary may modify parole and order any of the conditions or may return the offender to confinement for up to twenty-four weeks if the offender was sentenced for a sex offense as defined under RCW 9A.44.130 and is known to have violated the terms of parole. Confinement beyond thirty days is intended to only be used for a small and limited number of sex offenders. It shall only be used when other graduated sanctions or interventions have not been effective or the behavior is so egregious it warrants the use of the higher level intervention and the violation: (i) Is a known pattern of behavior consistent with a previous sex offense that puts the youth at high risk for reoffending sexually; (ii) consists of sexual behavior that is determined to be predatory as defined in RCW 71.09.020; or (iii) requires a review under chapter 71.09 RCW, due to a recent overt act. The total number of days of confinement for violations of parole conditions during the parole period shall not exceed the number of days provided by the maximum sentence imposed by the disposition for the underlying offense pursuant to RCW 13.40.0357. The department shall not aggregate multiple parole violations that occur prior to the parole revocation hearing and impose consecutive twenty-four week periods of confinement for each parole violation. The department is authorized to engage in rule making pursuant to chapter 34.05 RCW, to implement this subsection, including narrowly defining the behaviors that could lead to this higher level intervention.

(c) If the department finds that any juvenile in a program of parole has possessed a firearm or used a deadly weapon during the program of parole, the department shall modify the parole under (a) of this subsection and confine the

juvenile for at least thirty days. Confinement shall be in a facility operated by or pursuant to a contract with the state or any county.

(5) A parole officer of the department of social and health services shall have the power to arrest a juvenile under his or her supervision on the same grounds as a law enforcement officer would be authorized to arrest the person.

(6) If so requested and approved under chapter 13.06 RCW, the secretary shall permit a county or group of counties to perform functions under subsections (3) through (5) of this section.

Sec. 2. RCW 46.09.170 and 2007 c 522 s 953 and 2007 c 241 s 16 are each reenacted to read as follows:

(1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 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 place these funds in the general fund as follows:

(a) Thirty-six percent shall 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 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 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 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 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 46.09.110, 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 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 46.09.110, 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 2007-09 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the NOVA account to the department of natural resources for planning and designing consistent off-road vehicle signage at department-managed recreation sites, and for planning recreation opportunities on department-managed lands in the Reiter block and Ahtanum state forest. This appropriation is not required to follow the specific distribution specified in subsection (2) of this section.

Sec. 3. RCW 49.60.040 and 2007 c 317 s 2 and 2007 c 187 s 4 are each reenacted to read as follows:

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

(1) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives, legal representatives, trustees and receivers, or any group of persons; it includes any owner, lessee, proprietor, manager, agent, or employee, whether one or more natural persons; and further includes any political or civil subdivisions of the state and any agency or instrumentality of the state or of any political or civil subdivision thereof.

(2) "Commission" means the Washington state human rights commission.

(3) "Employer" includes any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons, and does not include any religious or sectarian organization not organized for private profit.

(4) "Employee" does not include any individual employed by his or her parents, spouse, or child, or in the domestic service of any person.

(5) "Labor organization" includes any organization which exists for the purpose, in whole or in part, of dealing with employers concerning grievances or terms or conditions of employment, or for other mutual aid or protection in connection with employment.

(6) "Employment agency" includes any person undertaking with or without compensation to recruit, procure, refer, or place employees for an employer.

(7) "Marital status" means the legal status of being married, single, separated, divorced, or widowed.

(8) "National origin" includes "ancestry".

(9) "Full enjoyment of" includes the right to purchase any service, commodity, or article of personal property offered or sold on, or by, any establishment to the public, and the admission of any person to accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement, without acts directly or

indirectly causing persons of any particular race, creed, color, sex, sexual orientation, national origin, or with any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, to be treated as not welcome, accepted, desired, or solicited.

(10) "Any place of public resort, accommodation, assemblage, or amusement" includes, but is not limited to, any place, licensed or unlicensed, kept for gain, hire, or reward, or where charges are made for admission, service, occupancy, or use of any property or facilities, whether conducted for the entertainment, housing, or lodging of transient guests, or for the benefit, use, or accommodation of those seeking health, recreation, or rest, or for the burial or other disposition of human remains, or for the sale of goods, merchandise, services, or personal property, or for the rendering of personal services, or for public conveyance or transportation on land, water, or in the air, including the stations and terminals thereof and the garaging of vehicles, or where food or beverages of any kind are sold for consumption on the premises, or where public amusement, entertainment, sports, or recreation of any kind is offered with or without charge, or where medical service or care is made available, or where the public gathers, congregates, or assembles for amusement, recreation, or public purposes, or public halls, public elevators, and public washrooms of buildings and structures occupied by two or more tenants, or by the owner and one or more tenants, or any public library or educational institution, or schools of special instruction, or nursery schools, or day care centers or children's camps: PROVIDED, That nothing contained in this definition shall be construed to include or apply to any institute, bona fide club, or place of accommodation, which is by its nature distinctly private, including fraternal organizations, though where public use is permitted that use shall be covered by this chapter; nor shall anything contained in this definition apply to any educational facility, columbarium, crematory, mausoleum, or cemetery operated or maintained by a bona fide religious or sectarian institution.

(11) "Real property" includes buildings, structures, dwellings, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal, or any interest therein.

(12) "Real estate transaction" includes the sale, appraisal, brokering, exchange, purchase, rental, or lease of real property, transacting or applying for a real estate loan, or the provision of brokerage services.

(13) "Dwelling" means any building, structure, or portion thereof that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof.

(14) "Sex" means gender.

(15) "Sexual orientation" means heterosexuality, homosexuality, bisexuality, and gender expression or identity. As used in this definition, "gender expression or identity" means having or being perceived as having a gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the sex assigned to that person at birth.

(16) "Aggrieved person" means any person who: (a) Claims to have been injured by an unfair practice in a real estate transaction; or (b) believes that he or she will be injured by an unfair practice in a real estate transaction that is about to occur.

(17) "Complainant" means the person who files a complaint in a real estate transaction.

(18) "Respondent" means any person accused in a complaint or amended complaint of an unfair practice in a real estate transaction.

(19) "Credit transaction" includes any open or closed end credit transaction, whether in the nature of a loan, retail installment transaction, credit card issue or charge, or otherwise, and whether for personal or for business purposes, in which a service, finance, or interest charge is imposed, or which provides for repayment in scheduled payments, when such credit is extended in the regular course of any trade or commerce, including but not limited to transactions by banks, savings and loan associations or other financial lending institutions of whatever nature, stock brokers, or by a merchant or mercantile establishment which as part of its ordinary business permits or provides that payment for purchases of property or service therefrom may be deferred.

(20) "Families with children status" means one or more individuals who have not attained the age of eighteen years being domiciled with a parent or another person having legal custody of such individual or individuals, or with the designee of such parent or other person having such legal custody, with the written permission of such parent or other person. Families with children status also applies to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen years.

(21) "Covered multifamily dwelling" means: (a) Buildings consisting of four or more dwelling units if such buildings have one or more elevators; and (b) ground floor dwelling units in other buildings consisting of four or more dwelling units.

(22) "Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(23) "Dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog that is trained for the purpose of assisting hearing impaired persons.

(24) "Service animal" means an animal that is trained for the purpose of assisting or accommodating a sensory, mental, or physical disability of a person with a disability.

(25)(a) "Disability" means the presence of a sensory, mental, or physical impairment that:

(i) Is medically cognizable or diagnosable; or

(ii) Exists as a record or history; or

(iii) Is perceived to exist whether or not it exists in fact.

(b) A disability exists whether it is temporary or permanent, common or uncommon, mitigated or unmitigated, or whether or not it limits the ability to work generally or work at a particular job or whether or not it limits any other activity within the scope of this chapter.

(c) For purposes of this definition, "impairment" includes, but is not limited to:

(i) Any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitor-urinary, hemic and lymphatic, skin, and endocrine; or

(ii) Any mental, developmental, traumatic, or psychological disorder, including but not limited to cognitive limitation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Only for the purposes of qualifying for reasonable accommodation in employment, an impairment must be known or shown through an interactive process to exist in fact and:

(i) The impairment must have a substantially limiting effect upon the individual's ability to perform his or her job, the individual's ability to apply or be considered for a job, or the individual's access to equal benefits, privileges, or terms or conditions of employment; or

(ii) The employee must have put the employer on notice of the existence of an impairment, and medical documentation must establish a reasonable likelihood that engaging in job functions without an accommodation would aggravate the impairment to the extent that it would create a substantially limiting effect.

(e) For purposes of (d) of this subsection, a limitation is not substantial if it has only a trivial effect.

(26) "Honorably discharged veteran or military status" means a person who is:

(a) A veteran, as defined in RCW 41.04.007; or

(b) An active or reserve member in any branch of the armed forces of the United States, including the national guard, coast guard, and armed forces reserves.

Sec. 4. RCW 66.20.310 and 2008 c 94 s 11 and 2008 c 41 s 3 are each reenacted to read as follows:

(1)(a) There shall be 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 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 have issued to them a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall 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 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 RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400,

66.24.425, 66.24.450, and 66.24.570 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 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.

Sec. 5. RCW 70.105D.070 and 2008 c 329 s 921, 2008 c 329 s 920, 2008 c 329 s 919, and 2008 c 328 s 6009 are each reenacted and amended to read as follows:

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the

account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority:

(i) Remedial actions;

(ii) Hazardous waste plans and programs under chapter 70.105 RCW;

(iii) Solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(iv) Funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and

(v) Cleanup and disposal of hazardous substances from abandoned or derelict vessels, defined for the purposes of this section as vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel, that pose a threat to human health or the environment.

(b) Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that is a Puget Sound partner, as defined in RCW 90.71.010, along with any project that is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, shall, except as conditioned by RCW 70.105D.120, receive priority for any available funding for any grant or funding programs or sources that use a competitive bidding process. During the 2007-2009 fiscal biennium, moneys in the account may also be used for grants to local governments to retrofit public sector diesel equipment and for storm water planning and implementation activities.

(c) ((~~Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.~~

~~(d)~~)) To expedite cleanups throughout the state, the department shall partner with local communities and liable parties for cleanups. The department is authorized to use the following additional strategies in order to ensure a healthful environment for future generations:

(i) The director may alter grant-matching requirements to create incentives for local governments to expedite cleanups when one of the following conditions exists:

(A) Funding would prevent or mitigate unfair economic hardship imposed by the clean-up liability;

(B) Funding would create new substantial economic development, public recreational, or habitat restoration opportunities that would not otherwise occur; or

(C) Funding would create an opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property under RCW 70.105D.040(5) that would not otherwise occur;

(ii) The use of outside contracts to conduct necessary studies;

(iii) The purchase of remedial action cost-cap insurance, when necessary to expedite multiparty clean-up efforts.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. ((~~However, during the 1999-2001 fiscal biennium, funding may not be granted to entities engaged in lobbying activities, and applicants may not be awarded grants if their cumulative grant awards under this section exceed two hundred thousand dollars.~~)) No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys

appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation, or, after January 1, 2010, for projects designed to address the restoration of Puget Sound, funded in a competitive grant process, that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(7) The department shall adopt rules for grant or loan issuance and performance.

(8) During the 2007-2009 fiscal biennium, the legislature may transfer from the local toxics control account to the state toxics control account such amounts as reflect excess fund balance in the account.

(9) During the 2007-2009 fiscal biennium, the local toxics control account may also be used for a standby rescue tug at Neah Bay.

Sec. 6. RCW 79A.55.020 and 1999 c 249 s 802 and 1999 c 151 s 1702 are each reenacted and amended to read as follows:

(1) The commission shall develop and adopt management policies for publicly owned or leased land on the rivers designated by the legislature as being a part of the state's scenic river system and within the associated river areas. The commission may adopt rules identifying river classifications which reflect the characteristics common to various segments of scenic rivers and may adopt management policies consistent with local government's shoreline management master plans appropriate for each such river classification. All such policies shall be adopted by the commission in accordance with the provisions of chapter 34.05 RCW, as now or hereafter amended. Any variance with such a policy by any public agency shall be authorized only by the approval of the ((~~department~~)) commission and shall be made only to alleviate unusual hardships unique to a given segment of the system.

(2) Any policies developed pursuant to subsection (1) of this section shall include management plans for protecting ecological, economic, recreational, aesthetic, botanical, scenic, geological, hydrological, fish and wildlife, historical, cultural, archaeological, and scientific features of the rivers designated as being in the system. Such policies shall also include management plans to encourage any nonprofit group, organization, association, person, or corporation to develop and adopt programs for the purpose of increasing fish propagation.

(3) The ((~~department~~)) commission shall identify on a river by river basis any publicly owned or leased lands which could be included in a river area of the system but which are developed in a manner unsuitable for land to be managed as part of the system. The commission shall exclude lands so identified from the provisions of any management policies implementing the provisions of this chapter.

(4) The ((~~department~~)) commission shall determine the boundaries which shall define the river area associated with any included river. With respect to the rivers named in RCW ((~~79.72.080~~)) 79A.55.070, the ((~~department~~)) commission shall make such determination, and those determinations authorized by subsection (3) of this section, within one year of September 21, 1977.

(5) Before making a decision regarding the river area to be included in the system, a variance in policy, or the excluding of land from the provisions of the management policies, the ((~~department~~)) commission shall hold hearings in accord with chapter 34.05 RCW, with at least one public hearing to be held in the general locale of the river under consideration. The commission shall cause to be published in a newspaper of general circulation in the area which includes the river or rivers to be considered, a description, including a map showing such river or rivers, of the material to be considered at the public hearing. Such notice shall appear at least twice in the time period between two and four weeks prior to the public hearing.

The ((~~department~~)) commission shall seek and receive comments from the public regarding potential additions to the system, shall initiate studies, and may submit to any session of the legislature proposals for additions to the state scenic river system. These proposals shall be accompanied by a detailed report on the factors which, in the ((~~department's~~)) commission's judgment, make an area a worthy addition to the system.

Passed by the House March 5, 2009.
Passed by the Senate April 10, 2009.
Approved by the Governor April 23, 2009.
Filed in Office of Secretary of State April 24, 2009.

CHAPTER 188

[Substitute House Bill 1067]

UNIFORM LIMITED PARTNERSHIP ACT

AN ACT Relating to the uniform limited partnership act; amending RCW 23B.11.080, 23B.11.090, 23B.11.110, 23B.13.020, 25.05.355, 25.05.375, 25.05.385, 25.05.390, 25.05.425, 25.15.010, 25.15.325, 25.15.400, 25.15.405, 25.15.410, 25.15.415, and 25.15.430; adding new sections to chapter 25.10 RCW; repealing RCW 25.10.005, 25.10.010, 25.10.020, 25.10.030, 25.10.040, 25.10.050, 25.10.060, 25.10.070, 25.10.080, 25.10.090, 25.10.100, 25.10.110, 25.10.120, 25.10.130, 25.10.140, 25.10.150, 25.10.160, 25.10.170, 25.10.180, 25.10.190, 25.10.200, 25.10.210, 25.10.220, 25.10.230, 25.10.240, 25.10.250, 25.10.260, 25.10.270, 25.10.280, 25.10.290, 25.10.300, 25.10.310, 25.10.320, 25.10.330, 25.10.340, 25.10.350, 25.10.360, 25.10.370, 25.10.390, 25.10.400, 25.10.410, 25.10.420, 25.10.430, 25.10.440, 25.10.450, 25.10.453, 25.10.455, 25.10.457, 25.10.460, 25.10.470, 25.10.480, 25.10.490, 25.10.500, 25.10.510, 25.10.520, 25.10.530, 25.10.540, 25.10.550, 25.10.553, 25.10.555, 25.10.560, 25.10.570, 25.10.580, 25.10.590, 25.10.600, 25.10.610, 25.10.620, 25.10.630, 25.10.640, 25.10.650, 25.10.660, 25.10.670, 25.10.680, 25.10.690, 25.10.800, 25.10.810, 25.10.820, 25.10.830, 25.10.840, 25.10.900, 25.10.905, 25.10.910, 25.10.915, 25.10.920, 25.10.925, 25.10.930, 25.10.935, 25.10.940, 25.10.945, 25.10.950, and 25.10.955; and providing effective dates.

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

ARTICLE 1
GENERAL PROVISIONS

NEW SECTION. **Sec. 101.** SHORT TITLE. This chapter may be known and cited as the uniform limited partnership act.

NEW SECTION. **Sec. 102.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Certificate of limited partnership" means the certificate required by section 201 of this act, including the certificate as amended or restated.

(2) "Contribution," except in the term "right of contribution," means any benefit provided by a person to a limited partnership in order to become a partner or in the person's capacity as a partner.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) A comparable order under federal, state, or foreign law governing insolvency.

(4) "Designated office" means:

(a) With respect to a limited partnership, the office that the limited partnership is required to designate and maintain under section 114 of this act; and

(b) With respect to a foreign limited partnership, its principal office.

(5) "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

(6) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to section 404(3) of this act.

(7) "Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than this state and required by those laws to have one or more general partners and one or more limited partners. "Foreign limited partnership" includes a foreign limited liability limited partnership.

(8) "General partner" means:

(a) With respect to a limited partnership, a person that:

(i) Becomes a general partner under section 401 of this act; or

(ii) Was a general partner in a limited partnership when the limited partnership became subject to this chapter under section 1306 (1) or (2) of this act; and

(b) With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.

(9) "Limited liability limited partnership," except in the term "foreign limited liability limited partnership," means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

(10) "Limited partner" means:

(a) With respect to a limited partnership, a person that:

(i) Becomes a limited partner under section 301 of this act; or

(ii) Was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section 1306 (1) or (2) of this act; and

(b) With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(11) "Limited partnership," except in the terms "foreign limited partnership" and "foreign limited liability limited partnership," means an entity, having one or more general partners and one or more limited partners, that is formed under this

chapter by two or more persons or becomes subject to this chapter under article 11 of this chapter or section 1306 (1) or (2) of this act. "Limited partnership" includes a limited liability limited partnership.

(12) "Partner" means a limited partner or general partner.

(13) "Partnership agreement" means the partners' agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. "Partnership agreement" includes the agreement as amended.

(14) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(15) "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.

(16) "Principal office" means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this state.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) "Required information" means the information that a limited partnership is required to maintain under section 111 of this act.

(19) "Sign" means:

(a) To sign with respect to a written record;

(b) To electronically transmit along with sufficient information to determine the sender's identity with respect to an electronic transmission; or

(c) With respect to a record to be filed with the secretary of state, to comply with the standard for filing with the office of the secretary of state as prescribed by the secretary of state.

(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(21) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(22) "Transferable interest" means a partner's right to receive distributions.

(23) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

NEW SECTION. **Sec. 103.** KNOWLEDGE AND NOTICE. (1) A person knows a fact if the person has actual knowledge of it.

(2) A person has notice of a fact if the person:

(a) Knows of it;

(b) Has received a notification of it;

(c) Has reason to know it exists from all of the facts known to the person at the time in question; or

(d) Has notice of it under subsection (3) or (4) of this section.

(3) A certificate of limited partnership on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as

otherwise provided in subsection (4) of this section, the certificate is not notice of any other fact.

(4) A person has notice of:

(a) Another person's dissociation as a general partner, ninety days after the effective date of an amendment to the certificate of limited partnership that states that the other person has dissociated or ninety days after the effective date of a statement of dissociation pertaining to the other person, whichever occurs first;

(b) A limited partnership's dissolution, ninety days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved;

(c) A limited partnership's termination, ninety days after the effective date of a statement of termination;

(d) A limited partnership's conversion under article 11 of this chapter, ninety days after the effective date of the articles of conversion; or

(e) A merger under article 11 of this chapter, ninety days after the effective date of the articles of merger.

(5) A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(6) A person receives a notification when the notification:

(a) Comes to the person's attention; or

(b) Is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(7) Except as otherwise provided in subsection (8) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(8) A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is not effective as knowledge of, notice to, or receipt of a notification by the limited partnership.

NEW SECTION. **Sec. 104.** NATURE, PURPOSE, AND DURATION OF ENTITY. (1) A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

(2) A limited partnership may be organized under this chapter for any lawful purpose.

(3) A limited partnership has a perpetual duration.

NEW SECTION. **Sec. 105.** POWERS. A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

NEW SECTION. **Sec. 106.** GOVERNING LAW. The law of this state governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.

NEW SECTION. **Sec. 107.** SUPPLEMENTAL PRINCIPLES OF LAW—RATE OF INTEREST. (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in RCW 19.52.010(1).

NEW SECTION. **Sec. 108.** NAME. (1) The name of a limited partnership may contain the name of any partner.

(2) The name of a limited partnership that is not a limited liability limited partnership must contain the term "limited partnership" or the abbreviation "LP" or "L.P." and may not contain the term "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P."

(3) The name of a limited liability limited partnership must contain the term "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and must not contain the abbreviation "LP" or "L.P."

(4) Unless authorized by subsection (5) of this section, the name of a limited partnership must be distinguishable in the records of the secretary of state from:

(a) The name of each person other than an individual incorporated, organized, or authorized to transact business in this state through a filing or registration with the secretary of state; and

(b) Each name reserved under section 109 of this act.

(5) A limited partnership may apply to the secretary of state for authorization to use a name that does not comply with subsection (4) of this section. The secretary of state shall authorize use of the name applied for if, as to each conflicting name:

(a) The present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the secretary of state to change the conflicting name to a name that complies with subsection (4) of this section and is distinguishable in the records of the secretary of state from the name applied for;

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or

(c) The applicant delivers to the secretary of state proof satisfactory to the secretary of state that the present user, registrant, or owner of the conflicting name:

(i) Has merged into the applicant;

(ii) Has been converted into the applicant; or

(iii) Has transferred substantially all of its assets, including the conflicting name, to the applicant.

(6) Subject to section 905 of this act, this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

(7) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability limited partnership," "limited liability company," or "limited liability partnership," or the abbreviations "corp.," "inc.," "co.," "ltd.," "LP," "L.P.," "LLP," "L.L.P.," "LLLP," "L.L.L.P.," "LLC," or "L.L.C.";

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(8) This chapter does not control the use of assumed business names or trade names.

NEW SECTION. **Sec. 109.** RESERVATION OF NAME. (1) The exclusive right to the use of a name that complies with section 108 of this act may be reserved by:

(a) A person intending to organize a limited partnership under this chapter and to adopt the name;

(b) A limited partnership or a foreign limited partnership authorized to transact business in this state intending to adopt the name;

(c) A foreign limited partnership intending to obtain a certificate of authority to transact business in this state and adopt the name;

(d) A person intending to organize a foreign limited partnership and intending to have it obtain a certificate of authority to transact business in this state and adopt the name;

(e) A foreign limited partnership formed under the name; or

(f) A foreign limited partnership formed under a name that does not comply with section 108 (2) or (3) of this act, but the name reserved under this subsection (1)(f) may differ from the foreign limited partnership's name only to the extent necessary to comply with section 108 (2) and (3) of this act.

(2) A person may apply to reserve a name under subsection (1) of this section by delivering to the secretary of state for filing an application that states the name to be reserved and the subsection of subsection (1) of this section that applies. If the secretary of state finds that the name is available for use by the applicant, the secretary of state shall file a statement of name reservation and thereby reserve the name for the exclusive use of the applicant for one hundred eighty days.

(3) An applicant that has reserved a name pursuant to subsection (2) of this section may reserve the same name for additional one hundred eighty-day periods. A person having a current reservation for a name may not apply for

another one hundred eighty-day period for the same name until ninety days have elapsed in the current reservation.

(4) A person that has reserved a name under this section may deliver to the secretary of state for filing a notice of transfer that states the reserved name, the name and street and mailing address of some other person to which the reservation is to be transferred, and the subsection of subsection (1) of this section that applies to the other person. Subject to section 206(3) of this act, the transfer is effective when the secretary of state files the notice of transfer.

NEW SECTION. **Sec. 110.** EFFECT OF PARTNERSHIP AGREEMENT—NONWAIVABLE PROVISIONS. (1) Except as otherwise provided in subsection (2) of this section, the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

(a) Vary a limited partnership's power under section 105 of this act to sue, be sued, and defend in its own name;

(b) Vary the law applicable to a limited partnership under section 106 of this act;

(c) Vary the requirements of section 204 of this act;

(d) Vary the information required under section 111 of this act or unreasonably restrict the right to information under section 304 or 407 of this act, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(e) Eliminate the duty of loyalty under section 408 of this act, but the partnership agreement may, if not manifestly unreasonable:

(i) Identify specific types or categories of activities that do not violate the duty of loyalty; and

(ii) Specify the number or percentage of partners that may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(f) Unreasonably reduce the duty of care under section 408(3) of this act;

(g) Eliminate the obligation of good faith and fair dealing under sections 305(2) and 408(4) of this act, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(h) Vary the power of a person to dissociate as a general partner under section 604(1) of this act except to require that the notice under section 603(1) of this act be in a record;

(i) Vary the power of a court to decree dissolution in the circumstances specified in section 802 of this act;

(j) Vary the requirement to wind up the partnership's business as specified in section 803 of this act;

(k) Unreasonably restrict the right to maintain an action under article 10 of this chapter;

(l) Restrict the right of a partner under section 1110(1) of this act to approve a conversion or merger or the right of a general partner under section 1110(2) of this act to consent to an amendment to the certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership; or

(m) Restrict rights under this chapter of a person other than a partner or a transferee.

NEW SECTION. **Sec. 111.** REQUIRED INFORMATION. A limited partnership shall maintain at its designated office the following information:

(1) A current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(2) A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

(3) A copy of any filed articles of conversion or merger;

(4) A copy of the limited partnership's federal, state, and local tax returns and reports, if any, for the three most recent years;

(5) A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;

(6) A copy of any financial statement of the limited partnership for the three most recent years;

(7) A copy of the three most recent annual reports delivered by the limited partnership to the secretary of state pursuant to section 210 of this act;

(8) A copy of any record made by the limited partnership during the past three years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and

(9) Unless contained in a partnership agreement made in a record, a record stating:

(a) The amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner;

(b) The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

(c) For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

(d) Any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.

NEW SECTION. **Sec. 112.** BUSINESS TRANSACTIONS OF PARTNER WITH PARTNERSHIP. A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

NEW SECTION. **Sec. 113.** DUAL CAPACITY. A person may be both a general partner and a limited partner. A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general

partners. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners.

NEW SECTION. **Sec. 114.** OFFICE AND AGENT FOR SERVICE OF PROCESS. (1) A limited partnership shall designate and continuously maintain in this state:

(a) An office, which need not be a place of its activity in this state; and

(b) An agent for service of process.

(2) A foreign limited partnership shall designate and continuously maintain in this state an agent for service of process.

(3) An agent for service of process of a limited partnership or foreign limited partnership must be an individual who is a resident of this state or other person authorized to do business in this state.

NEW SECTION. **Sec. 115.** CHANGE OF DESIGNATED OFFICE OR AGENT FOR SERVICE OF PROCESS. (1) In order to change its designated office, agent for service of process, or the address of its agent for service of process, a limited partnership or a foreign limited partnership must deliver to the secretary of state for filing a statement of change containing:

(a) The name of the limited partnership or foreign limited partnership;

(b) The street and mailing address of its current designated office;

(c) If the current designated office is to be changed, the street and mailing address of the new designated office;

(d) The name and street and mailing address of its current agent for service of process; and

(e) If the current agent for service of process or an address of the agent is to be changed, the new information.

(2) Subject to section 206(3) of this act, a statement of change is effective when filed by the secretary of state.

NEW SECTION. **Sec. 116.** RESIGNATION OF AGENT FOR SERVICE OF PROCESS. (1) In order to resign as an agent for service of process of a limited partnership or foreign limited partnership, the agent must deliver to the secretary of state for filing a statement of resignation containing the name of the limited partnership or foreign limited partnership.

(2) After receiving a statement of resignation, the secretary of state shall file it and mail a copy to the designated office of the limited partnership or foreign limited partnership and another copy to the principal office if the address of the office appears in the records of the secretary of state and is different from the address of the designated office.

(3) An agent for service of process is terminated on the thirty-first day after the secretary of state files the statement of resignation.

NEW SECTION. **Sec. 117.** SERVICE OF PROCESS. (1) An agent for service of process appointed by a limited partnership or foreign limited partnership is an agent of the limited partnership or foreign limited partnership for service of any process, notice, or demand required or permitted by law to be served upon the limited partnership or foreign limited partnership.

(2) If a limited partnership or foreign limited partnership does not appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's address, the

secretary of state is an agent of the limited partnership or foreign limited partnership upon whom process, notice, or demand may be served.

(3) Service of any process, notice, or demand on the secretary of state may be made by delivering to and leaving with the secretary of state duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the limited partnership or foreign limited partnership at its designated office.

(4) Service is effected under subsection (3) of this section at the earliest of:

(a) The date the limited partnership or foreign limited partnership receives the process, notice, or demand;

(b) The date shown on the return receipt, if signed on behalf of the limited partnership or foreign limited partnership; or

(c) Five days after the process, notice, or demand is deposited in the mail, if mailed postpaid and correctly addressed.

(5) The secretary of state shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.

(6) This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

NEW SECTION. **Sec. 118.** CONSENT AND PROXIES OF PARTNERS. Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney-in-fact.

NEW SECTION. **Sec. 119.** STANDARDS FOR ELECTRONIC FILING RULES. The secretary of state may adopt rules to facilitate electronic filing. The rules will detail the circumstances under which the electronic filing of documents will be permitted, how the documents will be filed, and how the secretary of state will return filed documents. The rules may also impose additional requirements related to implementation of electronic filing processes, including but not limited to file formats, signature technologies, delivery, and the types of entities, records, or documents permitted.

ARTICLE 2
FORMATION—CERTIFICATE OF LIMITED PARTNERSHIP AND OTHER FILINGS

NEW SECTION. **Sec. 201.** FORMATION OF LIMITED PARTNERSHIP—CERTIFICATE OF LIMITED PARTNERSHIP. (1) In order for a limited partnership to be formed, a certificate of limited partnership must be delivered to the secretary of state for filing. The certificate of limited partnership must state:

(a) The name of the limited partnership, which must comply with section 108 of this act;

(b) The street and mailing address of the initial designated office and the name and street and mailing address of the initial agent for service of process;

(c) The name and the street and mailing address of each general partner;

(d) Whether the limited partnership is a limited liability limited partnership; and

(e) Any additional information required by article 11 of this chapter.

(2) A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in section 110(2) of this act in a manner inconsistent with that section.

(3) If there has been substantial compliance with subsection (1) of this section, subject to section 206(3) of this act, a limited partnership is formed when the secretary of state files the certificate of limited partnership.

(4) Subject to subsection (2) of this section, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger:

(a) The partnership agreement prevails as to partners and transferees; and

(b) The filed certificate of limited partnership, statement of dissociation, termination, or change or articles of conversion or merger prevails as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

NEW SECTION. **Sec. 202.** AMENDMENT OR RESTATEMENT OF CERTIFICATE OF LIMITED PARTNERSHIP. (1) In order to amend its certificate of limited partnership, a limited partnership must deliver to the secretary of state for filing an amendment or, pursuant to article 11 of this chapter, articles of merger stating:

(a) The name of the limited partnership;

(b) The date of filing of its initial certificate of limited partnership; and

(c) The changes the amendment makes to the certificate of limited partnership as most recently amended or restated.

(2) A limited partnership shall promptly deliver to the secretary of state for filing an amendment to a certificate of limited partnership to reflect:

(a) The admission of a new general partner;

(b) The dissociation of a person as a general partner; or

(c) The appointment of a person to wind up the limited partnership's activities under section 803 (3) or (4) of this act.

(3) A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

(a) Cause the certificate of limited partnership to be amended; or

(b) If appropriate, deliver to the secretary of state for filing a statement of change pursuant to section 115 of this act or a statement of correction pursuant to section 207 of this act.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.

(5) A restated certificate of limited partnership may be delivered to the secretary of state for filing in the same manner as an amendment.

(6) Subject to section 206(3) of this act, an amendment or restated certificate of limited partnership is effective when filed by the secretary of state.

NEW SECTION. **Sec. 203.** STATEMENT OF TERMINATION. A dissolved limited partnership that has completed winding up may deliver to the secretary of state for filing a statement of termination that states:

(1) The name of the limited partnership;

(2) The date of filing of its initial certificate of limited partnership; and

(3) Any other information as determined by the general partners filing the statement or by a person appointed pursuant to section 803 (3) or (4) of this act.

NEW SECTION. **Sec. 204.** SIGNING OF RECORDS. (1) Each record delivered to the secretary of state for filing pursuant to this chapter must be signed in the following manner:

(a) An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

(b) An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.

(c) An amendment designating as general partner a person admitted under section 801(3)(b) of this act following the dissociation of a limited partnership's last general partner must be signed by that person.

(d) An amendment required by section 803(3) of this act following the appointment of a person to wind up the dissolved limited partnership's activities must be signed by that person.

(e) Any other amendment must be signed by:

(i) At least one general partner listed in the certificate of limited partnership;

(ii) Each other person designated in the amendment as a new general partner; and

(iii) Each person that the amendment indicates has dissociated as a general partner, unless:

(A) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or

(B) The person has previously delivered to the secretary of state for filing a statement of dissociation.

(f) A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other subsection of this subsection (1), the certificate must be signed in a manner that satisfies that subsection.

(g) A statement of termination must be signed by all general partners listed in the certificate or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to section 803 (3) or (4) of this act to wind up the dissolved limited partnership's activities.

(h) Articles of conversion must be signed by each general partner listed in the certificate of limited partnership.

(i) Articles of merger must be signed as provided in section 1108(1) of this act.

(j) Any other record delivered on behalf of a limited partnership to the secretary of state for filing must be signed by at least one general partner listed in the certificate of limited partnership.

(k) A statement by a person pursuant to section 605(1)(d) of this act stating that the person has dissociated as a general partner must be signed by that person.

(l) A statement of withdrawal by a person pursuant to section 306 of this act must be signed by that person.

(m) A record delivered on behalf of a foreign limited partnership to the secretary of state for filing must be signed by at least one general partner of the foreign limited partnership.

(n) Any other record delivered on behalf of any person to the secretary of state for filing must be signed by that person.

(2) Any person may sign by an attorney-in-fact any record to be filed pursuant to this chapter.

NEW SECTION. **Sec. 205.** SIGNING AND FILING PURSUANT TO JUDICIAL ORDER. (1) If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing does not do so, any other person that is aggrieved may petition the appropriate court to order:

(a) The person to sign the record;

(b) Delivery of the record to the secretary of state for filing; or

(c) The secretary of state to file the record unsigned.

(2) If the person aggrieved under subsection (1) of this section is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection (1) of this section may seek the remedies provided in subsection (1) of this section in the same action in combination or in the alternative.

(3) A record filed unsigned pursuant to this section is effective without being signed.

NEW SECTION. **Sec. 206.** DELIVERY TO AND FILING OF RECORDS BY SECRETARY OF STATE—EFFECTIVE TIME AND DATE. (1) A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. Unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, and if all filing fees have been paid, the secretary of state shall file the record and:

(a) For a statement of dissociation, send:

(i) A copy of the filed statement and a receipt for the fees to the person that the statement indicates has dissociated as a general partner; and

(ii) A copy of the filed statement and receipt to the limited partnership;

(b) For a statement of withdrawal, send:

(i) A copy of the filed statement and a receipt for the fees to the person on whose behalf the record was filed; and

(ii) If the statement refers to an existing limited partnership, a copy of the filed statement and receipt to the limited partnership; and

(c) For all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(2) Upon request and payment of a fee, the secretary of state shall send to the requester a certified copy of the requested record.

(3) Except as otherwise provided in sections 116 and 207 of this act, a record delivered to the secretary of state for filing under this chapter may specify

an effective time and a delayed effective date. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:

(a) If the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date and time on the record;

(b) If the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) If the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(i) The specified date; or

(ii) The ninetieth day after the record is filed; or

(d) If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) The specified date; or

(ii) The ninetieth day after the record is filed.

NEW SECTION. **Sec. 207.** CORRECTING FILED RECORD. (1) A limited partnership or foreign limited partnership may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the limited partnership or foreign limited partnership to the secretary of state and filed by the secretary of state, if at the time of filing the record contained false or erroneous information or was defectively signed.

(2) A statement of correction may not state a delayed effective date and must:

(a) Describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(b) Specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective; and

(c) Correct the incorrect information or defective signature.

(3) When filed by the secretary of state, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

(a) For the purposes of section 103 (3) and (4) of this act; and

(b) As to persons relying on the uncorrected record and adversely affected by the correction.

NEW SECTION. **Sec. 208.** LIABILITY FOR FALSE INFORMATION IN FILED RECORD. (1) If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains false information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(a) A person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be false at the time the record was signed; and

(b) A general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under section 202 of this act, file a petition under section 205 of this act, or deliver to the

secretary of state for filing a statement of change under section 115 of this act or a statement of correction under section 207 of this act.

(2) A person who signs a record authorized or required to be filed under this chapter that such a person knows is false in any material respect with intent that the record be delivered to the secretary of state for filing is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

NEW SECTION. **Sec. 209.** CERTIFICATE OF EXISTENCE OR AUTHORIZATION. (1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic limited partnership or a certificate of authorization for a foreign limited partnership.

(2) A certificate of existence or authorization means that as of the date of its issuance:

(a) The domestic limited partnership is duly formed under the laws of this state, or that the foreign limited partnership is authorized to transact business in this state;

(b) All fees and penalties owed to this state under this chapter have been paid, if (i) payment is reflected in the records of the secretary of state, and (ii) nonpayment affects the existence or authorization of the domestic or foreign limited partnership;

(c) The limited partnership's most recent annual report required by section 210 of this act has been delivered to the secretary of state;

(d) The partnership's certificate of limited partnership has not been amended to state that the limited partnership is dissolved; and

(e) A statement of termination or an application for withdrawal has not been filed by the secretary of state.

(3) A person may apply to the secretary of state to issue a certificate covering any fact of record.

(4) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign limited partnership is in existence or is authorized to transact business in the limited partnership form in this state.

NEW SECTION. **Sec. 210.** ANNUAL REPORT FOR SECRETARY OF STATE. (1) A limited partnership or a foreign limited partnership authorized to transact business in this state shall deliver to the secretary of state for filing an annual report that states:

(a) The name of the limited partnership or foreign limited partnership;

(b) The street and mailing address of its designated office and the name and street and mailing address of its agent for service of process in this state;

(c) In the case of a limited partnership, the street and mailing address of its principal office; and

(d) In the case of a foreign limited partnership, the state or other jurisdiction under whose law the foreign limited partnership is formed and any alternate name adopted under section 905(1) of this act.

(2) Information in an annual report must be current as of the date the annual report is delivered to the secretary of state for filing.

(3) Annual reports must be delivered to the secretary of state on a date determined by the secretary of state, and at such additional times as the partnership elects.

(4) If an annual report does not contain the information required in subsection (1) of this section, the secretary of state shall promptly notify the reporting limited partnership or foreign limited partnership and return the report to it for correction. If the report is corrected to contain the information required in subsection (1) of this section and delivered to the secretary of state within thirty days after the effective date of the notice, it is timely delivered.

(5) If a filed annual report contains an address of a designated office or the name or address of an agent for service of process that differs from the information shown in the records of the secretary of state immediately before the filing, the differing information in the annual report is considered a statement of change under section 115 of this act.

ARTICLE 3
LIMITED PARTNERS

NEW SECTION. **Sec. 301.** BECOMING LIMITED PARTNER. A person becomes a limited partner:

(1) As provided in the partnership agreement;

(2) As the result of a conversion or merger under article 11 of this chapter; or

(3) With the consent of all the partners.

NEW SECTION. **Sec. 302.** NO RIGHT OR POWER AS LIMITED PARTNER TO BIND LIMITED PARTNERSHIP. A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.

NEW SECTION. **Sec. 303.** NO LIABILITY AS LIMITED PARTNER FOR LIMITED PARTNERSHIP OBLIGATIONS. An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

NEW SECTION. **Sec. 304.** RIGHT OF LIMITED PARTNER AND FORMER LIMITED PARTNER TO INFORMATION. (1) On ten days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's designated office. The limited partner need not have any particular purpose for seeking the information.

(2) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if:

(a) The limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;

(b) The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(c) The information sought is directly connected to the limited partner's purpose.

(3) Within ten days after receiving a demand pursuant to subsection (2) of this section, the limited partnership in a record shall inform the limited partner that made the demand:

(a) What information the limited partnership will provide in response to the demand;

(b) When and where the limited partnership will provide the information; and

(c) If the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

(4) Subject to subsection (6) of this section, a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's designated office if:

(a) The information pertains to the period during which the person was a limited partner;

(b) The person seeks the information in good faith; and

(c) The person meets the requirements of subsection (2) of this section.

(5) The limited partnership shall respond to a demand made pursuant to subsection (4) of this section in the same manner as provided in subsection (3) of this section.

(6) If a limited partner dies, section 704 of this act applies.

(7) The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(8) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(9) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (7) of this section or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

(10) The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.

NEW SECTION. **Sec. 305.** LIMITED DUTIES OF LIMITED PARTNERS. (1) A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

(2) A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(3) A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest.

NEW SECTION. **Sec. 306.** PERSON ERRONEOUSLY BELIEVING SELF TO BE LIMITED PARTNER. (1) Except as otherwise provided in subsection (2) of this section, a person that makes an investment in a business enterprise, and erroneously but in good faith believes that the person has become a limited partner in the enterprise, is not a general partner and is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

(a) Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing; or

(b) Withdraws from future participation as an owner in the enterprise by signing and delivering to the secretary of state for filing a statement of withdrawal under this section.

(2) A person that makes an investment described in subsection (1) of this section is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the secretary of state files a statement of withdrawal, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

(3) If a person makes a diligent effort in good faith to comply with subsection (1)(a) of this section and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing, the person has the right to withdraw from the enterprise pursuant to subsection (1)(b) of this section even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

ARTICLE 4
GENERAL PARTNERS

NEW SECTION. **Sec. 401.** BECOMING GENERAL PARTNER. A person becomes a general partner:

(1) As provided in the partnership agreement;

(2) Under section 801(3)(b) of this act following the dissociation of a limited partnership's last general partner;

(3) As the result of a conversion or merger under article 11 of this chapter; or

(4) With the consent of all the partners.

NEW SECTION. **Sec. 402.** GENERAL PARTNER AGENT OF LIMITED PARTNERSHIP. (1) Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course of the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the

particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under section 103(4) of this act that the general partner lacked authority.

(2) An act of a general partner that is not apparently for carrying on in the ordinary course of the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

NEW SECTION. **Sec. 403.** LIMITED PARTNERSHIP LIABLE FOR GENERAL PARTNER'S ACTIONABLE CONDUCT. (1) A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

(2) If, in the course of the limited partnership's activities or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

NEW SECTION. **Sec. 404.** GENERAL PARTNER'S LIABILITY. (1) Except as otherwise provided in subsections (2) and (3) of this section, all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.

(2) A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.

(3) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under section 406(2)(b) of this act.

NEW SECTION. **Sec. 405.** ACTIONS BY AND AGAINST PARTNERSHIP AND PARTNERS. (1) To the extent not inconsistent with section 404 of this act, a general partner may be joined in an action against the limited partnership or named in a separate action.

(2) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

(3) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under section 404 of this act and:

(a) A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) The limited partnership is a debtor in bankruptcy;

(c) The general partner has agreed that the creditor need not exhaust limited partnership assets;

(d) A court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) Liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

NEW SECTION. **Sec. 406.** MANAGEMENT RIGHTS OF GENERAL PARTNER. (1) Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

(2) The consent of each partner is necessary to:

(a) Amend the partnership agreement;

(b) Amend the certificate of limited partnership to add or, subject to section 1110 of this act, delete a statement that the limited partnership is a limited liability limited partnership; and

(c) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

(3) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

(4) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(5) A payment or advance made by a general partner that gives rise to an obligation of the limited partnership under subsection (3) or (4) of this section constitutes a loan to the limited partnership that accrues interest from the date of the payment or advance.

(6) A general partner is not entitled to remuneration for services performed for the partnership.

NEW SECTION. **Sec. 407.** RIGHT OF GENERAL PARTNER AND FORMER GENERAL PARTNER TO INFORMATION. (1) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

(a) In the limited partnership's designated office, required information; and

(b) At a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

(2) Each general partner and the limited partnership shall furnish to a general partner:

(a) Without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and

(b) On demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(3) Subject to subsection (5) of this section, on ten days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection (1) of this section at the location specified in subsection (1) of this section if:

(a) The information or record pertains to the period during which the person was a general partner;

(b) The person seeks the information or record in good faith; and

(c) The person satisfies the requirements imposed on a limited partner by section 304(2) of this act.

(4) The limited partnership shall respond to a demand made pursuant to subsection (3) of this section in the same manner as provided in section 304(3) of this act.

(5) If a general partner dies, section 704 of this act applies.

(6) The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(7) A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(8) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (6) of this section or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

(9) The rights under this section do not extend to a person as transferee, but the rights under subsection (3) of this section of a person dissociated as a general partner may be exercised by the legal representative of an individual who dissociated as a general partner under section 603(7) (b) or (c) of this act.

NEW SECTION. **Sec. 408.** GENERAL STANDARDS OF GENERAL PARTNER'S CONDUCT. (1) The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections (2) and (3) of this section.

(2) A general partner's duty of loyalty to the limited partnership and the other partners is limited to the following:

(a) To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

(b) To refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership; and

(c) To refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.

(3) A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest.

ARTICLE 5
CONTRIBUTIONS AND DISTRIBUTIONS

NEW SECTION. **Sec. 501.** FORM OF CONTRIBUTION. A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

NEW SECTION. **Sec. 502.** LIABILITY FOR CONTRIBUTION. (1) A partner's obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the partner's death, disability, or other inability to perform personally.

(2) If a partner does not make a promised nonmonetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution that has not been made.

(3) The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership that extends credit or otherwise acts in reasonable reliance on an obligation described in subsection (1) of this section, without notice of any compromise under this subsection, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a partner to make a contribution.

NEW SECTION. **Sec. 503.** SHARING OF DISTRIBUTIONS. A distribution by a limited partnership must be shared among the partners on the basis of the value, as stated in the required records when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner.

NEW SECTION. **Sec. 504.** INTERIM DISTRIBUTIONS. A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.

NEW SECTION. **Sec. 505.** NO DISTRIBUTION ON ACCOUNT OF DISSOCIATION. A person does not have a right to receive a distribution on account of dissociation.

NEW SECTION. **Sec. 506.** DISTRIBUTION IN KIND. A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to section 811(2) of this act, a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions.

NEW SECTION. **Sec. 507.** RIGHT TO DISTRIBUTION. When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

NEW SECTION. **Sec. 508.** LIMITATIONS ON DISTRIBUTION. (1) A limited partnership may not make a distribution in violation of the partnership agreement.

(2) A limited partnership may not make a distribution if after the distribution:

(a) The limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or

(b) The limited partnership's total assets would be less than the sum of its total liabilities other than liabilities to partners on account of their partnership interests and liabilities for which recourse of creditors is limited to specified property of the limited partnership, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds that liability.

(3) A limited partnership may base a determination that a distribution is not prohibited under subsection (2) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(4) Except as otherwise provided in subsection (7) of this section, the effect of a distribution under subsection (2) of this section is measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership; and

(b) In all other cases, as of the date:

(i) The distribution is authorized, if the payment occurs within one hundred twenty days after that date; or

(ii) The payment is made, if payment occurs more than one hundred twenty days after the distribution is authorized.

(5) A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors.

(6) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection (2) of this section if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

(7) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

NEW SECTION. **Sec. 509.** LIABILITY FOR IMPROPER DISTRIBUTIONS. (1) A general partner that consents to a distribution made in violation of section 508 of this act is personally liable to the limited partnership for the amount of the distribution that exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with section 408 of this act.

(2) A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of section 508 of this act is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under section 508 of this act.

(3) A general partner against which an action is commenced under subsection (1) of this section may:

(a) Implead in the action any other person that is liable under subsection (1) of this section and compel contribution from the person; and

(b) Implead in the action any person that received a distribution in violation of subsection (2) of this section and compel contribution from the person in the amount the person received in violation of subsection (2) of this section.

(4) An action under this section is barred if it is not commenced within two years after the distribution.

ARTICLE 6
DISSOCIATION

NEW SECTION. **Sec. 601.** DISSOCIATION AS LIMITED PARTNER. (1) A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

(2) A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

(a) The limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;

(b) An event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;

(c) The person's expulsion as a limited partner pursuant to the partnership agreement;

(d) The person's expulsion as a limited partner by the unanimous consent of the other partners if:

(i) It is unlawful to carry on the limited partnership's activities with the person as a limited partner;

(ii) There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, that has not been foreclosed;

(iii) The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(e) On application by the limited partnership, the person's expulsion as a limited partner by judicial order because:

(i) The person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;

(ii) The person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under section 305(2) of this act; or

(iii) The person engaged in conduct relating to the limited partnership's activities that makes it not reasonably practicable to carry on the activities with the person as limited partner;

(f) In the case of a person who is an individual, the person's death;

(g) In the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(h) In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(i) Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;

(j) The limited partnership's participation in a conversion or merger under article 11 of this chapter, if the limited partnership:

(i) Is not the converted or surviving entity; or

(ii) Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

NEW SECTION. **Sec. 602.** EFFECT OF DISSOCIATION AS LIMITED PARTNER. (1) Upon a person's dissociation as a limited partner:

(a) Subject to section 704 of this act, the person does not have further rights as a limited partner;

(b) The person's obligation of good faith and fair dealing as a limited partner under section 305(2) of this act continues only as to matters arising and events occurring before the dissociation; and

(c) Subject to section 704 of this act and article 11 of this chapter, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.

(2) A person's dissociation as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners that the person incurred while a limited partner.

NEW SECTION. **Sec. 603.** DISSOCIATION AS GENERAL PARTNER. A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

(1) The limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;

(2) An event agreed to in the partnership agreement as causing the person's dissociation as a general partner;

(3) The person's expulsion as a general partner pursuant to the partnership agreement;

(4) The person's expulsion as a general partner by the unanimous consent of the other partners if:

(a) It is unlawful to carry on the limited partnership's activities with the person as a general partner;

(b) There has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, that has not been foreclosed;

(c) The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) On application by the limited partnership, the person's expulsion as a general partner by judicial determination because:

(a) The person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;

(b) The person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section 408 of this act; or

(c) The person engaged in conduct relating to the limited partnership's activities that makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;

(6) The person's:

(a) Becoming a debtor in bankruptcy;

(b) Execution of an assignment for the benefit of creditors;

(c) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or

(d) Failure, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

(7) In the case of a person who is an individual:

(a) The person's death;

(b) The appointment of a guardian or general conservator for the person; or

(c) A judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;

(8) In the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(10) Termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or

(11) The limited partnership's participation in a conversion or merger under article 11 of this chapter, if the limited partnership:

(a) Is not the converted or surviving entity; or

(b) Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

NEW SECTION. **Sec. 604.** PERSON'S POWER TO DISSOCIATE AS GENERAL PARTNER—WRONGFUL DISSOCIATION. (1) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to section 603(1) of this act.

(2) A person's dissociation as a general partner is wrongful only if:

(a) It is in breach of an express provision of the partnership agreement; or

(b) It occurs before the termination of the limited partnership, and:

(i) The person withdraws as a general partner by express will;

(ii) The person is expelled as a general partner by judicial determination under section 603(5) of this act;

(iii) The person is dissociated as a general partner as a result of an event described in section 603(6) of this act; or

(iv) In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

(3) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to section 1001 of this act, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

NEW SECTION. **Sec. 605.** EFFECT OF DISSOCIATION AS GENERAL PARTNER. (1) Upon a person's dissociation as a general partner:

(a) The person's right to participate as a general partner in the management and conduct of the partnership's activities terminates;

(b) The person's duty of loyalty as a general partner under section 408(2)(c) of this act terminates;

(c) The person's duty of loyalty as a general partner under section 408(2) (a) and (b) of this act and duty of care under section 408(3) of this act continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;

(d) The person may sign and deliver to the secretary of state for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership that states that the person has dissociated; and

(e) Subject to section 704 of this act and article 11 of this chapter, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

(2) A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners that the person incurred while a general partner.

NEW SECTION. **Sec. 606.** POWER TO BIND AND LIABILITY TO LIMITED PARTNERSHIP BEFORE DISSOLUTION OF PARTNERSHIP OF PERSON DISSOCIATED AS GENERAL PARTNER. (1) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under article 11 of this chapter, or merged out of existence under article 11 of this chapter, the limited partnership is bound by an act of the person only if:

(a) The act would have bound the limited partnership under section 402 of this act before the dissociation; and

(b) At the time the other party enters into the transaction:

(i) Less than two years have passed since the dissociation; and

(ii) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(2) If a limited partnership is bound under subsection (1) of this section, the person dissociated as a general partner that caused the limited partnership to be bound is liable:

(a) To the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection (1) of this section; and

(b) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

NEW SECTION. **Sec. 607.** LIABILITY TO OTHER PERSONS OF PERSON DISSOCIATED AS GENERAL PARTNER. (1) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections (2) and (3) of this section, the person is not liable for a limited partnership's obligation incurred after dissociation.

(2) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under section 404 of this act on an obligation incurred by the limited partnership under section 804 of this act.

(3) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities is liable on a transaction entered into by the limited partnership after the dissociation only if:

(a) A general partner would be liable on the transaction; and

(b) At the time the other party enters into the transaction:

(i) Less than two years have passed since the dissociation; and

(ii) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(4) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.

(5) A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

ARTICLE 7
TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

NEW SECTION. **Sec. 701.** PARTNER'S TRANSFERABLE INTEREST. The only interest of a partner that is transferable is the partner's transferable interest. A transferable interest is personal property.

NEW SECTION. **Sec. 702.** TRANSFER OF PARTNER'S TRANSFERABLE INTEREST. (1) A transfer, in whole or in part, of a partner's transferable interest:

(a) Is permissible;

(b) Does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and

(c) Does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection (3) of this section, or to inspect or copy the required information or the limited partnership's other records.

(2) A transferee has a right to receive, in accordance with the transfer:

(a) Distributions to which the transferor would otherwise be entitled; and

(b) Upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.

(3) In a dissolution and winding up, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.

(4) Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.

(5) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

(6) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(7) A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under sections 502 and 509 of this act. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

NEW SECTION. **Sec. 703.** RIGHTS OF CREDITOR OF PARTNER OR TRANSFEREE. (1) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or that the circumstances of the case may require to give effect to the charging order.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, an interest charged may be redeemed:

(a) By the judgment debtor;

(b) With property other than limited partnership property, by one or more of the other partners; or

(c) With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

(4) This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

NEW SECTION. **Sec. 704.** POWER OF ESTATE OF DECEASED PARTNER. If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in section 702 of this act and, for the purposes of settling the estate, may exercise the rights of a current limited partner under section 304 of this act.

ARTICLE 8
DISSOLUTION

NEW SECTION. **Sec. 801.** NONJUDICIAL DISSOLUTION. Except as otherwise provided in section 802 of this act, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

(1) The happening of an event specified in the partnership agreement;

(2) The consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;

(3) The passage of ninety days after the dissociation of a person as a general partner if following such dissociation the limited partnership does not have a remaining general partner unless before the end of the period:

(a) Consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(b) At least one person is admitted as a general partner in accordance with the consent;

(4) The passage of ninety days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner; or

(5) The signing and filing of a declaration of dissolution by the secretary of state under section 809(3) of this act.

NEW SECTION. **Sec. 802.** JUDICIAL DISSOLUTION. On application by a partner the Thurston county superior court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

NEW SECTION. **Sec. 803.** WINDING UP. (1) A limited partnership continues after dissolution only for the purpose of winding up its activities.

(2) In winding up its activities, the limited partnership:

(a) May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in section 203 of this act, and perform other necessary acts; and

(b) Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

(3) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:

(a) Has the powers of a general partner under section 804 of this act; and

(b) Shall promptly amend the certificate of limited partnership to state:

(i) That the limited partnership does not have a general partner;

(ii) The name of the person that has been appointed to wind up the limited partnership; and

(iii) The street and mailing address of the person.

(4) On the application of any partner, or, if there are no partners, any transferee of a partner's transferable interest, the Thurston county superior court

may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:

(a) A limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (3) of this section; or

(b) The applicant establishes other good cause.

NEW SECTION. **Sec. 804.** POWER OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO BIND PARTNERSHIP AFTER DISSOLUTION. (1) A limited partnership is bound by a general partner's act after dissolution that:

(a) Is appropriate for winding up the limited partnership's activities; or

(b) Would have bound the limited partnership under section 402 of this act before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.

(2) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(a) At the time the other party enters into the transaction:

(i) Less than two years have passed since the dissociation; and

(ii) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and

(b) The act:

(i) Is appropriate for winding up the limited partnership's activities; or

(ii) Would have bound the limited partnership under section 402 of this act before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

NEW SECTION. **Sec. 805.** LIABILITY AFTER DISSOLUTION OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER TO LIMITED PARTNERSHIP, OTHER GENERAL PARTNERS, AND PERSONS DISSOCIATED AS GENERAL PARTNER. (1) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under section 804(1) of this act by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:

(a) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(2) If a person dissociated as a general partner causes a limited partnership to incur an obligation under section 804(2) of this act, the person is liable:

(a) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

NEW SECTION. **Sec. 806.** KNOWN CLAIMS AGAINST DISSOLVED LIMITED PARTNERSHIP. (1) A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection (2) of this section.

(2) A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must:

(a) Specify the information required to be included in a claim;

(b) Provide a mailing address to which the claim is to be sent;

(c) State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant;

(d) State that the claim will be barred if not received by the deadline; and

(e) Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on section 404 of this act.

(3) A claim against a dissolved limited partnership is barred if the requirements of subsection (2) of this section are met and:

(a) The claim is not received by the specified deadline; or

(b) In the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within ninety days after the receipt of the notice of the rejection.

(4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

NEW SECTION. **Sec. 807.** OTHER CLAIMS AGAINST DISSOLVED LIMITED PARTNERSHIP. (1) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

(2) The notice must:

(a) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this state, in the county in which the limited partnership's designated office is or was last located;

(b) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;

(c) State that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within three years after publication of the notice; and

(d) Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on section 404 of this act.

(3) If a dissolved limited partnership publishes a notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within three years after the publication date of the notice:

(a) A claimant that did not receive notice in a record under section 806 of this act;

(b) A claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) Against the dissolved limited partnership, to the extent of its undistributed assets;

(b) If the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this subsection (4)(b) does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

(c) Against any person liable on the claim under section 404 of this act.

NEW SECTION. **Sec. 808.** LIABILITY OF GENERAL PARTNER AND PERSON DISSOCIATED AS GENERAL PARTNER WHEN CLAIM AGAINST LIMITED PARTNERSHIP BARRED. If a claim against a dissolved limited partnership is barred under section 806 or 807 of this act, any corresponding claim under section 404 of this act is also barred.

NEW SECTION. **Sec. 809.** ADMINISTRATIVE DISSOLUTION. (1) The secretary of state may dissolve a limited partnership administratively if the limited partnership does not:

(a) Within sixty days after the due date:

(i) Pay any fee, tax, or penalty due to the secretary of state under this chapter or other law; or

(ii) Deliver its annual report to the secretary of state;

(b) Maintain a registered agent and registered office as required under section 114 of this act; or

(c) Notify the secretary of state that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(2) If the secretary of state determines that grounds exist for administratively dissolving a limited partnership, the secretary of state shall send notice of the grounds for dissolution to the limited partnership by first-class mail, postage prepaid.

(3) If within sixty days after service of the copy the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist, the secretary of state shall administratively dissolve the limited partnership. The secretary of state shall send the limited partnership a declaration of administrative dissolution stating the grounds for the dissolution.

(4) A limited partnership administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under sections 803 and 811 of this act and to notify claimants under sections 806 and 807 of this act.

(5) The administrative dissolution of a limited partnership does not terminate the authority of its agent for service of process.

NEW SECTION. **Sec. 810.** REINSTATEMENT FOLLOWING ADMINISTRATIVE DISSOLUTION. (1) A limited partnership that has been administratively dissolved may apply to the secretary of state for reinstatement

within five years after the effective date of dissolution. The application must be delivered to the secretary of state for filing and state:

(a) The name of the limited partnership and the effective date of its administrative dissolution;

(b) That the grounds for dissolution either did not exist or have been eliminated; and

(c) That the limited partnership's name satisfies the requirements of section 108 of this act.

(2) If the secretary of state determines that an application contains the information required by subsection (1) of this section and that the information is correct, the secretary of state shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and send a copy of the filed declaration to the limited partnership.

(3) When reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership may resume its activities as if the administrative dissolution had never occurred.

NEW SECTION. **Sec. 811.** DISPOSITION OF ASSETS—WHEN CONTRIBUTIONS REQUIRED. (1) In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, must be applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.

(2) Any surplus remaining after the limited partnership complies with subsection (1) of this section must be paid in cash as a distribution.

(3) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (1) of this section, with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:

(a) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under section 607 of this act shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) If a person does not contribute the full amount required under (a) of this subsection with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by (a) of this subsection on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

(c) If a person does not make the additional contribution required by (b) of this subsection, further additional contributions are determined and due in the same manner as provided in (b) of this subsection.

(4) A person that makes an additional contribution under subsection (3)(b) or (c) of this section may recover from any person whose failure to contribute

under subsection (3)(a) or (b) of this section necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

(5) The estate of a deceased individual is liable for the person's obligations under this section.

(6) An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subsection (3) of this section.

ARTICLE 9
FOREIGN LIMITED PARTNERSHIPS

NEW SECTION. **Sec. 901.** GOVERNING LAW. (1) The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

(2) A foreign limited partnership may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this state.

(3) A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this state.

NEW SECTION. **Sec. 902.** APPLICATION FOR CERTIFICATE OF AUTHORITY. (1) Before transacting business in this state, a foreign limited partnership shall apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state:

(a) The name of the foreign limited partnership and, if the name does not comply with section 108 of this act, an alternate name adopted pursuant to section 905(1) of this act.

(b) The name of the state or other jurisdiction under whose law the foreign limited partnership is organized;

(c) The street and mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing address of the required office;

(d) The name and street and mailing address of the foreign limited partnership's initial agent for service of process in this state;

(e) The name and street and mailing address of each of the foreign limited partnership's general partners; and

(f) Whether the foreign limited partnership is a foreign limited liability limited partnership.

(2) A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the foreign limited

partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized.

NEW SECTION. **Sec. 903.** ACTIVITIES NOT CONSTITUTING TRANSACTING BUSINESS. (1) Activities of a foreign limited partnership that do not constitute transacting business in this state within the meaning of this article include:

(a) Maintaining, defending, and settling an action or proceeding;

(b) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(c) Maintaining accounts in financial institutions;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts and the contracts do not involve any local performance other than delivery and installation;

(g) Making loans or creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner;

(k) Owning a controlling interest in a domestic or foreign corporation, or participating as a limited partner of a domestic or foreign limited partnership, or participating as a member or a manager of a domestic or foreign limited liability company, that transacts business in this state; and

(l) Transacting business in interstate commerce.

(2) The list of activities in subsection (1) of this section is not exhaustive.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this state.

NEW SECTION. **Sec. 904.** FILING OF CERTIFICATE OF AUTHORITY. Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon payment of all filing fees, shall file the application, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign limited partnership or its representative.

NEW SECTION. **Sec. 905.** NONCOMPLYING NAME OF FOREIGN LIMITED PARTNERSHIP. (1) A foreign limited partnership whose name does not comply with section 108 of this act may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 108 of this act. A foreign limited partnership that adopts an alternate name under this subsection and then obtains a certificate

of authority with the name need not comply with RCW 19.80.010. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this state under the name unless the foreign limited partnership is authorized under RCW 19.80.010 to transact business in this state under another name.

(2) If a foreign limited partnership authorized to transact business in this state changes its name to one that does not comply with section 108 of this act, it may not thereafter transact business in this state until it complies with subsection (1) of this section and obtains an amended certificate of authority.

NEW SECTION. **Sec. 906.** REVOCATION OF CERTIFICATE OF AUTHORITY. (1) A certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the secretary of state in the manner provided in subsections (2) and (3) of this section if the foreign limited partnership does not:

(a) Pay, within sixty days after the due date, any fee, tax, or penalty due to the secretary of state under this chapter or other law;

(b) Deliver, within sixty days after the due date, its annual report required under section 210 of this act;

(c) Appoint and maintain an agent for service of process as required by section 114 of this act; or

(d) Deliver for filing a statement of a change under section 115 of this act within thirty days after a change has occurred in the name or address of the agent.

(2) In order to revoke a certificate of authority, the secretary of state must prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for service of process in this state, or if the foreign limited partnership does not appoint and maintain a proper agent in this state, to the foreign limited partnership's designated office. The notice must state:

(a) The revocation's effective date, which must be at least sixty days after the date the secretary of state sends the copy; and

(b) The foreign limited partnership's failures to comply with subsection (1) of this section that are the reason for the revocation.

(3) The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign limited partnership cures each failure to comply with subsection (1) of this section stated in the notice. If the foreign limited partnership cures the failures, the secretary of state shall so indicate on the filed notice.

NEW SECTION. **Sec. 907.** CANCELLATION OF CERTIFICATE OF AUTHORITY—EFFECT OF FAILURE TO HAVE CERTIFICATE. (1) In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership must deliver to the secretary of state for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under section 206 of this act.

(2) A foreign limited partnership transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(3) The failure of a foreign limited partnership to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this state.

(4) A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this state without a certificate of authority.

(5) If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state.

NEW SECTION. **Sec. 908.** ACTION BY ATTORNEY GENERAL. The attorney general may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of this article.

ARTICLE 10
ACTIONS BY PARTNERS

NEW SECTION. **Sec. 1001.** DIRECT ACTION BY PARTNER. (1) Subject to subsection (2) of this section, a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(2) A partner commencing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(3) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

NEW SECTION. **Sec. 1002.** DERIVATIVE ACTION. A partner may maintain a derivative action to enforce a right of a limited partnership if:

(1) The partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or

(2) A demand would be futile.

NEW SECTION. **Sec. 1003.** PROPER PLAINTIFF. A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

(1) That was a partner when the conduct giving rise to the action occurred; or

(2) Whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

NEW SECTION. **Sec. 1004.** PLEADING. In a derivative action, the complaint must state with particularity:

(1) The date and content of plaintiff's demand and the general partners' response to the demand; or

(2) Why a demand should be excused as futile.

NEW SECTION. **Sec. 1005.** PROCEEDS AND EXPENSES. (1) Except as otherwise provided in subsection (2) of this section:

(a) Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff;

(b) If the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

(2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, from the recovery of the limited partnership.

ARTICLE 11
CONVERSION AND MERGER

NEW SECTION. **Sec. 1101.** DEFINITIONS. In this article:

(1) "Constituent limited partnership" means a constituent organization that is a limited partnership.

(2) "Constituent organization" means an organization that is party to a merger.

(3) "Converted organization" means the organization into which a converting organization converts pursuant to sections 1102 through 1105 of this act.

(4) "Converting limited partnership" means a converting organization that is a limited partnership.

(5) "Converting organization" means an organization that converts into another organization pursuant to section 1102 of this act.

(6) "General partner" means a general partner of a limited partnership.

(7) "Governing statute" of an organization means the statute that governs the organization's internal affairs.

(8) "Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.

(9) "Organizational documents" means:

(a) For a domestic or foreign general partnership, its partnership agreement;

(b) For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(c) For a domestic or foreign limited liability company, its certificate of formation and limited liability company agreement, or comparable records as provided in its governing statute;

(d) For a business trust, its agreement of trust and declaration of trust;

(e) For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders that are authorized by its governing statute, or comparable records as provided in its governing statute; and

(f) For any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(10) "Personal liability" means personal liability for a debt, liability, or other obligation of an organization that is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) By the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(b) By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

(11) "Surviving organization" means an organization into which one or more other organizations are merged.

NEW SECTION. **Sec. 1102.** CONVERSION. (1) An organization other than a limited partnership may convert into a limited partnership, and a limited partnership may convert into another organization pursuant to this section and sections 1103 through 1105 of this act and a plan of conversion, if:

(a) The other organization's governing statute authorizes the conversion;

(b) The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(c) The other organization complies with its governing statute in effecting the conversion.

(2) A plan of conversion must be in a record and must include:

(a) The name and form of the organization before conversion;

(b) The name and form of the organization after conversion;

(c) The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(d) The organizational documents of the converted organization.

NEW SECTION. **Sec. 1103.** ACTION ON PLAN OF CONVERSION BY CONVERTING LIMITED PARTNERSHIP. (1) Subject to section 1110 of this act, a plan of conversion must be consented to by all the partners of a converting limited partnership.

(2) Subject to section 1110 of this act and any contractual rights, after a conversion is approved, and at any time before a filing is made under section 1104 of this act, a converting limited partnership may amend the plan or abandon the planned conversion:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, by the same consent as was required to approve the plan.

NEW SECTION. **Sec. 1104.** FILINGS REQUIRED FOR CONVERSION—EFFECTIVE DATE. (1) After a plan of conversion is approved:

(a) A converting limited partnership shall deliver to the secretary of state for filing articles of conversion, which must include:

(i) A statement that the limited partnership has been converted into another organization;

(ii) The name and form of the organization and the jurisdiction of its governing statute;

(iii) The date the conversion is effective under the governing statute of the converted organization;

(iv) A statement that the conversion was approved as required by this chapter;

(v) A statement that the conversion was approved as required by the governing statute of the converted organization; and

(vi) If the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office that the secretary of state may use for the purposes of section 1105(3) of this act; and

(b) If the converting organization is not a converting limited partnership, the converting organization shall deliver to the secretary of state for filing a certificate of limited partnership, which must include, in addition to the information required by section 201 of this act:

(i) A statement that the limited partnership was converted from another organization;

(ii) The name and form of the organization and the jurisdiction of its governing statute; and

(iii) A statement that the conversion was approved in a manner that complied with the organization's governing statute.

(2) A conversion becomes effective:

(a) If the converted organization is a limited partnership, when the certificate of limited partnership takes effect; and

(b) If the converted organization is not a limited partnership, as provided by the governing statute of the converted organization.

NEW SECTION. **Sec. 1105.** EFFECT OF CONVERSION. (1) An organization that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) All property owned by the converting organization remains vested in the converted organization;

(b) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(c) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(d) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(e) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(f) Except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of article 8 of this chapter.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted

organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in section 117 (3) and (4) of this act.

NEW SECTION. **Sec. 1106.** MERGER. (1) A limited partnership may merge with one or more other constituent organizations pursuant to this section and sections 1107 through 1109 of this act and a plan of merger, if:

(a) The governing statute of each of the other organizations authorizes the merger;

(b) The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(c) Each of the other organizations complies with its governing statute in effecting the merger.

(2) A plan of merger must be in a record and must include:

(a) The name and form of each constituent organization;

(b) The name and form of the surviving organization;

(c) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration; and

(d) Any amendments to be made by the merger to the surviving organization's organizational documents.

NEW SECTION. **Sec. 1107.** ACTION ON PLAN OF MERGER BY CONSTITUENT LIMITED PARTNERSHIP. (1) Subject to section 1110 of this act, a plan of merger must be consented to by all the partners of a constituent limited partnership.

(2) Subject to section 1110 of this act and any contractual rights, after a merger is approved, and at any time before a filing is made under section 1108 of this act, a constituent limited partnership may amend the plan or abandon the planned merger:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, with the same consent as was required to approve the plan.

(3) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW.

(4) If a domestic partnership is a party to the merger, the plan of merger shall be approved as provided in RCW 25.05.375.

(5) If a domestic limited liability company is a party to the merger, the plan of merger shall be approved as provided in RCW 25.15.400.

NEW SECTION. **Sec. 1108.** FILINGS REQUIRED FOR MERGER—EFFECTIVE DATE. (1) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(a) Each constituent limited partnership, by each general partner listed in the certificate of limited partnership; and

(b) Each other constituent organization, by an authorized representative.

(2) The articles of merger must include:

(a) The name and form of each constituent organization and the jurisdiction of its governing statute;

(b) The name and form of the surviving organization and the jurisdiction of its governing statute;

(c) The date the merger is effective under the governing statute of the surviving organization;

(d) Any amendments provided for in the plan of merger for the organizational document that created the surviving organization;

(e) A statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(f) If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office that the secretary of state may use for the purposes of section 1109(2) of this act; and

(g) Any additional information required by the governing statute of any constituent organization.

(3) Each constituent limited partnership shall deliver the articles of merger for filing in the office of the secretary of state.

(4) A merger becomes effective under this article:

(a) If the surviving organization is a limited partnership, upon the later of:

(i) Compliance with subsection (3) of this section; or

(ii) Subject to section 206(3) of this act, as specified in the articles of merger; or

(b) If the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

NEW SECTION. **Sec. 1109.** EFFECT OF MERGER. (1) When a merger becomes effective:

(a) The surviving organization continues;

(b) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(c) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(d) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(e) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(f) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(g) Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(h) Except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of article 8 of this chapter; and

(i) Any amendments provided for in the articles of merger for the organizational document that created the surviving organization become effective.

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in section 117 (3) and (4) of this act.

NEW SECTION. **Sec. 1110.** RESTRICTIONS ON APPROVAL OF CONVERSIONS AND MERGERS AND ON RELINQUISHING LLLP STATUS. (1) If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner, unless:

(a) The limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and

(b) The partner has consented to the provision of the partnership agreement.

(2) An amendment to a certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner unless:

(a) The limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners; and

(b) Each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

(3) A partner does not give the consent required by subsection (1) or (2) of this section merely by consenting to a provision of the partnership agreement that permits the partnership agreement to be amended with the consent of fewer than all the partners.

NEW SECTION. **Sec. 1111.** LIABILITY OF GENERAL PARTNER AFTER CONVERSION OR MERGER. (1) A conversion or merger under this article does not discharge any liability under sections 404 and 607 of this act of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but:

(a) The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;

(b) For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and

(c) If a person is required to pay any amount under this subsection:

(i) The person has a right of contribution from each other person that was liable as a general partner under section 404 of this act when the obligation was incurred and has not been released from the obligation under section 607 of this act; and

(ii) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(2) In addition to any other liability provided by law:

(a) A person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:

(i) Does not have notice of the conversion or merger; and

(ii) Reasonably believes that:

(A) The converted or surviving business is the converting or constituent limited partnership;

(B) The converting or constituent limited partnership is not a limited liability limited partnership; and

(C) The person is a general partner in the converting or constituent limited partnership; and

(b) A person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if:

(i) Immediately before the conversion or merger became effective the converting or surviving limited partnership was not a limited liability limited partnership; and

(ii) At the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and the third party:

(A) Does not have notice of the dissociation;

(B) Does not have notice of the conversion or merger; and

(C) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting or constituent limited partnership.

NEW SECTION. **Sec. 1112.** POWER OF GENERAL PARTNERS AND PERSONS DISSOCIATED AS GENERAL PARTNERS TO BIND ORGANIZATION AFTER CONVERSION OR MERGER. (1) An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(a) Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 402 of this act; and

(b) At the time the third party enters into the transaction, the third party:

(i) Does not have notice of the conversion or merger; and

(ii) Reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(2) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited

partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(a) Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section 402 of this act if the person had been a general partner; and

(b) At the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and the third party:

(i) Does not have notice of the dissociation;

(ii) Does not have notice of the conversion or merger; and

(iii) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(3) If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection (1) or (2) of this section, the person is liable:

(a) To the converted or surviving organization for any damage caused to the organization arising from the obligation; and

(b) If another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

NEW SECTION. **Sec. 1113.** ARTICLE NOT EXCLUSIVE. This article does not preclude an entity from being converted or merged under other law.

ARTICLE 12
DISSENTERS' RIGHTS

NEW SECTION. **Sec. 1201.** DEFINITIONS. In this article:

(1) "Limited partnership" means the domestic limited partnership in which the dissenter holds or held a partnership interest, or the surviving organization, whether foreign or domestic, of that limited partnership.

(2) "Dissenter" means a partner who is entitled to dissent from a plan of merger and who exercises that right when and in the manner required by this article.

(3) "Fair value," with respect to a dissenter's partnership interest, means the value of the partnership interest immediately before the effectuation of the merger to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the merger unless exclusion would be inequitable.

(4) "Interest" means interest from the effective date of the merger until the date of payment, at the average rate currently paid by the limited partnership on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

NEW SECTION. **Sec. 1202.** PARTNER—DISSENT—PAYMENT OF FAIR VALUE. (1) Except as provided in section 1204 or 1206(2) of this act, a partner of a domestic limited partnership is entitled to dissent from, and obtain payment of, the fair value of the partner's partnership interest in the event of consummation of a plan of merger to which the limited partnership is a party as permitted by section 1106 of this act.

(2) A partner entitled to dissent and obtain payment for the partner's partnership interest under this article may not challenge the merger creating the partner's entitlement unless the merger fails to comply with the procedural

requirements imposed by this chapter, Title 23B RCW, chapter 25.05 RCW, chapter 25.15 RCW, or the partnership agreement, or is fraudulent with respect to the partner or the limited partnership.

(3) The right of a dissenting partner to obtain payment of the fair value of the partner's partnership interest shall terminate upon the occurrence of any one of the following events:

(a) The proposed merger is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the merger; or

(c) The partner's demand for payment is withdrawn with the written consent of the limited partnership.

NEW SECTION. **Sec. 1203.** DISSENTERS' RIGHTS—NOTICE—TIMING. (1) Not less than ten days prior to the approval of a plan of merger, the limited partnership must send a written notice to all partners who are entitled to vote on or approve the plan of merger that they may be entitled to assert dissenters' rights under this article. Such notice shall be accompanied by a copy of this article.

(2) The limited partnership shall notify in writing all partners not entitled to vote on or approve the plan of merger that the plan of merger was approved, and send them the dissenters' notice as required by section 1205 of this act.

NEW SECTION. **Sec. 1204.** PARTNER—DISSENT—VOTING RESTRICTION. A partner who is entitled to vote on or approve the plan of merger and who wishes to assert dissenters' rights must not vote in favor of or approve the plan of merger. A partner who does not satisfy the requirements of this section is not entitled to payment for the partner's interest under this article.

NEW SECTION. **Sec. 1205.** PARTNERS—DISSENTERS' NOTICE—REQUIREMENTS. (1) If the plan of merger is approved, the limited partnership shall deliver a written dissenters' notice to all partners who satisfied the requirements of section 1204 of this act.

(2) The dissenters' notice required by section 1203(2) of this act or by subsection (1) of this section must be sent within ten days after the approval of the plan of merger, and must:

(a) State where the payment demand must be sent;

(b) Inform holders of the partnership interest as to the extent transfer of the partnership interest will be restricted as permitted by section 1207 of this act after the payment demand is received;

(c) Supply a form for demanding payment;

(d) Set a date by which the limited partnership must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice under this section is delivered; and

(e) Be accompanied by a copy of this article.

NEW SECTION. **Sec. 1206.** PARTNER—PAYMENT DEMAND—ENTITLEMENT. (1) A partner who demands payment retains all other rights of a partner until the proposed merger becomes effective.

(2) A partner sent a dissenters' notice who does not demand payment by the date set in the dissenters' notice is not entitled to payment for the partner's partnership interest under this article.

NEW SECTION. **Sec. 1207.** PARTNERSHIP INTERESTS—TRANSFER RESTRICTIONS. The limited partnership may restrict the transfer of partnership interests from the date the demand for their payment is received until the proposed merger becomes effective or the restriction is released under this article.

NEW SECTION. **Sec. 1208.** PAYMENT OF FAIR VALUE—REQUIREMENTS FOR COMPLIANCE. (1) Within thirty days of the later of the date the proposed merger becomes effective, or the payment demand is received, the limited partnership shall pay each dissenter who complied with section 1206 of this act the amount the limited partnership estimates to be the fair value of the partnership interest, plus accrued interest.

(2) The payment must be accompanied by:

(a) Copies of any financial statements for the most recent fiscal year maintained as required by section 111 of this act;

(b) An explanation of how the limited partnership estimated the fair value of the partnership interest;

(c) An explanation of how the accrued interest was calculated;

(d) A statement of the dissenter's right to demand payment; and

(e) A copy of this article.

NEW SECTION. **Sec. 1209.** MERGER—NOT EFFECTIVE WITHIN SIXTY DAYS—TRANSFER RESTRICTIONS. (1) If the proposed merger does not become effective within sixty days after the date set for demanding payment, the limited partnership shall release any transfer restrictions imposed as permitted by section 1207 of this act.

(2) If, after releasing transfer restrictions, the proposed merger becomes effective, the limited partnership must send a new dissenters' notice as provided in sections 1203(2) and 1205 of this act and repeat the payment demand procedure.

NEW SECTION. **Sec. 1210.** DISSENTER'S ESTIMATE OF FAIR VALUE—NOTICE. (1) A dissenter may notify the limited partnership in writing of the dissenter's own estimate of the fair value of the dissenter's partnership interest and amount of interest due, and demand payment of the dissenter's estimate, less any payment under section 1208 of this act; if:

(a) The dissenter believes that the amount paid is less than the fair value of the dissenter's partnership interest or that the interest due is incorrectly calculated;

(b) The limited partnership fails to make payment within sixty days after the date set for demanding payment; or

(c) The limited partnership, having failed to effectuate the proposed merger, does not release the transfer restrictions imposed on partnership interests as permitted by section 1207 of this act within sixty days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited partnership of the dissenter's demand in writing under subsection (1)(a) of this section within thirty days after the limited partnership made payment for the dissenter's partnership interest.

NEW SECTION. **Sec. 1211.** UNSETTLED DEMAND FOR PAYMENT—PROCEEDING—PARTIES—APPRAISERS. (1) If a demand for

payment under section 1210 of this act remains unsettled, the limited partnership shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the partnership interest and accrued interest. If the limited partnership does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The limited partnership shall commence the proceeding in the superior court in the county where its office is or was maintained as required by section 114 of this act.

(3) The limited partnership shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their partnership interests and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The limited partnership may join as a party to the proceeding any partner who claims to be a dissenter but who has not, in the opinion of the limited partnership, complied with the provisions of this chapter. If the court determines that such partner has not complied with the provisions of this article, the partner shall be dismissed as a party.

(5) The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decisions on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(6) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of the dissenter's partnership interest, plus interest, exceeds the amount paid by the limited partnership.

NEW SECTION. **Sec. 1212.** UNSETTLED DEMAND FOR PAYMENT—COSTS, FEES AND EXPENSES OF COUNSEL. (1) The court in a proceeding commenced under section 1211 of this act shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited partnership, except that the court may assess the costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited partnership and in favor of any or all dissenters if the court finds the limited partnership did not substantially comply with the requirements of this article; or

(b) Against either the limited partnership or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for

those services should not be assessed against the limited partnership, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

ARTICLE 13
MISCELLANEOUS PROVISIONS

NEW SECTION. **Sec. 1301.** UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

NEW SECTION. **Sec. 1302.** SEVERABILITY CLAUSE. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 1303.** RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but this chapter does not modify, limit, or supersede section 101(c) of that chapter or authorize electronic delivery of any of the notices described in section 103(b) of that chapter.

NEW SECTION. **Sec. 1304.** EFFECTIVE DATE. This chapter takes effect January 1, 2010.

NEW SECTION. **Sec. 1305.** REPEALS. The following acts or parts of acts are each repealed, effective July 1, 2010:

(1) RCW 25.10.005 (Periodic reports required—Contents—Due dates—Rules) and 1998 c 277 s 5;

(2) RCW 25.10.010 (Definitions) and 2002 c 296 s 2, 1987 c 55 s 1, 1982 c 35 s 177, & 1981 c 51 s 1;

(3) RCW 25.10.020 (Name) and 1998 c 102 s 8, 1996 c 76 s 1, 1994 c 211 s 1309, 1991 c 269 s 1, 1987 c 55 s 2, & 1981 c 51 s 2;

(4) RCW 25.10.030 (Reservation of name) and 1991 c 269 s 2 & 1981 c 51 s 3;

(5) RCW 25.10.040 (Registered office and agent) and 1987 c 55 s 3 & 1981 c 51 s 4;

(6) RCW 25.10.050 (Records to be kept) and 1987 c 55 s 4 & 1981 c 51 s 5;

(7) RCW 25.10.060 (Nature of business) and 1981 c 51 s 6;

(8) RCW 25.10.070 (Business transactions of partner with the partnership) and 1981 c 51 s 7;

(9) RCW 25.10.080 (Certificate of limited partnership) and 2000 c 169 s 5, 1987 c 55 s 5, & 1981 c 51 s 8;

(10) RCW 25.10.090 (Amendment to certificate—Restatement of certificate) and 1987 c 55 s 6 & 1981 c 51 s 9;

(11) RCW 25.10.100 (Cancellation of certificate) and 1991 c 269 s 3, 1987 c 55 s 7, & 1981 c 51 s 10;

(12) RCW 25.10.110 (Execution of documents) and 1991 c 269 s 4, 1987 c 55 s 8, & 1981 c 51 s 11;

(13) RCW 25.10.120 (Execution of certificate by judicial act) and 1987 c 55 s 9 & 1981 c 51 s 12;

(14) RCW 25.10.130 (Filing in office of secretary of state) and 1991 c 269 s 5, 1987 c 55 s 10, 1982 c 35 s 178, & 1981 c 51 s 13;

(15) RCW 25.10.140 (Liability for false statement in certificate) and 1991 c 269 s 6, 1987 c 55 s 11, & 1981 c 51 s 14;

(16) RCW 25.10.150 (Notice) and 1987 c 55 s 12 & 1981 c 51 s 15;

(17) RCW 25.10.160 (Delivery of certificates to limited partners) and 1991 c 269 s 7, 1987 c 55 s 13, & 1981 c 51 s 16;

(18) RCW 25.10.170 (Admission of limited partners) and 1987 c 55 s 14 & 1981 c 51 s 17;

(19) RCW 25.10.180 (Voting) and 1981 c 51 s 18;

(20) RCW 25.10.190 (Liability to third parties) and 1987 c 55 s 15 & 1981 c 51 s 19;

(21) RCW 25.10.200 (Person erroneously believing that he or she is limited partner) and 1987 c 55 s 16, 1983 c 302 s 1, & 1981 c 51 s 20;

(22) RCW 25.10.210 (Information) and 1991 c 269 s 10, 1987 c 55 s 17, & 1981 c 51 s 21;

(23) RCW 25.10.220 (Admission of additional general partners) and 2000 c 169 s 6 & 1981 c 51 s 22;

(24) RCW 25.10.230 (Events of withdrawal of general partner) and 2000 c 169 s 7, 1987 c 55 s 18, & 1981 c 51 s 23;

(25) RCW 25.10.240 (General powers and liabilities of general partner) and 1987 c 55 s 19, 1983 c 302 s 2, & 1981 c 51 s 24;

(26) RCW 25.10.250 (Contributions by a general partner) and 1987 c 55 s 20 & 1981 c 51 s 25;

(27) RCW 25.10.260 (Voting) and 1981 c 51 s 26;

(28) RCW 25.10.270 (Form of contribution) and 1981 c 51 s 27;

(29) RCW 25.10.280 (Liability for contributions) and 1987 c 55 s 21 & 1981 c 51 s 28;

(30) RCW 25.10.290 (Sharing of profits and losses) and 1987 c 55 s 22 & 1981 c 51 s 29;

(31) RCW 25.10.300 (Sharing of distributions) and 1987 c 55 s 23 & 1981 c 51 s 30;

(32) RCW 25.10.310 (Interim distributions) and 1987 c 55 s 24, 1982 c 35 s 179, & 1981 c 51 s 31;

(33) RCW 25.10.320 (Withdrawal of general partner) and 1981 c 51 s 32;

(34) RCW 25.10.330 (Withdrawal of limited partner) and 1996 c 76 s 2, 1987 c 55 s 25, & 1981 c 51 s 33;

(35) RCW 25.10.340 (Distribution upon withdrawal) and 1987 c 55 s 26 & 1981 c 51 s 34;

(36) RCW 25.10.350 (Distribution in kind) and 1987 c 55 s 27 & 1981 c 51 s 35;

(37) RCW 25.10.360 (Right to distribution) and 1981 c 51 s 36;

(38) RCW 25.10.370 (Limitations on distributions) and 1991 c 269 s 29, 1987 c 55 s 28, & 1981 c 51 s 37;

(39) RCW 25.10.390 (Nature of partnership interest) and 1981 c 51 s 39;

(40) RCW 25.10.400 (Assignment of partnership interest—Certificate of partnership interest) and 1987 c 55 s 30 & 1981 c 51 s 40;

(41) RCW 25.10.410 (Rights of creditor) and 1981 c 51 s 41;

(42) RCW 25.10.420 (Right of assignee to become limited partner) and 1987 c 55 s 31 & 1981 c 51 s 42;

(43) RCW 25.10.430 (Power of estate of deceased or incompetent partner) and 1981 c 51 s 43;

(44) RCW 25.10.440 (Nonjudicial dissolution) and 2000 c 169 s 8, 1996 c 76 s 3, 1991 c 269 s 30, 1987 c 55 s 32, & 1981 c 51 s 44;

(45) RCW 25.10.450 (Judicial dissolution) and 1981 c 51 s 45;

(46) RCW 25.10.453 (Administrative dissolution—Commencement of proceeding) and 1998 c 277 s 3 & 1991 c 269 s 31;

(47) RCW 25.10.455 (Administrative dissolution—Notice—Opportunity to correct deficiencies) and 1991 c 269 s 32;

(48) RCW 25.10.457 (Administrative dissolution—Reinstatement—Application—When effective) and 1991 c 269 s 33;

(49) RCW 25.10.460 (Winding up) and 1981 c 51 s 46;

(50) RCW 25.10.470 (Distribution of assets) and 1981 c 51 s 47;

(51) RCW 25.10.480 (Law governing) and 1981 c 51 s 48;

(52) RCW 25.10.490 (Registration) and 1987 c 55 s 33 & 1981 c 51 s 49;

(53) RCW 25.10.500 (Issuance of registration) and 1981 c 51 s 50;

(54) RCW 25.10.510 (Name—Foreign limited partnership) and 1987 c 55 s 34 & 1981 c 51 s 51;

(55) RCW 25.10.520 (Changes and amendments) and 1981 c 51 s 52;

(56) RCW 25.10.530 (Cancellation of registration) and 1981 c 51 s 53;

(57) RCW 25.10.540 (Transaction of business without registration) and 1981 c 51 s 54;

(58) RCW 25.10.550 (Action by secretary of state) and 1981 c 51 s 55;

(59) RCW 25.10.553 (Revocation of registration—Commencement of proceeding) and 1998 c 277 s 4 & 1991 c 269 s 43;

(60) RCW 25.10.555 (Revocation of registration—Notice—Opportunity to correct deficiencies) and 1991 c 269 s 44;

(61) RCW 25.10.560 (Right of action) and 1981 c 51 s 56;

(62) RCW 25.10.570 (Proper plaintiff) and 1981 c 51 s 57;

(63) RCW 25.10.580 (Pleading) and 1981 c 51 s 58;

(64) RCW 25.10.590 (Expenses) and 1981 c 51 s 59;

(65) RCW 25.10.600 (Establishment of filing fees and miscellaneous charges) and 1991 c 269 s 12, 1991 c 72 s 48, 1987 c 55 s 35, & 1981 c 51 s 60;

(66) RCW 25.10.610 (Authority to adopt rules) and 1981 c 51 s 61;

(67) RCW 25.10.620 (Construction and application) and 1981 c 51 s 62;

(68) RCW 25.10.630 (Short title) and 1981 c 51 s 63;

(69) RCW 25.10.640 (Severability—1981 c 51) and 1981 c 51 s 64;

(70) RCW 25.10.650 (Effective date and extended effective date—1981 c 51) and 1981 c 51 s 65;

(71) RCW 25.10.660 (Rules for class not provided for in this chapter) and 2000 c 169 s 9 & 1981 c 51 s 66;

(72) RCW 25.10.670 (Application to existing partnerships) and 1981 c 51 s 67;

(73) RCW 25.10.680 (Effect of invalidity of part of this title) and 1981 c 51 s 68;

(74) RCW 25.10.690 (Section captions) and 1981 c 51 s 71;

(75) RCW 25.10.800 (Merger—Plan—Effective date) and 1998 c 103 s 1314 & 1991 c 269 s 11;

(76) RCW 25.10.810 (Merger—Plan—Approval) and 1998 c 103 s 1315 & 1991 c 269 s 13;

(77) RCW 25.10.820 (Articles of merger—Filing) and 1998 c 103 s 1316 & 1991 c 269 s 14;

(78) RCW 25.10.830 (Effect of merger) and 1998 c 103 s 1317 & 1991 c 269 s 15;

(79) RCW 25.10.840 (Merger—Foreign and domestic) and 1998 c 103 s 1318 & 1991 c 269 s 16;

(80) RCW 25.10.900 (Definitions) and 1991 c 269 s 17;

(81) RCW 25.10.905 (Partner—Dissent—Payment of fair value) and 1991 c 269 s 18;

(82) RCW 25.10.910 (Dissenters' rights—Notice—Timing) and 1991 c 269 s 19;

(83) RCW 25.10.915 (Partner—Dissent—Voting restriction) and 1991 c 269 s 20;

(84) RCW 25.10.920 (Partners—Dissenters' notice—Requirements) and 1991 c 269 s 21;

(85) RCW 25.10.925 (Partner—Payment demand—Entitlement) and 1991 c 269 s 22;

(86) RCW 25.10.930 (Partnership interests—Transfer restrictions) and 1991 c 269 s 23;

(87) RCW 25.10.935 (Payment of fair value—Requirements for compliance) and 1991 c 269 s 24;

(88) RCW 25.10.940 (Merger—Not effective within sixty days—Transfer restrictions) and 1991 c 269 s 25;

(89) RCW 25.10.945 (Dissenter's estimate of fair value—Notice) and 1991 c 269 s 26;

(90) RCW 25.10.950 (Unsettled demand for payment—Proceeding—Parties—Appraisers) and 1991 c 269 s 27; and

(91) RCW 25.10.955 (Unsettled demand for payment—Costs—Fees and expenses of counsel) and 1991 c 269 s 28.

NEW SECTION. **Sec. 1306.** APPLICATION TO EXISTING RELATIONSHIPS. (1) Before July 1, 2010, this chapter governs only:

(a) A limited partnership formed on or after the effective date of this section; and

(b) Except as otherwise provided in subsections (3) and (4) of this section, a limited partnership formed before the effective date of this section that elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

(2) Except as otherwise provided in subsection (3) of this section, on and after July 1, 2010, this chapter governs all limited partnerships.

(3) With respect to a limited partnership formed before the effective date of this section, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(a) Section 104(3) of this act does not apply and the limited partnership has whatever duration it had under the law applicable immediately before the effective date of this section.

(b) The limited partnership is not required to amend its certificate of limited partnership to comply with section 201(1)(d) of this act.

(c) Sections 601 and 602 of this act do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before the effective date of this section.

(d) Section 603(4) of this act does not apply.

(e) Section 603(5) of this act does not apply and a court has the same power to expel a general partner as the court had immediately before the effective date of this section.

(f) Section 801(3) of this act does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before the effective date of this section.

(4) With respect to a limited partnership that elects pursuant to subsection (1)(b) of this section to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the limited partnership's general partners to third parties apply:

(a) Before July 1, 2010, to:

(i) A third party that had not done business with the limited partnership in the year before the election took effect; and

(ii) A third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and

(b) On and after July 1, 2010, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under (a)(ii) of this subsection.

NEW SECTION. **Sec. 1307.** ESTABLISHMENT OF FILING FEES AND MISCELLANEOUS CHARGES. (1) The secretary of state shall adopt rules establishing fees that shall be charged and collected for:

(a) Filing of a certificate of limited partnership or an application for a certificate of authority of a foreign limited partnership;

(b) Filing of an amendment or restatement of a certificate of domestic or foreign limited partnership;

(c) Filing an application to reserve, register, or transfer a limited partnership name;

(d) Filing any other certificate, statement, or report authorized or permitted to be filed; and

(e) Copies, certified copies, certificates, service of process filings, and expedited filings or other special services.

(2) In the establishment of a fee schedule, the secretary of state shall, insofar as is possible and reasonable, be guided by the fee schedule provided for corporations governed by Title 23B RCW.

(a) Fees for copies, certified copies, certificates of record, and service of process filings are the same as in RCW 23B.01.220.

(b) Fees for reinstatement of a foreign or domestic limited partnership are the same as in RCW 23B.01.560.

(c) All fees collected by the secretary of state shall be deposited with the state treasurer pursuant to law.

NEW SECTION. **Sec. 1308.** AUTHORITY TO ADOPT RULES. The secretary of state has the power and authority reasonably necessary for the efficient and effective administration of this chapter, including the adoption of rules under chapter 34.05 RCW.

NEW SECTION. **Sec. 1309.** SAVINGS CLAUSE. This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

NEW SECTION. **Sec. 1310.** Captions and article headings used in this act are not any part of the law.

NEW SECTION. **Sec. 1311.** Sections 101 through 1304 and 1306 through 1310 of this act are each added to chapter 25.10 RCW.

Sec. 1401. RCW 23B.11.080 and 1998 c 103 s 1310 are each amended to read as follows:

(1) One or more domestic corporations may merge with one or more limited liability companies, partnerships, or limited partnerships if:

(a) The board of directors of each corporation adopts and the shareholders of each corporation approve, if approval would be necessary, the plan of merger as required by RCW 23B.11.030;

(b) The partners of each limited partnership approve the plan of merger as required by ((~~RCW 25.10.810~~)) section 1107 of this act;

(c) The partners of each partnership approve the plan of merger as required by RCW 25.05.375; and

(d) The members of each limited liability company approve, if approval is necessary, the plan of merger as required by RCW 25.15.400.

(2) The plan of merger must set forth:

(a) The name of each limited liability company, partnership, corporation, and limited partnership planning to merge and the name of the surviving limited liability company, partnership, corporation, or limited partnership into which each other limited liability company, partnership, corporation, or limited partnership plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation, the member interests of each limited liability company, and the partnership interests in each partnership and each limited partnership into shares, limited liability company member interests, partnership interests, obligations((~~[,]~~)), or other securities of the surviving limited liability company, partnership, corporation, or limited partnership, or into cash or other property, including shares, obligations, or securities of any other limited liability company, partnership, or corporation, and partnership interests, obligations, or securities of any other limited partnership, in whole or in part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation;

(b) Amendments to the certificate of limited partnership of the surviving limited partnership; and

(c) Other provisions relating to the merger.

Sec. 1402. RCW 23B.11.090 and 1998 c 103 s 1311 are each amended to read as follows:

After a plan of merger for one or more corporations and one or more limited partnerships, one or more partnerships, or one or more limited liability companies is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), is approved by the partners for each limited partnership as required by ((~~RCW 25.10.810~~)) section 1107 of this act, is approved by the partners of each partnership as required by RCW 25.05.380, or is approved by the members of each limited liability company as required by RCW 25.15.400, the surviving entity must:

(1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:

(a) The plan of merger;

(b) A statement that the merger was duly approved by the shareholders of each corporation pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and

(c) A statement that the merger was duly approved by the partners of each limited partnership pursuant to ((~~RCW 25.10.810~~)) section 1107 of this act.

(2) If the surviving entity is a limited partnership, comply with the requirements in ((~~RCW 25.10.820~~)) section 1108 of this act.

(3) If the surviving entity is a partnership, comply with the requirements in RCW 25.05.380.

(4) If the surviving entity is a limited liability company, comply with the requirements in RCW 25.15.405.

Sec. 1403. RCW 23B.11.110 and 1998 c 103 s 1313 are each amended to read as follows:

(1) One or more foreign limited partnerships, foreign corporations, foreign partnerships, and foreign limited liability companies may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations, provided that:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized and the law of the state or country under which each foreign corporation was incorporated and each foreign limited partnership or foreign corporation complies with that law in effecting the merger;

(b) If the surviving entity is a foreign or domestic corporation, that corporation complies with RCW 23B.11.090;

(c) If the surviving entity is a foreign or domestic limited partnership, that limited partnership complies with ((~~RCW 25.10.820~~)) section 1108 of this act;

(d) Each domestic corporation complies with RCW 23B.11.080;

(e) Each domestic limited partnership complies with ((~~RCW 25.10.810~~)) section 1107 of this act;

(f) Each domestic limited liability company complies with RCW 25.15.400; and

(g) Each domestic partnership complies with RCW 25.05.375.

(2) Upon the merger taking effect, a surviving foreign corporation, foreign limited partnership, foreign limited liability corporation, or foreign partnership is deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders or partners of each domestic corporation, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger; and

(b) To agree that it will promptly pay to the dissenting shareholders or partners of each domestic corporation, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger the amount, if any, to which they are entitled under chapter 23B.13 RCW, in the case of dissenting shareholders, or under chapter 25.10, 25.15, or 25.05 RCW, in the case of dissenting partners.

Sec. 1404. RCW 23B.13.020 and 2003 c 35 s 9 are each amended to read as follows:

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) Consummation of a plan of merger to which the corporation is a party (i) if shareholder approval is required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, and the shareholder is entitled to vote on the merger, or (ii) if the corporation is a subsidiary that is merged with its parent under RCW 23B.11.040;

(b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;

(c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation; or

(e) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, ((~~RCW 25.10.900 through 25.10.955~~)) sections 1201 through 1212 of this act, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation.

Sec. 1405. RCW 25.05.355 and 1998 c 103 s 902 are each amended to read as follows:

(1) A partnership may be converted to a limited partnership pursuant to this section.

(2) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(3) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(a) A statement that the partnership was converted to a limited partnership from a partnership;

(b) Its former name; and

(c) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(4) If the partnership was converted to a domestic limited partnership, the certificate must also include:

(a) The name of the limited partnership;

(b) The address of the office for records and the name and address of the agent for service of process appointed pursuant to ((~~RCW 25.10.040~~)) section 114 of this act;

(c) The name and the geographical and mailing address of each general partner;

(d) The latest date upon which the limited partnership is to dissolve; and

(e) Any other matters the general partners determine to include therein.

(5) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(6) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Washington uniform limited partnership act.

Sec. 1406. RCW 25.05.375 and 1998 c 103 s 906 are each amended to read as follows:

(1) Unless otherwise provided in the partnership agreement, approval of a plan of merger by a domestic partnership party to the merger shall occur when the plan is approved by all of the partners.

(2) If a domestic limited partnership is a party to the merger, the plan of merger shall be adopted and approved as provided in ((~~RCW 25.10.810~~)) section 1107 of this act.

(3) If a domestic limited liability company is a party to the merger, the plan of merger shall be adopted and approved as provided in RCW 25.15.400.

(4) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW.

Sec. 1407. RCW 25.05.385 and 1998 c 103 s 908 are each amended to read as follows:

(1) When a merger takes effect:

(a) Every other partnership, limited liability company, limited partnership, or corporation that is party to the merger merges into the surviving partnership, limited liability company, limited partnership, or corporation and the separate existence of every partnership, limited liability company, limited partnership, or corporation except the surviving partnership, limited liability company, limited partnership, or corporation ceases;

(b) The title to all real estate and other property owned by each partnership, limited liability company, limited partnership, and corporation party to the merger is vested in the surviving partnership, limited liability company, limited partnership, or corporation without reversion or impairment;

(c) The surviving partnership, limited liability company, limited partnership, or corporation has all liabilities of each partnership, limited liability company, limited partnership, and corporation that is party to the merger;

(d) A proceeding pending against any partnership, limited liability company, limited partnership, or corporation that is party to the merger may be continued as if the merger did not occur or the surviving partnership, limited liability company, limited partnership, or corporation may be substituted in the proceeding for the partnership, limited liability company, limited partnership, or corporation whose existence ceased;

(e) The certificate of formation of the surviving limited liability company is amended to the extent provided in the plan of merger;

(f) The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;

(g) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(h) The former members of every limited liability company party to the merger, the former holders of the partnership interests of every domestic partnership or limited partnership that is party to the merger, and the former holders of the shares of every domestic corporation that is party to the merger are entitled only to the rights provided in the plan of merger, or to their rights under this article, to their rights under ((~~RCW 25.10.900 through 25.10.955~~)) sections 1201 through 1212 of this act, or to their rights under chapter 23B.13 RCW.

(2) Unless otherwise agreed, a merger of a domestic partnership, including a domestic partnership which is not the surviving entity in the merger, shall not

require the domestic partnership to wind up its affairs under article 8 of this chapter.

(3) Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership which is not the surviving entity in the merger, shall not require the domestic limited partnership to wind up its affairs under ((~~RCW 25.10.460~~)) section 803 of this act or pay its liabilities and distribute its assets under ((~~RCW 25.10.470~~)) section 811 of this act.

(4) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under RCW 25.15.295 or pay its liabilities and distribute its assets under RCW 25.15.300.

Sec. 1408. RCW 25.05.390 and 1998 c 103 s 909 are each amended to read as follows:

(1) One or more foreign partnerships, foreign limited liability companies, foreign limited partnerships, and foreign corporations may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations if:

(a) The merger is permitted by the law of the jurisdiction under which each foreign partnership was organized, each foreign limited liability company was formed, each foreign limited partnership was organized, and each foreign corporation was incorporated, and each foreign partnership, foreign limited liability company, foreign limited partnership, and foreign corporation complies with that law in effecting the merger;

(b) The surviving entity complies with RCW 25.05.380;

(c) Each domestic limited liability company complies with RCW 25.15.400;

(d) Each domestic limited partnership complies with ((~~RCW 25.10.810~~)) section 1107 of this act; and

(e) Each domestic corporation complies with RCW 23B.11.080.

(2) Upon the merger taking effect, a surviving foreign limited liability company, limited partnership, or corporation is deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting members, partners, or shareholders of each domestic limited liability company, domestic limited partnership, or domestic corporation party to the merger.

Sec. 1409. RCW 25.05.425 and 1998 c 103 s 1002 are each amended to read as follows:

(1) Except as provided in RCW 25.05.435 or 25.05.445(2), a partner in a domestic partnership is entitled to dissent from, and obtain payment of the fair value of the partner's interest in a partnership in the event of consummation of a plan of merger to which the partnership is a party as permitted by RCW 25.05.370 or 25.05.390.

(2) A partner entitled to dissent and obtain payment for the partner's interest in a partnership under this article may not challenge the merger creating the partner's entitlement unless the merger fails to comply with the procedural requirements imposed by this title, Title 23B RCW, ((~~RCW 25.10.800 through 25.10.840~~)) sections 1106 through 1110 of this act, or 25.15.430, as applicable,

or the partnership agreement, or is fraudulent with respect to the partner or the partnership.

(3) The right of a dissenting partner in a partnership to obtain payment of the fair value of the partner's interest in the partnership shall terminate upon the occurrence of any one of the following events:

(a) The proposed merger is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the merger; or

(c) The partner's demand for payment is withdrawn with the written consent of the partnership.

Sec. 1410. RCW 25.15.010 and 1998 c 102 s 9 are each amended to read as follows:

(1) The name of each limited liability company as set forth in its certificate of formation:

(a) Must contain the words "Limited Liability Company," the words "Limited Liability" and abbreviation "Co.," or the abbreviation "L.L.C." or "LLC";

(b) Except as provided in subsection (1)(d) of this section, may contain the name of a member or manager;

(c) Must not contain language stating or implying that the limited liability company is organized for a purpose other than those permitted by RCW 25.15.030;

(d) Must not contain any of the words or phrases:"Bank," "banking," "banker," "trust," "cooperative," "partnership," "corporation," "incorporated," or the abbreviations "corp.," "ltd.," or "inc.," or "LP," "L.P.," "LLP," "L.L.P.," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(e) Must be distinguishable upon the records of the secretary of state from the names described in RCW 23B.04.010(1)(d) and ((~~25.10.020(1)(d)~~)) section 108(4) of this act, and the names of any limited liability company reserved, registered, or formed under the laws of this state or qualified to do business as a foreign limited liability company in this state.

(2) A limited liability company may apply to the secretary of state for authorization to use any name which is not distinguishable upon the records of the secretary of state from one or more of the names described in subsection (1)(e) of this section. The secretary of state shall authorize use of the name applied for if the other corporation, limited partnership, limited liability partnership, or limited liability company consents in writing to the use and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited liability company.

(3) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability company," or "limited liability partnership," or

the abbreviations "corp.," "inc.," "co.," "ltd.," "LP," "L.P.," "LLP," "L.L.P.," "LLC," or "L.L.C.";

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(4) This chapter does not control the use of assumed business names or "trade names."

Sec. 1411. RCW 25.15.325 and 2002 c 74 s 19 are each amended to read as follows:

(1) A foreign limited liability company may register with the secretary of state under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company," the words "Limited Liability" and the abbreviation "Co.," or the abbreviation "L.L.C." or "LLC" and that could be registered by a domestic limited liability company. A foreign limited liability company may apply to the secretary of state for authorization to use a name which is not distinguishable upon the records of the office of the secretary of state from the names described in RCW 23B.04.010 and ((~~25.10.020~~)) section 108 of this act, and the names of any domestic or foreign limited liability company reserved, registered, or formed under the laws of this state. The secretary of state shall authorize use of the name applied for if the other corporation, limited liability company, limited liability partnership, or limited partnership consents in writing to the use and files with the secretary of state documents necessary to change its name, or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying foreign limited liability company.

(2) Each foreign limited liability company shall continuously maintain in this state:

(a) A registered office, which may but need not be a place of its business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the foreign limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent for service of process on the foreign limited liability company, which agent may be either an individual resident of this state whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, a limited partnership or limited liability company, or a foreign corporation authorized to do business in this state having a business office identical with such registered office; and

(c) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written

consent shall be filled with or as a part of the document first appointing a registered agent. In the event any individual, limited liability company, limited partnership, or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

(3) A foreign limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) The name of the foreign limited liability company;

(b) If the current registered office is to be changed, the street address of the new registered office in accord with subsection (2)(a) of this section;

(c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(4) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (3) of this section and recites that the foreign limited liability company has been notified of the change.

(5) A registered agent of any foreign limited liability company may resign as agent by signing and delivering to the secretary of state for filing a statement that the registered office is also discontinued. After filing the statement the secretary of state shall mail a copy of the statement to the foreign limited liability company at its principal place of business shown in its application for certificate of registration if no annual report has been filed. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

Sec. 1412. RCW 25.15.400 and 1998 c 103 s 1320 are each amended to read as follows:

(1) Unless otherwise provided in the limited liability company agreement, approval of a plan of merger by a domestic limited liability company party to the merger shall occur when the plan is approved by the members, or if there is more than one class or group of members, then by each class or group of members, in either case, by members contributing more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to RCW 25.15.135) of the contributions made, or obligated to be made, by all members or by the members in each class or group, as appropriate.

(2) If a domestic limited partnership is a party to the merger, the plan of merger shall be adopted and approved as provided in ((~~RCW 25.10.810~~)) section 1107 of this act.

(3) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW.

(4) If a domestic partnership is a party to the merger, the plan of merger must be approved as provided in RCW 25.05.375.

Sec. 1413. RCW 25.15.405 and 1998 c 103 s 1321 are each amended to read as follows:

After a plan of merger is approved or adopted, the surviving partnership, limited liability company, limited partnership, or corporation shall deliver to the secretary of state for filing articles of merger setting forth:

(1) The plan of merger;

(2) If the approval of any members, partners, or shareholders of one or more partnerships, limited liability companies, limited partnerships, or corporations party to the merger was not required, a statement to that effect; or

(3) If the approval of any members, partners, or shareholders of one or more of the partnerships, limited liability companies, limited partnerships, or corporations party to the merger was required, a statement that the merger was duly approved by such members, partners, and shareholders pursuant to RCW 25.05.375, 25.15.400, ((~~25.10.810~~)) section 1107 of this act, or chapter 23B.11 RCW.

Sec. 1414. RCW 25.15.410 and 1998 c 103 s 1322 are each amended to read as follows:

(1) When a merger takes effect:

(a) Every other partnership, limited liability company, limited partnership, or corporation that is party to the merger merges into the surviving partnership, limited liability company, limited partnership, or corporation and the separate existence of every partnership, limited liability company, limited partnership, or corporation except the surviving partnership, limited liability company, limited partnership, or corporation ceases;

(b) The title to all real estate and other property owned by each partnership, limited liability company, limited partnership, and corporation party to the merger is vested in the surviving partnership, limited liability company, limited partnership, or corporation without reversion or impairment;

(c) The surviving partnership, limited liability company, limited partnership, or corporation has all liabilities of each partnership, limited liability company, limited partnership, and corporation that is party to the merger;

(d) A proceeding pending against any partnership, limited liability company, limited partnership, or corporation that is party to the merger may be continued as if the merger did not occur or the surviving partnership, limited liability company, limited partnership, or corporation may be substituted in the proceeding for the partnership, limited liability company, limited partnership, or corporation whose existence ceased;

(e) The certificate of formation of the surviving limited liability company is amended to the extent provided in the plan of merger;

(f) The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;

(g) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(h) The former members of every limited liability company party to the merger, holders of the partnership interests of every domestic partnership or domestic limited partnership that is party to the merger, and the former holders of the shares of every domestic corporation that is party to the merger are entitled only to the rights provided in the plan of merger, to their rights under chapter 25.05 RCW, to their rights under this article, to their rights under ((~~RCW~~

~~25.10.900 through 25.10.955~~)) sections 1201 through 1212 of this act, or to their rights under chapter 23B.13 RCW.

(2) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under RCW 25.15.295 or pay its liabilities and distribute its assets under RCW 25.15.300.

(3) Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership which is not the surviving entity in the merger, shall not require the domestic limited partnership to wind up its affairs under ((~~RCW 25.10.460~~)) section 803 of this act or pay its liabilities and distribute its assets under ((~~RCW 25.10.470~~)) section 811 of this act.

(4) Unless otherwise agreed, a merger of a domestic partnership, including a domestic partnership which is not the surviving entity in the merger, shall not require the domestic partnership to wind up its affairs under article 8 of chapter 25.05 RCW.

(5) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under article 8 of chapter 25.15 RCW.

Sec. 1415. RCW 25.15.415 and 1998 c 103 s 1323 are each amended to read as follows:

(1) One or more foreign partnerships, one or more foreign limited liability companies, one or more foreign limited partnerships, and one or more foreign corporations may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations if:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited liability company was formed, each foreign partnership or foreign limited partnership was organized, and each foreign corporation was incorporated, and each foreign limited liability company, foreign partnership, foreign limited partnership, and foreign corporation complies with that law in effecting the merger;

(b) The surviving entity complies with RCW 25.15.405 and 25.05.380;

(c) Each domestic limited liability company complies with RCW 25.15.400;

(d) Each domestic limited partnership complies with ((~~RCW 25.10.810~~)) section 1107 of this act; and

(e) Each domestic corporation complies with RCW 23B.11.080.

(2) Upon the merger taking effect, a surviving foreign limited liability company, limited partnership, or corporation is deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting partners or shareholders of each domestic limited liability company, domestic limited partnership, or domestic corporation party to the merger.

Sec. 1416. RCW 25.15.430 and 1994 c 211 s 1202 are each amended to read as follows:

(1) Except as provided in RCW 25.15.440 or 25.15.450(2), a member of a domestic limited liability company is entitled to dissent from, and obtain

payment of, the fair value of the member's interest in a limited liability company in the event of consummation of a plan of merger to which the limited liability company is a party as permitted by RCW 25.15.395 or 25.15.415.

(2) A member entitled to dissent and obtain payment for the member's interest in a limited liability company under this article may not challenge the merger creating the member's entitlement unless the merger fails to comply with the procedural requirements imposed by this title, Title 23B RCW, ((~~RCW 25.10.800 through 25.10.840~~)) sections 1106 through 1110 of this act, or the limited liability company agreement, or is fraudulent with respect to the member or the limited liability company.

(3) The right of a dissenting member in a limited liability company to obtain payment of the fair value of the member's interest in the limited liability company shall terminate upon the occurrence of any one of the following events:

(a) The proposed merger is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the merger; or

(c) The member's demand for payment is withdrawn with the written consent of the limited liability company.

NEW SECTION. **Sec. 1417.** Sections 1401 through 1416 of this act take effect July 1, 2010.

Passed by the House March 5, 2009.
Passed by the Senate April 10, 2009.
Approved by the Governor April 23, 2009.
Filed in Office of Secretary of State April 24, 2009.

CHAPTER 189

[House Bill 1068]

WASHINGTON BUSINESS CORPORATION ACT

AN ACT Relating to the Washington business corporation act; amending RCW 23B.01.410, 23B.02.020, 23B.02.050, 23B.02.060, 23B.06.020, 23B.06.040, 23B.06.210, 23B.06.220, 23B.06.260, 23B.06.310, 23B.06.400, 23B.07.030, 23B.07.040, 23B.07.060, 23B.07.070, 23B.07.200, 23B.07.250, 23B.07.260, 23B.07.270, 23B.07.280, 23B.07.320, 23B.08.030, 23B.08.210, 23B.08.230, 23B.08.240, 23B.08.250, 23B.08.500, 23B.08.550, 23B.08.700, 23B.10.020, 23B.10.060, 23B.10.070, 23B.10.080, 23B.10.200, 23B.10.205, 23B.10.210, 23B.11.030, 23B.11.040, 23B.12.020, 23B.13.020, 23B.13.200, 23B.13.210, 23B.13.220, 23B.13.240, 23B.13.260, 23B.13.270, 23B.13.280, 23B.14.010, 23B.14.020, 23B.14.030, 23B.14.040, 23B.14.050, 23B.16.010, 23B.16.020, and 23B.19.040; and reenacting and amending RCW 23B.01.400.

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

Sec. 1. RCW 23B.01.400 and 2002 c 297 s 9 and 2002 c 296 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 title.

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so prepared that a reasonable person against whom the record is to operate should have noticed it. For example, printing in

italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) "Corporate action" means any resolution, act, policy, contract, transaction, plan, adoption or amendment of articles of incorporation or bylaws, or other matter approved by or submitted for approval to a corporation's incorporators, board of directors or a committee thereof, or shareholders.

(5) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this title.

(((~~(5)~~))) (6) "Deliver" includes (a) mailing, (b) for purposes of delivering a demand, consent, notice, or waiver to the corporation or one of its officers, directors, or shareholders, transmission by facsimile equipment, and (c) for purposes of delivering a demand, consent, notice, or waiver to the corporation or one of its officers, directors, or shareholders under RCW 23B.01.410 or chapter 23B.07, 23B.08, 23B.11, 23B.13, 23B.14, or 23B.16 RCW delivery by electronic transmission.

(((~~(6)~~))) (7) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a distribution in partial or complete liquidation, or upon voluntary or involuntary dissolution; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(((~~(7)~~))) (8) "Effective date of notice" has the meaning provided in RCW 23B.01.410.

(((~~(8)~~))) (9) "Electronic transmission" means an electronic communication (a) not directly involving the physical transfer of a record in a tangible medium and (b) that may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by such a sender and recipient.

(((~~(9)~~))) (10) "Electronically transmitted" means the initiation of an electronic transmission.

(((~~(10)~~))) (11) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(((~~(11)~~))) (12) "Entity" includes a corporation and foreign corporation, not-for-profit corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, two or more persons having a joint or common economic interest, the state, United States, and a foreign governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(((~~(12)~~))) (13) "Execute," "executes," or "executed" means (a) signed with respect to a written record or (b) electronically transmitted along with sufficient information to determine the sender's identity with respect to an electronic transmission, or (c) with respect to a record to be filed with the secretary of state, in compliance with the standards for filing with the office of the secretary of state as prescribed by the secretary of state.

(((~~(13)~~))) (14) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(((~~(14)~~))) (15) "Foreign limited partnership" means a partnership formed under laws other than of this state and having as partners one or more general partners and one or more limited partners.

(((~~(15)~~))) (16) "Governmental subdivision" includes authority, county, district, and municipality.

(((~~(16)~~))) (17) "Includes" denotes a partial definition.

(((~~(17)~~))) (18) "Individual" includes the estate of an incompetent or deceased individual.

(((~~(18)~~))) (19) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(((~~(19)~~))) (20) "Means" denotes an exhaustive definition.

(((~~(20)~~))) (21) "Notice" has the meaning provided in RCW 23B.01.410.

(((~~(21)~~))) (22) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(((~~(22)~~))) (23) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(((~~(23)~~))) (24) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(((~~(24)~~))) (25) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute.

(((~~(25)~~))) (26) "Record" means information inscribed on a tangible medium or contained in an electronic transmission.

(((~~(26)~~))) (27) "Record date" means the date established under chapter 23B.07 RCW on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(((~~(27)~~))) (28) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RCW 23B.08.400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(((~~(28)~~))) (29) "Shares" means the units into which the proprietary interests in a corporation are divided.

(((~~(29)~~))) (30) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(((~~(30)~~))) (31) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(((~~(31)~~))) (32) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(((~~(32)~~))) (33) "Tangible medium" means a writing, copy of a writing, or facsimile, or a physical reproduction, each on paper or on other tangible material.

(((~~(33)~~))) (34) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(((~~(34)~~))) (35) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group.

(((~~(35)~~))) (36) "Writing" does not include an electronic transmission.

(((~~(36)~~))) (37) "Written" means embodied in a tangible medium.

Sec. 2. RCW 23B.01.410 and 2008 c 59 s 1 are each amended to read as follows:

(1) Notice under this title must be provided in the form of a record, except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

(2) Permissible means of transmission.

(a) Oral notice. Oral notice may be communicated in person, by telephone, wire, or wireless equipment which does not transmit a facsimile of the notice, or by any electronic means which does not create a record. If these forms of oral notice are impracticable, oral notice may be communicated by radio, television, or other form of public broadcast communication.

(b) Notice provided in a tangible medium. Notice may be provided in a tangible medium and be transmitted by mail, private carrier, or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment which transmits a facsimile of the notice. If these forms of notice in a tangible medium are impracticable, notice in a tangible medium may be transmitted by an advertisement in a newspaper of general circulation in the area where published.

(c) Notice provided in an electronic transmission.

(i) Notice may be provided in an electronic transmission and be electronically transmitted.

(ii) Notice to shareholders or directors in an electronic transmission is effective only with respect to shareholders and directors that have consented, in the form of a record, to receive electronically transmitted notices under this title and designated in the consent the address, location, or system to which these notices may be electronically transmitted and with respect to a notice that otherwise complies with any other requirements of this title and applicable federal law.

(A) Notice to shareholders or directors for this purpose includes material that this title requires to accompany the notice.

(B) A shareholder or director who has consented to receipt of electronically transmitted notices may revoke this consent by delivering a revocation to the corporation in the form of a record.

(C) The consent of any shareholder or director is revoked if (I) the corporation is unable to electronically transmit two consecutive notices given by the corporation in accordance with the consent, and (II) this inability becomes known to the secretary of the corporation, the transfer agent, or any other person responsible for giving the notice. The inadvertent failure by the corporation to

treat this inability as a revocation does not invalidate any meeting or other corporate action.

(iii) Notice to shareholders or directors who have consented to receipt of electronically transmitted notices may be provided by (A) posting the notice on an electronic network and (B) delivering to the shareholder or director a separate record of the posting, together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.

(iv) Notice to a domestic or foreign corporation, authorized to transact business in this state, in an electronic transmission is effective only with respect to a corporation that has designated in a record an address, location, or system to which the notices may be electronically transmitted.

(d) Materials accompanying notice to shareholders of public companies. Notwithstanding anything to the contrary in this section or any other section of this title, if this title requires that a notice to shareholders be accompanied by certain material, a public company may satisfy such a requirement, whether or not a shareholder has consented to receive electronically transmitted notice, by (i) posting the material on an electronic network (either separate from, or in combination or as part of, any other materials the public company has posted on the electronic network in compliance with applicable federal law) at or prior to the time that the notice is delivered to the public company's shareholders entitled to receive the notice, and (ii) delivering to the public company's shareholders entitled to receive the notice a separate record of the posting (which record may accompany, or be contained in, the notice), together with comprehensible instructions regarding how to obtain access to the posting on the electronic network. In such a case, the material is deemed to have been delivered to the public company's shareholders at the time the notice to the shareholders is effective under this section. A public company that elects pursuant to this section to post on an electronic network any material required by this title to accompany a notice to shareholders is required, at its expense, to provide a copy of the material in a tangible medium (alone or in combination or as part of any other materials the public company has posted on the electronic network in compliance with federal law) to any shareholder entitled to such a notice who so requests.

(3) Effective time and date of notice.

(a) Oral notice. Oral notice is effective when received.

(b) Notice provided in a tangible medium.

(i) Notice in a tangible medium, if in a comprehensible form, is effective at the earliest of the following:

(A) If expressly authorized by the articles of incorporation or bylaws, and if notice is sent to the person's address, telephone number, or other number appearing on the records of the corporation, when dispatched by telegraph, teletype, or facsimile equipment;

(B) When received;

(C) Except as provided in (b)(ii) of this subsection, five days after its deposit in the United States mail, as evidenced by the postmark, if mailed with first-class postage, prepaid and correctly addressed; or

(D) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(ii) Notice in a tangible medium by a domestic or foreign corporation to its shareholder, if in a comprehensible form and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, is effective:

(A) When mailed, if mailed with first-class postage prepaid; and

(B) When dispatched, if prepaid, by air courier.

(iii) Notice in a tangible medium to a domestic or foreign corporation, authorized to transact business in this state, may be addressed to the corporation's registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report, or in the case of a foreign corporation that has not yet delivered its annual report in its application for a certificate of authority.

(c) Notice provided in an electronic transmission. Notice provided in an electronic transmission, if in comprehensible form, is effective when it: (i) Is electronically transmitted to an address, location, or system designated by the recipient for that purpose; or (ii) has been posted on an electronic network and a separate record of the posting has been delivered to the recipient together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.

(4) If this title prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this title, those requirements govern.

Sec. 3. RCW 23B.02.020 and 2002 c 297 s 11 are each amended to read as follows:

(1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of RCW 23B.04.010;

(b) The number of shares the corporation is authorized to issue in accordance with RCW 23B.06.010 and 23B.06.020;

(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office in accordance with RCW 23B.05.010; and

(d) The name and address of each incorporator in accordance with RCW 23B.02.010.

(2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010.

(3) Unless its articles of incorporation provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may adopt bylaws to be effective only in an emergency as provided by RCW 23B.02.070;

(b) A corporation has the purpose of engaging in any lawful business under RCW 23B.03.010;

(c) A corporation has perpetual existence and succession in its corporate name under RCW 23B.03.020;

(d) A corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including itemized powers under RCW 23B.03.020;

(e) All shares are of one class and one series, have unlimited voting rights, and are entitled to receive the net assets of the corporation upon dissolution under RCW 23B.06.010 and 23B.06.020;

(f) If more than one class of shares is authorized, all shares of a class must have preferences, limitations, and relative rights identical to those of other shares of the same class under RCW 23B.06.010;

(g) If the board of directors is authorized to designate the number of shares in a series, the board may, after the issuance of shares in that series, reduce the number of authorized shares of that series under RCW 23B.06.020;

(h) The board of directors must ((~~authorize~~)) approve any issuance of shares under RCW 23B.06.210;

(i) Shares may be issued pro rata and without consideration to shareholders under RCW 23B.06.230;

(j) Shares of one class or series may not be issued as a share dividend with respect to another class or series, unless there are no outstanding shares of the class or series to be issued, or a majority of votes entitled to be cast by such class or series approve as provided in RCW 23B.06.230;

(k) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation under RCW 23B.06.240;

(l) A shareholder has, and may waive, a preemptive right to acquire the corporation's unissued shares as provided in RCW 23B.06.300;

(m) Shares of a corporation acquired by it may be reissued under RCW 23B.06.310;

(n) The board may authorize and the corporation may make distributions not prohibited by statute under RCW 23B.06.400;

(o) The preferential rights upon dissolution of certain shareholders will be considered a liability for purposes of determining the validity of a distribution under RCW 23B.06.400;

(p) Corporate action may be ((~~taken~~)) approved by shareholders by unanimous consent of all shareholders entitled to vote on the corporate action, unless the approval of a lesser number of shareholders is permitted as provided in RCW 23B.07.040, which shareholder consent shall be in the form of a record;

(q) Unless this title requires otherwise, the corporation is required to give notice only to shareholders entitled to vote at a meeting and the notice for an annual meeting need not include the purpose for which the meeting is called under RCW 23B.07.050;

(r) A corporation that is a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(s) Subject to statutory exceptions, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting under RCW 23B.07.210;

(t) A majority of the votes entitled to be cast on a matter by a voting group constitutes a quorum, unless the title provides otherwise under RCW 23B.07.250 and 23B.07.270;

(u) Corporate action on a matter, other than election of directors, by a voting group is approved if the votes cast within the voting group favoring the corporate action exceed the votes cast opposing the corporate action, unless this title requires a greater number of affirmative votes under RCW 23B.07.250;

(v) All shares of one or more classes or series that are entitled to vote will be counted together collectively on any matter at a meeting of shareholders under RCW 23B.07.260;

(w) Directors are elected by cumulative voting under RCW 23B.07.280;

(x) Directors are elected by a plurality of votes cast by shares entitled to vote under RCW 23B.07.280, except as otherwise provided in the articles of incorporation or a bylaw adopted pursuant to RCW 23B.10.205;

(y) A corporation must have a board of directors under RCW 23B.08.010;

(z) All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors under RCW 23B.08.010;

(aa) The shareholders may remove one or more directors with or without cause under RCW 23B.08.080;

(bb) A vacancy on the board of directors may be filled by the shareholders or the board of directors under RCW 23B.08.100;

(cc) A corporation shall indemnify a director who was wholly successful in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding under RCW 23B.08.520;

(dd) A director of a corporation who is a party to a proceeding may apply for indemnification of reasonable expenses incurred by the director in connection with the proceeding to the court conducting the proceeding or to another court of competent jurisdiction under RCW 23B.08.540;

(ee) An officer of the corporation who is not a director is entitled to mandatory indemnification under RCW 23B.08.520, and is entitled to apply for court-ordered indemnification under RCW 23B.08.540, in each case to the same extent as a director under RCW 23B.08.570;

(ff) The corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director under RCW 23B.08.570;

(gg) A corporation may indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific ((~~action~~)) approval of its board of directors, or contract under RCW 23B.08.570;

(hh) A corporation's board of directors may adopt certain amendments to the corporation's articles of incorporation without shareholder ((~~action~~)) approval under RCW 23B.10.020;

(ii) Unless this title or the board of directors requires a greater vote or a vote by voting groups, an amendment to the corporation's articles of incorporation must be approved by each voting group entitled to vote on the proposed amendment by two-thirds, or, in the case of a public company, a majority, of all the votes entitled to be cast by that voting group under RCW 23B.10.030;

(jj) A corporation's board of directors may amend or repeal the corporation's bylaws unless this title reserves this power exclusively to the shareholders in

whole or in part, or unless the shareholders in amending or repealing a bylaw provide expressly that the board of directors may not amend or repeal that bylaw under RCW 23B.10.200;

(kk) Unless this title or the board of directors require a greater vote or a vote by voting groups, a plan of merger or share exchange must be approved by each voting group entitled to vote on the merger or share exchange by two-thirds of all the votes entitled to be cast by that voting group under RCW 23B.11.030;

(ll) Approval by the shareholders of the sale, lease, exchange, or other disposition of all, or substantially all, the corporation's property in the usual and regular course of business is not required under RCW 23B.12.010;

(mm) Approval by the shareholders of the mortgage, pledge, dedication to the repayment of indebtedness, or other encumbrance of any or all of the corporation's property, whether or not in the usual and regular course of business, is not required under RCW 23B.12.010;

(nn) Unless the board of directors requires a greater vote or a vote by voting groups, a sale, lease, exchange, or other disposition of all or substantially all of the corporation's property, other than in the usual and regular course of business, must be approved by each voting group entitled to vote on such transaction by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.12.020; and

(oo) Unless the board of directors requires a greater vote or a vote by voting groups, a proposal to dissolve must be approved by each voting group entitled to vote on the dissolution by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.14.020.

(4) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may ((~~authorize~~)) approve the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;

(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;

(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;

(e) Members of the board of directors may participate in a meeting of the board by any means of similar communication by which all directors participating can hear each other during the meeting under RCW 23B.08.200;

(f) Corporate action permitted or required by this title to be taken at a board of directors' meeting may be ((~~taken~~)) approved without a meeting if ((~~action is taken~~)) approved by all members of the board under RCW 23B.08.210;

(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;

(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;

(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;

(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;

(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and

(l) Unless approved by the shareholders, a corporation may indemnify, or make advances to, a director for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director only to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580.

(5) The articles of incorporation may contain the following provisions:

(a) The names and addresses of the individuals who are to serve as initial directors;

(b) The par value of any authorized shares or classes of shares;

(c) Provisions not inconsistent with law related to the management of the business and the regulation of the affairs of the corporation;

(d) Any provision that under this title is required or permitted to be set forth in the bylaws;

(e) Provisions not inconsistent with law defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(f) Provisions authorizing ((~~shareholder~~)) corporate action to be ((~~taken~~)) approved by consent of less than all of the shareholders entitled to vote on the corporate action, in accordance with RCW 23B.07.040;

(g) If the articles of incorporation authorize dividing shares into classes, the election of all or a specified number of directors may be effected by the holders of one or more authorized classes of shares under RCW 23B.08.040;

(h) The terms of directors may be staggered under RCW 23B.08.060;

(i) Shares may be redeemable or convertible (i) at the option of the corporation, the shareholder, or another person, or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events under RCW 23B.06.010; and

(j) A director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director may be eliminated or limited under RCW 23B.08.320.

(6) The articles of incorporation or the bylaws may contain the following provisions:

(a) A restriction on the transfer or registration of transfer of the corporation's shares under RCW 23B.06.270;

(b) Shareholders may participate in a meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other under RCW 23B.07.080;

(c) A quorum of the board of directors may consist of as few as one-third of the number of directors under RCW 23B.08.240;

(d) If the corporation is registered as an investment company under the investment company act of 1940, a provision limiting the requirement to hold an annual meeting of shareholders as provided in RCW 23B.07.010(2); and

(e) If the corporation is registered as an investment company under the investment company act of 1940, a provision establishing terms of directors which terms may be longer than one year as provided in RCW 23B.05.050.

(7) The articles of incorporation need not set forth any of the corporate powers enumerated in this title.

Sec. 4. RCW 23B.02.050 and 2002 c 297 s 13 are each amended to read as follows:

(1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Corporate action required or permitted by this title to be ((~~taken~~)) approved by incorporators at an organizational meeting may be ((~~taken~~)) approved without a meeting if the ((~~action taken~~)) approval is evidenced by the consent of each of the incorporators in the form of a record describing the corporate action ((~~taken~~)) so approved and executed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

(4) A corporation's initial report containing the information described in RCW 23B.16.220(1) must be delivered to the secretary of state within one hundred twenty days of the date on which the corporation's articles of incorporation were filed.

Sec. 5. RCW 23B.02.060 and 1989 c 165 s 31 are each amended to read as follows:

(1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010;

(3) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may ((~~authorize~~)) approve the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;

(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;

(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;

(e) Members of the board of directors may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200;

(f) Corporate action permitted or required by this title to be ((~~taken~~)) approved at a board of directors' meeting may be ((~~taken~~)) approved without a meeting if the corporate action is ((~~taken~~)) approved by all members of the board under RCW 23B.08.210;

(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;

(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;

(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;

(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;

(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and

(l) Unless approved by shareholders, a corporation may indemnify, or make advances to, a director only for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580 under RCW 23B.08.590.

(4) The bylaws of a corporation may contain any provision, not in conflict with law or the articles of incorporation, for managing the business and regulating the affairs of the corporation, including but not limited to the following:

(a) A restriction on the transfer or registration of transfer of the corporation's shares under RCW 23B.06.270;

(b) Shareholders may participate in a meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other under RCW 23B.07.080; and

(c) A quorum of the board of directors may consist of as few as one-third of the number of directors under RCW 23B.08.240.

Sec. 6. RCW 23B.06.020 and 1998 c 104 s 2 are each amended to read as follows:

(1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, voting powers, and relative rights, within the limits set forth in RCW 23B.06.010(1)(b) and this section of (a) any class of shares before the issuance of any shares of that class, or (b) one or more series within a class, and designate the number of shares within that series, before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations, voting powers, and relative rights identical with those of other shares of the same series, except to the extent otherwise permitted by RCW 23B.06.010(1)(b). All shares of a series must have preferences, limitations, voting powers, and relative rights identical with those of shares of other series of the same class, except to the extent otherwise provided in the description of the series.

(4) Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder ((~~action~~)) approval, that set forth:

(a) The name of the corporation;

(b) The text of the amendment determining the terms of the class or series of shares;

(c) The date it was adopted; and

(d) The statement that the amendment was duly adopted by the board of directors.

(5) Unless the articles of incorporation provide otherwise, the board of directors may, after the issuance of shares of a series whose number it is authorized to designate, amend the resolution establishing the series to decrease, but not below the number of shares of such series then outstanding, the number of authorized shares of that series, by filing articles of amendment, which are effective without shareholder ((~~action~~)) approval, in the manner provided in subsection (4) of this section.

Sec. 7. RCW 23B.06.040 and 1989 c 165 s 47 are each amended to read as follows:

(1) A corporation may:

(a) Issue fractions of a share or pay in money the value of fractions of a share;

(b) Arrange for disposition of fractional shares by the shareholders;

(c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by RCW 23B.06.250(2).

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may ((~~authorize~~)) approve the issuance of scrip subject to any condition considered desirable, including:

(a) That the scrip will become void if not exchanged for full shares before a specified date; and

(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Sec. 8. RCW 23B.06.210 and 1989 c 165 s 49 are each amended to read as follows:

(1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) Any issuance of shares must be ((~~authorized~~)) approved by the board of directors. Shares may be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) A good faith determination by the board of directors that the consideration received or to be received for the shares to be issued is adequate is conclusive insofar as the adequacy of consideration relates to whether the shares are validly issued, fully paid and nonassessable. When the board of directors has made such a determination and the corporation has received the consideration, the shares issued therefor are fully paid and nonassessable.

(4) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect to the shares against their purchase price, until the services are performed, the benefits are received, or the note is paid. If the services are not performed, the benefits are not received, or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(5) Where it cannot be determined that outstanding shares are fully paid and nonassessable, there shall be a conclusive presumption that such shares are fully paid and nonassessable if the board of directors makes a good faith determination that there is no substantial evidence that the full consideration for such shares has not been paid.

Sec. 9. RCW 23B.06.220 and 1989 c 165 s 50 are each amended to read as follows:

A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were ((~~authorized~~)) approved to be issued under RCW 23B.06.210 or specified in the subscription agreement under RCW 23B.06.200.

Sec. 10. RCW 23B.06.260 and 2002 c 297 s 18 are each amended to read as follows:

(1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may ((~~authorize~~)) approve the issue of some or all of the shares of any or all of its classes or series without certificates. The ((~~authorization~~)) approval does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a record containing the information required on certificates by RCW 23B.06.250 (2) and (3), and, if applicable, RCW 23B.06.270.

Sec. 11. RCW 23B.06.310 and 1989 c 165 s 58 are each amended to read as follows:

(1) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(3) The board of directors may adopt articles of amendment under this section without shareholder ((~~action~~)) approval and deliver them to the secretary of state for filing. The articles must set forth:

(a) The name of the corporation;

(b) The reduction in the number of authorized shares, itemized by class and series; and

(c) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

Sec. 12. RCW 23B.06.400 and 2006 c 52 s 2 are each amended to read as follows:

(1) A board of directors may ((~~authorize~~)) approve and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (2) of this section.

(2) No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its liabilities as they become due in the usual course of business; or

(b) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(3) For purposes of determinations under subsection (2) of this section:

(a) The board of directors may base a determination that a distribution is not prohibited under subsection (2) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances; and

(b) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section.

(4) The effect of a distribution under subsection (2) of this section is measured:

(a) In the case of a distribution of indebtedness, the terms of which provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made; or

(b) In the case of any other distribution:

(i) If the distribution is by purchase, redemption, or other acquisition of the corporation's shares, the effect of the distribution is measured as of the earlier of the date any money or other property is transferred or debt incurred by the corporation, or the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(ii) If the distribution is of indebtedness other than that described in subsection (4) (a) and (b)(i) of this section, the effect of the distribution is measured as of the date the indebtedness is distributed; and

(iii) In all other cases, the effect of the distribution is measured as of the date the distribution is ((~~authorized~~)) approved if payment occurs within one hundred

twenty days after the date of ((~~authorization~~)) approval, or the date the payment is made if it occurs more than one hundred twenty days after the date of ((~~authorization~~)) approval.

(5) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent provided otherwise by agreement.

(6) In circumstances to which this section and related sections of this title are applicable, such provisions supersede the applicability of any other statutes of this state with respect to the legality of distributions.

(7) A transfer of the assets of a dissolved corporation to a trust or other successor entity of the type described in RCW 23B.14.030(4) constitutes a distribution subject to subsection (2) of this section only when and to the extent that the trust or successor entity distributes assets to shareholders.

Sec. 13. RCW 23B.07.030 and 2002 c 297 s 22 are each amended to read as follows:

(1) The superior court of the county in which the corporation's registered office is located may, after notice to the corporation, summarily order a meeting to be held:

(a) On application of any shareholder of the corporation entitled to vote in the election of directors at an annual meeting, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting or approval of corporate action by shareholder consent in lieu of such a meeting; or

(b) On application of a shareholder who executed a demand for a special meeting valid under RCW 23B.07.020, if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may, after notice to the corporation, fix the time and place of the meeting, determine the shares and shareholders entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the manner, form, and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for ((~~action on~~)) approval of those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

Sec. 14. RCW 23B.07.040 and 2002 c 297 s 23 are each amended to read as follows:

(1)(a) Corporate action required or permitted by this title to be ((~~taken~~)) approved by a shareholder vote at a ((~~shareholders'~~)) meeting may be ((~~taken~~)) approved without a meeting or a vote if either:

(i) The corporate action is ((~~taken~~)) approved by all shareholders entitled to vote on the corporate action; or

(ii) The corporate action is ((~~taken~~)) approved by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes that would be necessary to ((~~authorize or take~~)) approve such corporate action at a meeting at which all shares entitled to vote on the corporate

action were present and voted, and at the time the corporate action is ((~~taken~~)) approved the corporation is not a public company and is authorized to ((~~take~~)) approve such corporate action under this subsection (1)(a)(ii) by a general or limited authorization contained in its articles of incorporation.

(b) ((~~The taking of~~)) Corporate action may be approved by shareholders without a meeting or a vote ((~~must be evidenced by one or more consents, each in the form of a record describing the action taken, executed~~)) by means of execution of a single consent or multiple counterpart consents by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes necessary ((~~in order to take such action by consent~~)) under (a)(i) or (ii) of this subsection((~~, and~~)). Any such shareholder consent must: (i) Be in the form of an executed record; (ii) indicate the date of execution of the consent by each shareholder who executes it, which date must be on or after the applicable record date determined in accordance with subsection (2) of this section; (iii) describe the corporate action being approved; (iv) when delivered to each shareholder for execution, include or be accompanied by the same material that would have been required by this title to be delivered to shareholders in or accompanying a notice of meeting at which the proposed corporate action would have been submitted for shareholder approval; and (v) be delivered to the corporation for inclusion in the minutes or filing with the corporate records((~~, which consent shall be set forth either (i) in an executed record or (ii) if the corporation has designated an address, location, or system to which the consent may be electronically transmitted and the consent is electronically transmitted to the designated address, location, or system, in an executed electronically transmitted record.~~

~~(2) If not otherwise fixed under RCW 23B.07.030 or 23B.07.070, the record date for determining shareholders entitled to take action without a meeting is the date on which the first shareholder consent is executed under subsection (1) of this section. Every consent shall bear the date of execution of each shareholder who executes the consent. A consent is not effective to take the action referred to in the consent unless, within sixty days of the earliest dated consent delivered to the corporation, consents executed by a sufficient number of shareholders to take action are delivered to the corporation.~~

~~(3)~~)) in accordance with subsection (4) of this section. A shareholder may withdraw an executed shareholder consent ((~~only~~)) by delivering a notice of withdrawal in the form of ((~~a~~)) an executed record to the corporation prior to the time when ((~~consents sufficient to authorize taking the action have been delivered to the corporation.~~

~~(4) Unless the shareholder consent specifies a later effective date, action taken under this section is effective when: (a) Consents sufficient to authorize taking the action have been delivered to the corporation; and (b) the period of advance notice required by the corporation's articles of incorporation to be given to any nonconsenting shareholders has been satisfied.~~

~~(5) A consent executed~~)) shareholder consents sufficient to approve the corporate action have been delivered to the corporation.

(2) The record date for determining shareholders entitled to approve a corporate action without a meeting may be fixed under RCW 23B.07.030 or 23B.07.070, but if not so fixed shall be the date of execution indicated on the earliest dated shareholder consent executed under subsection (1) of this section,

even though such shareholder consent may not have been delivered to the corporation on that date.

(3)(a) Notice that shareholder consents are being sought under subsection (1)(a) of this section shall be given, by the corporation or by another person soliciting such consents, on or promptly after the record date, to all shareholders entitled to vote on the record date who have not yet executed the shareholder consent and, if this title would otherwise require that notice of a meeting of shareholders to consider the proposed corporate action be given to nonvoting shareholders, to all nonvoting shareholders as of the record date. Notice given under this subsection (3)(a) shall include or be accompanied by the same information required to be included in or to accompany the shareholder consent under subsection (1)(b)(iii) and (iv) of this section.

(b) Notice that sufficient shareholder consents have been executed to approve the proposed corporate action under either of subsection (1)(a)(i) or (ii) of this section shall be given by the corporation, promptly after delivery to the corporation of shareholder consents sufficient to approve the corporate action in accordance with subsection (4) of this section, to all shareholders entitled to vote on the record date and, if this title would otherwise require that notice of a meeting of shareholders to consider the proposed corporate action be given to nonvoting shareholders, to all nonvoting shareholders as of the record date.

(4) Unless the consent executed by shareholders specifies a later effective date, shareholder approval obtained under this section is effective when: (a) Executed shareholder consents sufficient to approve the proposed corporate action have been delivered to the corporation, either at an address designated by the corporation for delivery of such shareholder consents or at the corporation's registered office, or to such electronic address, location, or system as the corporation may have designated for delivery of such shareholder consents; and (b) any period of advance notice required by the corporation's articles of incorporation to be given to any nonconsenting shareholders has been satisfied. Executed shareholder consents are not effective to approve a proposed corporate action unless, within sixty days after the date of the earliest dated shareholder consent delivered to the corporation, consents executed by a sufficient number of shareholders to approve the corporate action are delivered to the corporation.

(5) Approval of corporate action by execution of shareholder consents under this section has the effect of a meeting vote and may be described as such in any record, except that, if the corporate action requires the filing of a certificate under any other section of this title, the certificate so filed shall state, in lieu of any statement required by that section concerning any vote of shareholders, that ((~~consent~~)) shareholder approval has been obtained in accordance with this section and that notice to any nonconsenting shareholders has been given ((~~as provided in this section.~~

~~(6) Notice of the taking of action by shareholders without a meeting by less than unanimous consent of all shareholders entitled to vote on the action shall be given, before the date on which the action becomes effective, to those shareholders entitled to vote on the action who have not consented and, if this title would otherwise require that notice of a meeting of shareholders to consider the action be given to nonvoting shareholders, to all nonvoting shareholders of the corporation. The general or limited authorization in the corporation's articles of incorporation authorizing shareholder action by less than unanimous consent~~

~~shall specify the amount and form of notice required to be given to nonconsenting shareholders before the effective date of the action. In the case of action of a type that would constitute a significant business transaction under RCW 23B.19.020(15), the notice shall be given no fewer than twenty days before the effective date of the action. The notice shall be in the form of a record and shall contain or be accompanied by the same material that, under this title, would have been required to be delivered to nonconsenting or nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted for shareholder action. If the action taken is of a type that would entitle shareholders to exercise dissenters' rights under RCW 23B.13.020(1), then the notice must comply with RCW 23B.13.220(2), RCW 23B.13.210 shall not apply, and all shareholders who have not executed the consent taking the action are entitled to receive the notice, demand payment under RCW 23B.13.230, and assert other dissenters' rights as prescribed in chapter 23B.13 RCW~~)) to the extent required by this section.

Sec. 15. RCW 23B.07.060 and 2002 c 297 s 24 are each amended to read as follows:

(1) A shareholder may waive any notice required by this title, the articles of incorporation, or bylaws before or after the date and time of the meeting that is the subject of such notice, or in the case of notice required by RCW 23B.07.040((~~(6)~~))(3), before or after the corporate action to be ((~~taken~~)) approved by executed consent ((~~is~~)) becomes effective. Except as provided by subsections (2) and (3) of this section, the waiver must be delivered by the shareholder entitled to notice to the corporation for inclusion in the minutes or filing with the corporate records, which waiver shall be set forth either (a) in an executed and dated record or (b) if the corporation has designated an address, location, or system to which the waiver may be electronically transmitted and the waiver is electronically transmitted to the designated address, location, or system, in an executed and dated electronically transmitted record.

(2) A shareholder's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

(3) A shareholder waives objection to consideration of a particular matter at a meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

Sec. 16. RCW 23B.07.070 and 1989 c 165 s 66 are each amended to read as follows:

(1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to ((~~take~~)) approve any other corporate action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) If not otherwise fixed under subsection (1) of this section or RCW 23B.07.030, the record date for determining shareholders entitled to notice of

and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

(4) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(5) A record date fixed under this section may not be more than seventy days before the meeting ((~~or action requiring a determination~~)) of shareholders or more than ten days prior to the date on which the first shareholder consent is executed under RCW 23B.07.040(1)(b).

(6) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(7) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

Sec. 17. RCW 23B.07.200 and 1989 c 165 s 68 are each amended to read as follows:

(1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders on the record date who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, beginning ten days prior to the meeting and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder, the shareholder's agent, or the shareholder's attorney to inspect the shareholders' list before or at the meeting, the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection is complete.

(5) A shareholder's right to copy the shareholders' list, and a shareholder's right to otherwise inspect and copy the record of shareholders, is governed by RCW 23B.16.020(3).

(6) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of corporate action ((~~taken~~)) approved at the meeting.

Sec. 18. RCW 23B.07.250 and 1989 c 165 s 73 are each amended to read as follows:

(1) Shares entitled to vote as a separate voting group may ((~~take~~)) approve a corporate action ((~~on a matter~~)) at a meeting only if a quorum of those shares exists with respect to that ((~~matter~~)) corporate action. Unless the articles of incorporation or this title provide otherwise, a majority of the votes entitled to be cast on the ((~~matter~~)) corporate action by the voting group constitutes a quorum of that voting group for ((~~action on that matter~~)) approval of that corporate action.

(2) Once a share is represented for any purpose at a meeting other than solely to object to holding the meeting or transacting business at the meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(3) If a quorum exists, a corporate action ((~~on a matter~~)), other than the election of directors, is approved by a voting group if the votes cast within the voting group favoring the corporate action exceed the votes cast within the voting group opposing the corporate action, unless the articles of incorporation or this title require a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing, or deleting either (i) a quorum for a voting group greater or lesser than specified in subsection (1) of this section, or (ii) a voting requirement for a voting group greater than specified in subsection (3) of this section, is governed by RCW 23B.07.270.

(5) The election of directors is governed by RCW 23B.07.280.

Sec. 19. RCW 23B.07.260 and 2003 c 35 s 2 are each amended to read as follows:

(1) If the articles of incorporation or this title provide for voting on a ((~~matter~~)) corporate action by all shares entitled to vote thereon, voting together as a single voting group and do not provide for separate voting by any other voting group or groups with respect to that ((~~matter~~)) corporate action, ((~~action on that matter is taken~~)) that corporate action is approved when voted upon by that single voting group as provided in RCW 23B.07.250.

(2) If the articles of incorporation or this title provide for voting by two or more voting groups on a ((~~matter~~)) corporate action, ((~~action on that matter is taken~~)) that corporate action is approved only when voted upon by each of those voting groups as provided in RCW 23B.07.250.

Sec. 20. RCW 23B.07.270 and 1990 c 178 s 11 are each amended to read as follows:

(1) The articles of incorporation may provide for a greater or lesser quorum, but not less than one-third of the votes entitled to be cast, for shareholders, or voting groups of shareholders, than is provided for by this title.

(2) The articles of incorporation may provide for a greater voting requirement for shareholders, or voting groups of shareholders, than is provided for by this title.

(3) Under RCW 23B.10.030, 23B.11.030, 23B.12.020, and 23B.14.020, the articles of incorporation may provide for a lesser vote than is otherwise prescribed in those sections or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the plan or transaction is not less than a majority of all the votes entitled to be cast on the plan or transaction by that voting group.

(4) Except as provided in subsection (5) of this section, an amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement for a particular corporate action must meet the same quorum requirement and be adopted by the same vote and voting groups as are required ((~~to take action~~)) under the quorum and voting requirements then in effect for approval of the corporate action.

(5) An amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement for a merger, share exchange, sale of substantially all assets, or dissolution must be adopted by the same vote and voting groups as are required ((~~to take action~~)) under the quorum and voting requirements then in effect for approval of the particular corporate action, or the quorum and voting requirements then in effect for amendments to articles of incorporation, whichever is greater.

Sec. 21. RCW 23B.07.280 and 1989 c 165 s 76 are each amended to read as follows:

(1) Unless otherwise provided in the articles of incorporation, shareholders entitled to vote at any election of directors are entitled to cumulate votes by multiplying the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and to cast the product for a single candidate or distribute the product among two or more candidates.

(2) Unless otherwise provided in the articles of incorporation or in a bylaw adopted under RCW 23B.10.205, in any election of directors the candidates elected are those receiving the largest numbers of votes cast by the shares entitled to vote in the election, up to the number of directors to be elected by such shares.

Sec. 22. RCW 23B.07.320 and 1995 c 47 s 6 are each amended to read as follows:

(1) An agreement among the shareholders of a corporation that is not contrary to public policy and that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this title in that it:

(a) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) Governs the ((~~authorization~~)) approval or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in RCW 23B.06.400;

(c) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(d) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation;

(g) Provides a process by which a deadlock among directors or shareholders may be resolved;

(h) Requires dissolution of the corporation at the request of one or more shareholders or upon the occurrence of a specified event or contingency; or

(i) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them.

(2) An agreement authorized by this section shall be:

(a) Set forth in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

(b) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(c) Valid for ten years, unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by RCW 23B.06.260(2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Unless the agreement provides otherwise, any person who acquires outstanding or newly issued shares in the corporation after an agreement authorized by this section has been effected, whether by purchase, gift, operation of law, or otherwise, is deemed to have assented to the agreement and to be a party to the agreement. A purchaser of shares who is aggrieved because he or she at the time of purchase did not have actual or constructive knowledge of the existence of the agreement may either: (a) Bring an action to rescind the purchase within the earlier of ninety days after discovery of the existence of the agreement or two years after the purchase of the shares; or (b) continue to hold the shares subject to the agreement but with a right of action for any damages resulting from nondisclosure of the existence of the agreement. A purchaser shall be deemed to have constructive knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

Sec. 23. RCW 23B.08.030 and 2007 c 467 s 1 are each amended to read as follows:

(1) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless (a) their terms are staggered under RCW 23B.08.060, or (b) their terms are otherwise governed by RCW 23B.05.050. Directors also may be elected by execution of a shareholder consent ((~~action~~)) under RCW 23B.07.040.

Sec. 24. RCW 23B.08.210 and 2002 c 297 s 29 are each amended to read as follows:

(1) Unless the articles of incorporation or bylaws provide otherwise, corporate action required or permitted by this title to be ((~~taken~~)) approved at a board of directors' meeting may be ((~~taken~~)) approved without a meeting if the corporate action is ((~~taken~~)) approved by all members of the board. The approval of the corporate action must be evidenced by one or more consents describing the ((~~action taken~~)) corporate action being approved, executed by each director either before or after the ((~~action taken~~)) corporate action becomes effective, and delivered to the corporation for inclusion in the minutes or filing with the corporate records, each of which consents shall be set forth either (a) in an executed record or (b) if the corporation has designated an address, location, or system to which the consents may be electronically transmitted and the consent is electronically transmitted to the designated address, location, or system, in an executed electronically transmitted record.

(2) Corporate action ((~~taken~~)) is approved under this section ((~~is effective~~)) when the last director executes the consent((~~, unless the consent specifies a later effective date~~)).

(3) A consent under this section has the effect of a meeting vote and may be described as such in any record.

Sec. 25. RCW 23B.08.230 and 2002 c 297 s 30 are each amended to read as follows:

(1) A director may waive any notice required by this title, the articles of incorporation, or bylaws before or after the date and time stated in the notice,

and such waiver shall be equivalent to the giving of such notice. Except as provided by subsection (2) of this section, the waiver must be delivered by the director entitled to the notice to the corporation for inclusion in the minutes or filing with the corporate records, which waiver shall be set forth either (a) in an executed record or (b) if the corporation has designated an address, location, or system to which the waiver may be electronically transmitted and the waiver has been electronically transmitted to the designated address, location, or system, in an executed electronically transmitted record.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any corporate action ((~~taken~~)) approved at the meeting.

Sec. 26. RCW 23B.08.240 and 2002 c 297 s 31 are each amended to read as follows:

(1) Unless the articles of incorporation or bylaws require a greater or lesser number, a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) Notwithstanding subsection (1) of this section, a quorum of a board of directors may in no event be less than one-third of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors when corporate action is ((~~taken~~)) approved is deemed to have assented to the corporate action ((~~taken~~)) unless: (a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding it or transacting business at the meeting; (b) the director's dissent or abstention ((~~from~~)) as to the corporate action ((~~taken~~)) is entered in the minutes of the meeting; or (c) the director delivers notice of the director's dissent or abstention as to the corporate action to the presiding officer of the meeting before ((~~its~~)) adjournment or to the corporation within a reasonable time after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the corporate action ((~~taken~~)).

Sec. 27. RCW 23B.08.250 and 1989 c 165 s 96 are each amended to read as follows:

(1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees of directors. Each committee must have two or more members, who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it must be approved by the greater of (a) a majority of all the directors in office when the ((~~action~~)) creation of the committee is ((~~taken~~)) approved or (b) the number of directors required by the articles of incorporation or bylaws to ((~~take action~~)) approve the creation of the committee under RCW 23B.08.240.

(3) RCW 23B.08.200 through 23B.08.240, which govern meetings, approval of corporate action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under RCW 23B.08.010.

(5) A committee may not, however:

(a) ((~~Authorize or~~)) Approve a distribution except according to a general formula or method prescribed by the board of directors;

(b) Approve or propose to shareholders corporate action that this title requires be approved by shareholders;

(c) Fill vacancies on the board of directors or on any of its committees;

(d) Amend articles of incorporation pursuant to RCW 23B.10.020;

(e) Adopt, amend, or repeal bylaws;

(f) Approve a plan of merger not requiring shareholder approval; or

(g) ((~~Authorize or~~)) Approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee, or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(6) The creation of, delegation of authority to, or approval of corporate action by a committee does not alone constitute compliance by a director with the standards of conduct described in RCW 23B.08.300.

Sec. 28. RCW 23B.08.500 and 1989 c 165 s 105 are each amended to read as follows:

For purposes of RCW 23B.08.510 through 23B.08.600:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon ((~~consummation~~)) the effective date of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means: (a) When used with respect to a director, the office of director in a corporation; and (b) when used with respect to an individual other than a director, as contemplated in RCW 23B.08.570, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official

capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

Sec. 29. RCW 23B.08.550 and 1989 c 165 s 110 are each amended to read as follows:

(1) A corporation may not indemnify a director under RCW 23B.08.510 unless ((~~authorized~~)) approved in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in RCW 23B.08.510.

(2) The determination shall be made:

(a) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) If a quorum cannot be obtained under (a) of this subsection, by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding;

(c) By special legal counsel:

(i) Selected by the board of directors or its committee in the manner prescribed in (a) or (b) of this subsection; or

(ii) If a quorum of the board of directors cannot be obtained under (a) of this subsection and a committee cannot be designated under (b) of this subsection, selected by majority vote of the full board of directors, in which selection directors who are parties may participate; or

(d) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(3) ((~~Authorization~~)) Approval of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, ((~~authorization~~)) approval of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (2)(c) of this section to select counsel.

Sec. 30. RCW 23B.08.700 and 1989 c 165 s 116 are each amended to read as follows:

For purposes of RCW 23B.08.710 through 23B.08.730:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, if:

(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person is a party to the transaction or has a beneficial

financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(b) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction: (i) An entity, other than the corporation, of which the director is a director, general partner, agent, or employee; (ii) a person that controls one or more of the entities specified in (b)(i) of this subsection or an entity that is controlled by, or is under common control with, one or more of the entities specified in (b)(i) of this subsection; or (iii) an individual who is a general partner, principal, or employer of the director.

(2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, respecting which a director of the corporation has a conflicting interest.

(3) "Related person" of a director means (a) the spouse, or a parent or sibling thereof, of the director, or a child, grandchild, sibling, parent, or spouse of any thereof, of the director, or an individual having the same home as the director, or a trust or estate of which an individual specified herein is a substantial beneficiary; or (b) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

(4) "Required disclosure" means disclosure by the director who has a conflicting interest of (a) the existence and nature of the director's conflicting interest, and (b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction ((~~is consummated~~)) becomes effective or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

Sec. 31. RCW 23B.10.020 and 2003 c 35 s 3 are each amended to read as follows:

Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder ((~~action~~)) approval:

(1) If the corporation has only one class of shares outstanding, to provide, change, or eliminate any provision with respect to the par value of any class of shares;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(4) If the corporation has only one class of shares outstanding, solely to:

(a) Effect a forward split of, or change the number of authorized shares of that class in proportion to a forward split of, or stock dividend in, the corporation's outstanding shares; or

(b) Effect a reverse split of the corporation's outstanding shares and the number of authorized shares of that class in the same proportions;

(5) To change the corporate name; or

(6) To make any other change expressly permitted by this title to be made without shareholder ((~~action~~)) approval.

Sec. 32. RCW 23B.10.060 and 1989 c 165 s 125 are each amended to read as follows:

A corporation amending its articles of incorporation shall deliver to the secretary of state for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) The date of each amendment's adoption;

(5) If an amendment was adopted by the incorporators or board of directors without shareholder ((~~action~~)) approval, a statement to that effect and that shareholder ((~~action~~)) approval was not required; and

(6) If shareholder ((~~action~~)) approval was required, a statement that the amendment was duly approved by the shareholders in accordance with the provisions of RCW 23B.10.030 and 23B.10.040.

Sec. 33. RCW 23B.10.070 and 1991 c 72 s 36 are each amended to read as follows:

(1) Any officer of the corporation may restate its articles of incorporation at any time.

(2) A restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment not requiring shareholder approval, it must be adopted by the board of directors. If the restatement includes an amendment requiring shareholder approval, it must be adopted in accordance with RCW 23B.10.030.

(3) If the board of directors submits a restatement for shareholder ((~~action~~)) approval, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.

(4) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) If the restatement does not include an amendment to the articles of incorporation, a statement to that effect;

(b) If the restatement contains an amendment to the articles of incorporation not requiring shareholder approval, a statement that the board of directors adopted the restatement and the date of such adoption;

(c) If the restatement contains an amendment to the articles of incorporation requiring shareholder approval, the information required by RCW 23B.10.060; and

(d) Both the articles of restatement and the certificate must be executed.

(5) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(6) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (4) of this section.

Sec. 34. RCW 23B.10.080 and 1989 c 165 s 127 are each amended to read as follows:

(1) A corporation's articles of incorporation may be amended without ((~~action~~)) approval by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by RCW 23B.02.020.

(2) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

Sec. 35. RCW 23B.10.200 and 2007 c 467 s 7 are each amended to read as follows:

(1) A corporation's board of directors may amend or repeal the corporation's bylaws, or adopt new bylaws, unless:

(a) The articles of incorporation, RCW 23B.10.205, or, if applicable, RCW ((~~23B.07.035~~)) 23B.10.210, or any other provision of this title reserve this power exclusively to the shareholders in whole or part; or

(b) The shareholders, in amending or repealing a particular bylaw, provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws, or adopt new bylaws, even though the bylaws may also be amended or repealed, or new bylaws may also be adopted, by its board of directors.

Sec. 36. RCW 23B.10.205 and 2007 c 467 s 5 are each amended to read as follows:

(1) Unless the articles of incorporation (((~~(a)~~))) specifically prohibit the adoption of a bylaw pursuant to this section, (((~~(b)~~))) alter the vote specified in RCW 23B.07.280(2), or (((~~(c)~~))) allow for or do not exclude cumulative voting, a public company may elect in its bylaws to be governed in the election of directors as follows:

(((~~(i)~~))) (a) Each vote entitled to be cast may be voted for, voted against, or withheld for one or more candidates up to that number of candidates that is equal to the number of directors to be elected but without cumulating the votes, or a shareholder may indicate an abstention for one or more candidates;

(((~~(ii)~~))) (b) To be elected, a candidate must have received the number, percentage, or level of votes specified in the bylaws; provided that holders of shares entitled to vote in the election and constituting a quorum are present at the meeting. Except in a contested election as provided in (((~~(c)(v)~~))) (e) of this subsection, a candidate who does not receive the number, percentage, or level of votes specified in the bylaws but who was a director at the time of the election shall continue to serve as a director for a term that shall terminate on the date that is the earlier of (((~~(A)~~))) (i) the date specified in the bylaw, but not longer than ninety days from the date on which the voting results are determined pursuant to RCW 23B.07.035(2), or (((~~(B)~~))) (ii) the date on which an individual is selected by the board of directors to fill the office held by such director, which selection shall be deemed to constitute the filling of a vacancy by the board to which RCW 23B.08.100 applies;

(((~~(iii)~~))) (c) A bylaw adopted pursuant to this section may provide that votes cast against and/or withheld as to a candidate are to be taken into account in determining whether the number, percentage, or level of votes required for election has been received. Unless the bylaw specifies otherwise, only votes cast are to be taken into account and a ballot marked "withheld" in respect to a share is deemed to be a vote cast. Unless the bylaws specify otherwise, shares otherwise present at the meeting but for which there is an abstention or as to which no authority or direction to vote in the election is given or specified, are not deemed to be votes cast in the election;

(((~~(iv)~~))) (d) The board of directors may select any qualified individual to fill the office held by a director who did not receive the specified vote for election referenced in (((~~(c)(ii)~~))) (b) of this subsection; and

(((~~(v)~~))) (e) Unless the bylaw specifies otherwise, a bylaw adopted pursuant to this subsection (1) shall not apply to an election of directors by a voting group if (((~~(A)~~))) (i) at the expiration of the time fixed under a provision requiring advance notification of director candidates, or (((~~(B)~~))) (ii) absent such a provision, at a time fixed by the board of directors which is not more than fourteen days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders. An individual shall not be considered a candidate for purposes of this subsection (1)(((~~(c)(v)~~))) (e) if the board of directors determines before the notice of meeting

is given that such individual's candidacy does not create a bona fide election contest.

(2) A bylaw containing an election to be governed by this section may be repealed or amended:

(a) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

(b) If adopted by the board of directors, by the board of directors or the shareholders.

Sec. 37. RCW 23B.10.210 and 1989 c 165 s 130 are each amended to read as follows:

(1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) If originally adopted by the shareholders, only by the shareholders; or

(b) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) If the corporation is a public company, ((~~action~~)) approval by the board of directors under subsection (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the quorum requirement and be ((~~adopted~~)) approved by the vote required ((~~to take action~~)) for approval under the quorum and voting requirement then in effect.

(4) If the corporation is not a public company, ((~~action~~)) approval by the board of directors under subsection (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be ((~~adopted~~)) approved by the same vote required ((~~to take action~~)) for approval under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Sec. 38. RCW 23B.11.030 and 2003 c 35 s 6 are each amended to read as follows:

(1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) The shareholders entitled to vote must approve the plan, except as provided in subsection (7) of this section.

(3) The board of directors may condition its submission of the proposed plan of merger or share exchange on any basis, including the affirmative vote of

holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed plan of merger or share exchange.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy or summary of the plan.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of merger ((~~to be authorized~~)) must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan, unless shareholder ((~~action~~)) approval is not required under subsection (7) of this section. The articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of merger and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of merger under the circumstances described in RCW 23B.11.035.

(6) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of share exchange ((~~to be authorized~~)) must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan. The articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of share exchange and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of share exchange under the circumstances described in RCW 23B.11.035.

(7) ((~~Action~~)) Approval by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in RCW 23B.10.020, from its articles of incorporation before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of voting shares of the surviving corporation authorized by its articles of incorporation immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of participating shares authorized by its articles of incorporation immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is ((~~authorized~~)) approved, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder ((~~action~~)) approval, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

Sec. 39. RCW 23B.11.040 and 2002 c 297 s 34 are each amended to read as follows:

(1) A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

(2) The board of directors of the parent shall ((~~adopt~~)) approve a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

(3) Within ten days after the corporate action ((~~is taken~~)) becomes effective, the parent shall deliver a notice to each shareholder of the subsidiary, which notice shall include a copy of the plan of merger.

(4) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation, except for amendments enumerated in RCW 23B.10.020.

Sec. 40. RCW 23B.12.020 and 2003 c 35 s 8 are each amended to read as follows:

(1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be ((~~authorized~~)) approved:

(a) The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) The shareholders entitled to vote must approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed transaction.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the transaction ((~~to be authorized~~)) must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the transaction, and of each other voting group entitled under the articles of incorporation to vote separately on the transaction. The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the transaction and of each other voting group entitled to vote separately on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is ((~~authorized~~)) approved, the transaction may be abandoned, subject to any contractual rights, without further shareholder ((~~action~~)) approval, in a manner determined by the board of directors.

(7) A transaction that constitutes a distribution is governed by RCW 23B.06.400 and not by this section.

Sec. 41. RCW 23B.13.020 and 2003 c 35 s 9 are each amended to read as follows:

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) ((~~Consummation of~~)) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval ((~~is~~)) was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, and the shareholder ((~~is~~)) was entitled to vote on the merger, or (ii) if the corporation ((~~is~~)) was a subsidiary that ((~~is~~)) has been merged with its parent under RCW 23B.11.040;

(b) ((~~Consummation of~~)) A plan of share exchange, which has become effective, to which the corporation is a party as the corporation whose shares ((~~will be~~)) have been acquired, if the shareholder ((~~is~~)) was entitled to vote on the plan;

(c) ((~~Consummation of~~)) A sale or exchange, which has become effective, of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder ((~~is~~)) was entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation; or

(e) Any corporate action ((~~taken~~)) approved pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.900 through 25.10.955, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation.

Sec. 42. RCW 23B.13.200 and 2002 c 297 s 36 are each amended to read as follows:

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted ((~~to~~)) for approval by a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(2) If corporate action creating dissenters' rights under RCW 23B.13.020 is ((~~taken~~)) submitted for approval without a vote of shareholders((~~, the corporation, within ten days after the effective date of such corporate action, shall deliver a notice to all shareholders entitled to assert dissenters' rights that the action was taken and send them the notice described in RCW 23B.13.220~~)) in accordance with RCW 23B.07.040, the shareholder consent described in RCW 23B.07.040(1)(b) and the notice described in RCW 23B.07.040(3)(a) must include a statement that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

Sec. 43. RCW 23B.13.210 and 2002 c 297 s 37 are each amended to read as follows:

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights must (a) deliver to the corporation before the vote is taken notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed corporate action is effected, and (b) not vote such shares in favor of the proposed corporate action.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in

accordance with RCW 23B.07.040, a shareholder who wishes to assert dissenters' rights must not execute the consent or otherwise vote such shares in favor of the proposed corporate action.

(3) A shareholder who does not satisfy the requirements of subsection (1) or (2) of this section is not entitled to payment for the shareholder's shares under this chapter.

Sec. 44. RCW 23B.13.220 and 2002 c 297 s 38 are each amended to read as follows:

(1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is ((~~authorized~~)) approved at a shareholders' meeting, the corporation shall within ten days after the effective date of the corporate action deliver ((~~a notice~~)) to all shareholders who satisfied the requirements of RCW 23B.13.210(1) a notice in compliance with subsection (3) of this section.

(2) ((~~The~~)) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.07.040, the notice delivered pursuant to RCW 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW 23B.13.210(2) shall comply with subsection (3) of this section.

(3) Any notice under subsection (1) or (2) of this section must ((~~be sent within ten days after the effective date of the corporate action, and must~~)):

(a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1) or (2) of this section is delivered; and

(e) Be accompanied by a copy of this chapter.

Sec. 45. RCW 23B.13.240 and 1989 c 165 s 147 are each amended to read as follows:

(1) The corporation may restrict the transfer of uncertificated shares from the date the demand for ((~~their~~)) payment under RCW 23B.13.230 is received until the proposed corporate action is effected or the restriction is released under RCW 23B.13.260.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until the effective date of the proposed corporate action.

Sec. 46. RCW 23B.13.260 and 1989 c 165 s 149 are each amended to read as follows:

(1) If the corporation does not effect the proposed corporate action within sixty days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release any transfer restrictions imposed on uncertificated shares.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation wishes to ((~~undertake~~)) effect the proposed corporate action, it must send a new dissenters' notice under RCW 23B.13.220 and repeat the payment demand procedure.

Sec. 47. RCW 23B.13.270 and 1989 c 165 s 150 are each amended to read as follows:

(1) A corporation may elect to withhold payment required by RCW 23B.13.250 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1) of this section, after ((~~taking~~)) the effective date of the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The corporation shall send with its offer an explanation of how it estimated the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under RCW 23B.13.280.

Sec. 48. RCW 23B.13.280 and 2002 c 297 s 40 are each amended to read as follows:

(1) A dissenter may deliver a notice to the corporation informing the corporation of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due, and demand payment of the dissenter's estimate, less any payment under RCW 23B.13.250, or reject the corporation's offer under RCW 23B.13.270 and demand payment of the dissenter's estimate of the fair value of the dissenter's shares and interest due, if:

(a) The dissenter believes that the amount paid under RCW 23B.13.250 or offered under RCW 23B.13.270 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(b) The corporation fails to make payment under RCW 23B.13.250 within sixty days after the date set for demanding payment; or

(c) The corporation does not effect the proposed corporate action and does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the corporation of the dissenter's demand under subsection (1) of this section within thirty days after the corporation made or offered payment for the dissenter's shares.

Sec. 49. RCW 23B.14.010 and 2006 c 52 s 5 are each amended to read as follows:

(1) A majority of the initial directors, or, if initial directors were not named in the articles of incorporation and have not been elected, a majority of the incorporators, of a corporation that has not issued shares may ((~~authorize~~)) approve dissolution of the corporation.

(2) Unless prohibited by the articles of incorporation, a majority of the board of directors may ((~~authorize~~)) approve dissolution of the corporation

without approval by the shareholders, upon a finding by the board of directors that:

(a) The corporation is not able to pay its liabilities as they become due in the usual course of business, or the corporation's assets are less than the sum of its total liabilities; and

(b) Ten or more days have elapsed since the corporation gave notice to all shareholders, whether or not they would otherwise be entitled to vote under RCW 23B.14.020, of the intent of the board of directors to ((~~authorize~~)) approve dissolution under this subsection.

Sec. 50. RCW 23B.14.020 and 2006 c 52 s 6 are each amended to read as follows:

(1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be ((~~adopted~~)) approved:

(a) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed dissolution.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed dissolution either (a) by giving notice of a shareholders' meeting in accordance with RCW 23B.07.050 and stating that the purpose or one of the purposes of the meeting is to consider dissolving the corporation, or (b) in accordance with the requirements of RCW 23B.07.040 for ((~~taking action on the proposal~~)) approving the proposed dissolution without a meeting.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the ((~~proposal to dissolve~~)) proposed dissolution must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the ((~~proposal~~)) proposed dissolution, and of each other voting group entitled under the articles of incorporation to vote separately on the ((~~proposal~~)) proposed dissolution. The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the ((~~proposal~~)) proposed dissolution and of each other voting group entitled to vote separately on the ((~~proposal~~)) proposed dissolution.

Sec. 51. RCW 23B.14.030 and 2006 c 52 s 7 are each amended to read as follows:

(1) At any time after dissolution is authorized under RCW 23B.14.010 or 23B.14.020, the corporation may dissolve by delivering to the secretary of state for filing:

(a) A copy of a revenue clearance certificate issued pursuant to RCW 82.32.260; and

(b) Articles of dissolution setting forth:

(i) The name of the corporation;

(ii) The date dissolution was ((~~authorized~~)) approved; and

(iii) A statement that dissolution was duly ((~~authorized~~)) approved by the initial directors, the incorporators, or the board of directors in accordance with RCW 23B.14.010, or was duly proposed by the board of directors and approved by the shareholders in accordance with RCW 23B.14.020.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

(3) A dissolved corporation shall, within thirty days after the effective date of its articles of dissolution, publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice. The notice must be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located. The notice must also describe the information that must be included in a claim, provide a mailing address where a claim may be sent, and state that claims against the dissolved corporation may be barred in accordance with the provisions of this chapter if not timely asserted. A dissolved corporation's failure to publish notice in accordance with this subsection does not affect the validity or the effective date of its dissolution.

(4) For purposes of this chapter, "dissolved corporation" means a corporation whose dissolution has been ((~~authorized~~)) approved in accordance with RCW 23B.14.010 or 23B.14.020 and whose articles of dissolution have become effective, and includes any trust or other successor entity to which the remaining assets of such a corporation are transferred subject to its liabilities for purposes of liquidation in accordance with RCW 23B.14.050.

Sec. 52. RCW 23B.14.040 and 1989 c 165 s 157 are each amended to read as follows:

(1) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(2) Revocation of dissolution must be ((~~authorized~~)) approved in the same manner as the dissolution was ((~~authorized~~)) approved unless that ((~~authorization~~)) approval permitted revocation upon approval by ((~~action of~~)) the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder ((~~action~~)) approval.

(3) After the revocation of dissolution is ((~~authorized~~)) approved, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) The name of the corporation and a statement that such name satisfies the requirements of RCW 23B.04.010; if the name is not available, the corporation must file articles of amendment changing its name with the articles of revocation of dissolution;

(b) The effective date of the dissolution that was revoked;

(c) The date that the revocation of dissolution was ((~~authorized~~)) approved;

(d) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;

(e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) If shareholder ((~~action~~)) approval was required to revoke the dissolution, a statement that revocation of the dissolution was duly approved by the shareholders in accordance with RCW 23B.14.040(2) and 23B.14.020.

(4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

Sec. 53. RCW 23B.14.050 and 2006 c 52 s 8 are each amended to read as follows:

(1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will be applied toward satisfaction or making reasonable provision for satisfaction of its liabilities or will otherwise not be distributed in kind to its shareholders, but in any case subject to applicable liens and security interests as well as any applicable contractual restrictions on the disposition of its properties;

(c) Satisfying or making reasonable provision for satisfying its liabilities, in accordance with their priorities as established by law, and on a pro rata basis within each class of liabilities;

(d) Subject to the limitations imposed by RCW 23B.06.400, distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Except as otherwise provided in this chapter, dissolution of a corporation does not:

(a) Transfer title to the corporation's property;

(b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in chapter 23B.08 RCW;

(d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(e) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) Terminate the authority of the registered agent of the corporation.

(3) A dissolved corporation's board of directors may make a determination that reasonable provision for the satisfaction of any liability, whether arising in tort or by contract, statute, or otherwise, and whether matured or unmatured,

contingent, or conditional, has been made by means of a purchase of insurance coverage, provision of security therefor, contractual assumption thereof by a solvent person, or any other means, that the board of directors determines is reasonably calculated to provide for satisfaction of the reasonably estimated amount of such liability. Upon making such a determination, the board of directors shall, for purposes of determining whether a subsequent distribution to shareholders is prohibited under RCW 23B.06.400(2), be entitled to treat such liability as fully satisfied by the assets used or committed in order to make such provision. In making determinations under RCW 23B.06.400(2), the board of directors of a dissolved corporation may also disregard, and make no provision for the satisfaction of, any liabilities that are barred in accordance with RCW 23B.14.060(2), or that may exceed any provision for their satisfaction ordered by a superior court pursuant to RCW 23B.14.065, or that the board of directors does not consider, based on the facts known to it, reasonably likely to arise prior to expiration of the survival period specified in RCW 23B.14.340.

(4) The board of directors of a dissolved corporation may at any time petition to have the dissolution continued under court supervision in accordance with RCW 23B.14.300, or, upon a finding that the corporation is not able to pay its liabilities as they become due in the usual course of business or that its assets are less than the sum of its total liabilities, may dedicate the corporation's assets to the repayment of its creditors by making an assignment for the benefit of creditors in accordance with chapter 7.08 RCW or obtaining the appointment of a general receiver in accordance with chapter 7.60 RCW. The assumption of control over the corporation's assets by a court, an assignee for the benefit of creditors, or a general receiver relieves the directors of any further duties with respect to the liquidation of the corporation's assets or the application of any assets or proceeds toward satisfaction of its liabilities.

(5) Corporate actions ((~~and decisions~~)) to be ((~~taken~~)) approved by a corporation that has been dissolved under RCW 23B.14.030 or 23B.14.210, which are within the scope of activities permitted in this chapter, may be ((~~taken~~)) approved by the corporation's board of directors and, if required, by its shareholders, membership in both groups determined as of the effective date of the dissolution. If vacancies in the board of directors occur after the effective date of dissolution, the shareholders, or the remaining directors, even if less than a quorum of the board, may fill the vacancies. A special meeting of the shareholders for purposes of ((~~authorizing~~)) approving any corporate action required or permitted to be ((~~authorized~~)) approved by shareholders, or for purposes of electing directors, may be called by any person who was an officer, director, or shareholder of the corporation at the effective date of the dissolution.

Sec. 54. RCW 23B.16.010 and 2002 c 297 s 45 are each amended to read as follows:

(1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all corporate actions ((~~taken~~)) approved by the shareholders or board of directors by executed consent without a meeting, and a record of all corporate actions ((~~taken~~)) approved by a committee of the board of directors exercising the authority of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) The minutes of all shareholders' meetings, and records of all ((~~action taken~~)) corporate actions approved by shareholders without a meeting, for the past three years;

(d) The financial statements described in RCW 23B.16.200(1), for the past three years;

(e) All communications in the form of a record to shareholders generally within the past three years;

(f) A list of the names and business addresses of its current directors and officers; and

(g) Its initial report or most recent annual report delivered to the secretary of state under RCW 23B.16.220.

Sec. 55. RCW 23B.16.020 and 2002 c 297 s 46 are each amended to read as follows:

(1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in RCW 23B.16.010(5) if the shareholder gives the corporation notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) of this section and gives the corporation notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, ((~~records of any action~~)) or of any meeting of a committee of the board of directors while exercising the authority of the board of directors, minutes of any meeting of the shareholders, and records of ((~~action taken~~)) corporate actions approved by the shareholders or board of directors or a committee thereof without a meeting, to the extent not subject to inspection under subsection (1) of this section;

(b) Accounting records of the corporation; and

(c) The record of shareholders.

(3) A shareholder may inspect and copy the records described in subsection (2) of this section only if:

(a) The shareholder's demand is made in good faith and for a proper purpose;

(b) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(c) The records are directly connected with the shareholder's purpose.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section does not affect:

(a) The right of a shareholder to inspect records under RCW 23B.07.200 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of a court, independently of this title, to compel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf.

Sec. 56. RCW 23B.19.040 and 2007 c 45 s 1 are each amended to read as follows:

(1)(a) Notwithstanding anything to the contrary contained in this title, a target corporation shall not for a period of five years following the acquiring person's share acquisition time engage in a significant business transaction unless:

(i) It is exempted by RCW 23B.19.030;

(ii) The significant business transaction or the purchase of shares made by the acquiring person is approved prior to the acquiring person's share acquisition time by a majority of the members of the board of directors of the target corporation; or

(iii) At or subsequent to the acquiring person's share acquisition time, such significant business transaction is approved by a majority of the members of the board of directors of the target corporation and ((~~authorized~~)) approved at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting shares, except shares beneficially owned by or under the voting control of the acquiring person.

(b) If a good faith proposal for a significant business transaction is made in writing to the board of directors of the target corporation prior to the significant business transaction or prior to the share acquisition time, the board of directors shall respond in writing, within thirty days or such shorter period, if any, as may be required by the exchange act setting forth its reasons for its decision regarding the proposal. If a good faith proposal to purchase shares is made in writing to the board of directors of the target corporation, the board of directors, unless it responds affirmatively in writing within thirty days or a shorter period, if any, as may be required by the exchange act shall be deemed to have disapproved such share purchase.

(2) Except for a significant business transaction approved under subsection (1) of this section or exempted by RCW 23B.19.030, in addition to any other requirement, a target corporation shall not engage at any time in any significant business transaction described in RCW 23B.19.020(15) (a) or (e) with any acquiring person of such a corporation other than a significant business transaction that either meets all of the conditions of (a), (b), and (c) of this subsection or meets the conditions of (d) of this subsection:

(a) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of such a target corporation in a significant business transaction is at least equal to the higher of the following:

(i) The highest per share price paid by such an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting shares of a target corporation, for any shares of common shares of the same class or series acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the earliest date, up to the amount of the interest; and

(ii) The market value per share of common shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the date, up to the amount of the interest.

(b) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of the target corporation is at least equal to the highest of the following, whether or not the acquiring person has previously acquired any shares of such a class or series of shares:

(i) The highest per share price paid by an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting shares of a resident domestic corporation, for any shares of the same class or series of shares acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the earliest date, up to the amount of the interest;

(ii) The highest preferential amount per share to which the holders of shares of the same class or series of shares are entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation, plus the

aggregate amount of any dividends declared or due as to which the holders are entitled prior to payment of dividends on some other class or series of shares, unless the aggregate amount of the dividends is included in the preferential amount; and

(iii) The market value per share of the same class or series of shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the date, up to the amount of the interest.

(c) The consideration to be received by holders of a particular class or series of outstanding shares, including common shares, of the target corporation in a significant business transaction is in cash or in the same form as the acquiring person has used to acquire the largest number of shares of the same class or series of shares previously acquired by the person, and the consideration shall be distributed promptly.

(d) The significant business transaction is approved at an annual meeting of shareholders, or special meeting of shareholders called for such a purpose, no earlier than five years after the acquiring person's share acquisition time, by a majority of the votes entitled to be counted within each voting group entitled to vote separately on the transaction. The votes of all outstanding shares entitled to vote under this title or the articles of incorporation shall be entitled to be counted under this subsection except that the votes of shares as to which an acquiring person has beneficial ownership or voting control may not be counted to determine whether shareholders have approved a transaction for purposes of this subsection. The votes of shares as to which an acquiring person has beneficial ownership or voting control shall, however, be counted in determining whether a transaction is approved under other sections of this title and for purposes of determining a quorum.

(3) Subsection (2) of this section does not apply to a target corporation that on June 6, 1996, had a provision in its articles of incorporation, adopted under RCW 23B.17.020(3)(d), expressly electing not to be covered under RCW 23B.17.020, which is repealed by section 6, chapter 155, Laws of 1996.

(4) A significant business transaction that is made in violation of subsection (1) or (2) of this section and that is not exempt under RCW 23B.19.030 is void.

Passed by the House February 27, 2009.
Passed by the Senate April 10, 2009.
Approved by the Governor April 23, 2009.
Filed in Office of Secretary of State April 24, 2009.

CHAPTER 190

[Substitute House Bill 1110]

HOME-BASED INSTRUCTION—MARKETING—PROHIBITION

AN ACT Relating to prohibiting advertising and marketing to students receiving home-based instruction; and adding a new section to chapter 28A.320 RCW.

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 are prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district, including but not limited to digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts may respond to requests for information that are initiated by a parent. This section does not apply to general mailings or newsletters sent by the school district to all households in the district.

Passed by the House February 20, 2009.
Passed by the Senate April 9, 2009.
Approved by the Governor April 23, 2009.
Filed in Office of Secretary of State April 24, 2009.

CHAPTER 191

[House Bill 1288]

PUBLIC DISCLOSURE—INTENT TO HOME SCHOOL—EXEMPTION

AN ACT Relating to exempting the annual parental declaration of intent to home school from the public disclosure act; and amending RCW 42.56.320.

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

Sec. 1. RCW 42.56.320 and 2005 c 274 s 412 are each amended to read as follows:

The following educational information is exempt from disclosure under this chapter:

(1) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW;

(2) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units;

(3) Individually identifiable information received by the workforce training and education coordinating board for research or evaluation purposes; ((~~and~~))

(4) Except for public records as defined in RCW ((~~40.14.040~~)) 40.14.010, any records or documents obtained by a state college, university, library, or archive through or concerning any gift, grant, conveyance, bequest, or devise, the terms of which restrict or regulate public access to those records or documents; and

(5) The annual declaration of intent filed by parents under RCW 28A.200.010 for a child to receive home-based instruction.

Passed by the House March 3, 2009.
Passed by the Senate April 9, 2009.
Approved by the Governor April 23, 2009.
Filed in Office of Secretary of State April 24, 2009.

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 2009 session (61st Legislature), chapters 1 through 191, 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 9th day of June, 2009.

K. KYLE THIESSEN
Code Reviser